



Department for  
Communities and  
Local Government

Mr C Simkins  
RPS  
20 Milton Park  
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Oxfordshire  
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Our Ref: APP/Y3940/A/13/2206963

Your Ref: OXF8221

21 September 2016

Dear Sir

**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, Terry G Phillimore MA, MCD, MRTPI, who held a public local inquiry from 5 to 7 April 2016 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.
3. A previous inquiry into the above appeal was held from 8 to 11 April 2014 and the Secretary of State issued his decision to dismiss the appeal on 27 October 2014. That decision was the subject of an application to the High Court and was subsequently quashed by order of the Court dated 5 May 2015. The appeal has therefore been re-determined by the Secretary of State. In this case, the Secretary of State consented to re-determine the case by way of a full public inquiry to consider all matters afresh.

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

4. The Inspector recommended that the appeal be dismissed and planning permission refused. For the reasons given below, the Secretary of State agrees 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.

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## **Procedural Matters**

5. An application for costs made by the Council against your clients (IR8) 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 Wiltshire Core Strategy (CS) (January 2015), the 'saved policies' of the Kennet Local Plan 2011 (KLP) (2004) and the Devizes Area Neighbourhood Plan (NP) (December 2015). The Secretary of State agrees with the Inspector that the development plan position has changed since the Council's refusal of the appeal application and the previous Inspector's report (IR18). The Secretary of State also agrees with the Inspector that the relevant policies of the development plan are those referred to at IR20–38.
7. The Secretary of State notes (IR40) that the parties agree that, since the previous decision, saved policy NR6 in the KLP has been replaced by Core Policy 1 and Core Policy 2 in the CS; and that the Council can now demonstrate a five-year supply of deliverable housing sites in the East Wiltshire Housing Market Area (HMA) based on the housing requirements set out in the CS.
8. Other 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; as well as the Community Infrastructure Levy (CIL) Regulations 2010 as amended.

## **Main issues**

9. The Secretary of State agrees with the Inspector that the main issues are those listed at IR193.

### The relationship of the proposal to the development plan

10. For the reasons given at IR194–203, the Secretary of State agrees with the Inspector's conclusion at IR204 that the proposal is contrary to Core Policy 2 of the CS and policy H1 of the NP. He agrees with the Inspector that these policies and Core Policy 12 give effect to the development strategy set out in policy Core Policy 1, which are intended to be implemented in combination, such that the proposal is therefore also in conflict with these policies. Given the fundamental nature of the policy conflict, and the scale of the proposal, the Secretary of State further agrees with the Inspector (IR204) that the proposal is not in accordance with the development plan as a whole on the location of new residential development.

### Whether there are factors that warrant giving reduced weight to the development plan

11. For the reasons given at IR205–218, the Secretary of State agrees with the Inspector's conclusion at IR219 that there are no strong grounds to warrant giving reduced weight to the development plan. In particular, the Secretary of State agrees with the Inspector (IR213) that the CS and NP should not be regarded as out-of-date for the reason of a five-year supply of housing land not being demonstrated at the present time given that the Council can demonstrate a 5-year supply of deliverable

housing sites in the HMA. He therefore also agrees with the Inspector's reasoning at IR217 that there is no justification at the present time for releasing this greenfield site on the basis of either the agreed need for a future review of sites or the degree of progress to date on such a review.

#### The degree of environmental harm that would result from the proposal including in terms of landscape, transport and air quality

12. The Secretary of State agrees with the parties (IR220) that the proposal is acceptable in terms of site access arrangements, road safety, traffic generation and distribution. Although local concern was raised at the inquiry about these matters, the Secretary of State agrees with the Inspector that there is no evidence to support any different conclusion. The Secretary of State also agrees with the Inspector (IR221) and the parties that the impact of the development would not affect air quality in the Air Quality Management Area. He notes that the Council has confirmed that it does not pursue any objection to the scheme on archaeological grounds (IR222); and he shares the Inspector's concern (IR223) that the scale of the proposal would result in harm to the countryside – to which he gives moderate weight.

#### Whether the proposal amounts to sustainable development

13. Having regard to the three dimensions of sustainable development (IR235-236), the Secretary of State agrees with the Inspector at IR237 that the potential economic benefits can be given significant positive weight. He also agrees with the Inspector (IR238) that the scheme's substantial boost to housing supply is a significant positive aspect of the social dimension of sustainability, despite the fact that there is not an established current shortfall in the five-year housing land supply for the housing market area; and that the new open space, canal-side improvements and the availability of the local centre would provide further social benefits. For the reasons given at IR239, the Secretary of State agrees with the Inspector that these would also be environmental benefits to be placed in the balance alongside improvements to a cycle route and bus services; but that there would be a degree of harm to the countryside as a result of the extension of urbanisation beyond the existing edge of the built-up area.

14. Overall, therefore, the Secretary of State agrees with the Inspector's conclusion at IR240 that, based on an assessment against the three dimensions set out in the Framework, the proposal can be regarded as sustainable development. However, like the Inspector, the Secretary of State recognises that there is also a need to take account of the principle in paragraph 17 of the Framework that planning should be genuinely plan-led (IR241). For the reasons given by the Inspector at IR241-242, the Secretary of State concludes that as both the CS and NP have recently been found to support sustainable development and neither of these plans supports the appeal proposal, the conflict with the development plan should carry very substantial weight. He also recognises that a decision to allow the appeal would be likely to be regarded as undermining the NP (IR242). For all these reasons, the Secretary of State agrees with the Inspector's conclusion at IR243 that, having regard to the Framework as a whole, the harmful impact of allowing the proposal would outweigh the benefits.

#### Conditions and planning obligations

15. The Secretary of State has considered the Inspector's analysis of the proposed conditions at IR224-230, the recommended conditions as set out at Annex 3 to the IR

and to national policy in paragraph 206 of the Framework and the relevant Guidance. He is satisfied that the conditions recommended by the Inspector comply with the policy test set out at paragraph 206 of the Framework. However, he does not consider that the imposition of these conditions would overcome his reasons for dismissing this appeal.

16. Having had regard to the Inspector's reasoning and conclusions at IR231-234, the submitted section 106 Agreement between the Council, the landowners and the developer dated 7 April 2016, paragraphs 203-205 of the Framework, the Guidance and the Community Infrastructure Levy Regulations 2010 as amended, the Secretary of State agrees with the Inspector that the obligations comply with Regulation 122 and the tests at paragraph 204 of the Framework and are necessary to make the development acceptable in planning terms, directly related to the development, and are fairly and reasonably related in scale and kind to the development. However, the Secretary of State does not consider that the obligations overcome his reasons for deciding that the appeal should be dismissed.

### **Overall planning balance and conclusions**

17. For the reasons given above, the Secretary of State concludes that the proposal does not comply with the development plan as a whole because of the identified conflict with Core Policies 1, 2 and 12 of the CS and policy H1 of the NP. As there is considerably in excess of a five-year supply of deliverable housing sites in the HMA and both the CS and the NP have been prepared relatively recently, he concludes that the development plan should not be regarded as out-of-date and that there are no firm grounds on which to reduce the weight which it should carry. He has therefore gone on to consider whether there are any material considerations that would justify deciding the case other than in accordance with the development plan and, if so, whether any adverse impacts of granting permission would significantly and demonstrably outweigh the benefits when assessed against the policies in the Framework taken as a whole.
18. The Secretary of State concludes that the proposal would have no significant adverse impact in terms of highway matters or air quality, while he gives moderate weight to the limited harm to the character and appearance of the area resulting from the loss of the existing undeveloped countryside. The Secretary of State recognises that, in many respects, the proposal would contribute positively to the sustainable development objectives as set out in the Framework but, given the aim of the Framework for planning to be genuinely plan-led and the emphasis placed in paragraph 198 on the important role of neighbourhood plans, he concludes that undermining this approach by allowing the appeal proposal would have a significant negative impact.
19. The Secretary of State recognises that there have been significant changes in material circumstances since the report of the Inspector on the previous inquiry recommending that permission be granted for this scheme. In particular, new elements of the development plan have come into force and a 5-year housing land supply has now been demonstrated for the relevant area. He is satisfied that these factors alter the balance of considerations and he finds that the overall balance is against the grant of permission.

20. Overall, therefore, the Secretary of State concludes that the proposed development would not amount to sustainable development to the extent that it is not plan-led, and that its adverse impacts would significantly and demonstrably outweigh the identified benefits when assessed against the policies in the Framework taken as a whole. The Secretary of State therefore concludes that planning permission should not be granted.

### **Formal Decision**

21. Accordingly, for the reasons given above, the Secretary of State agrees with the Inspector's recommendation. He hereby dismisses your clients' 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**

22. A separate note is attached setting out the circumstances in which the validity of the Secretary of State's decision may be challenged. This must be done by making an application to the High Court within six weeks from the day after the date of this letter for leave to bring a statutory review under section 288 of the Town and Country Planning Act 1990.

23. A copy of this letter has been sent to Wiltshire Council. A notification has been sent to others 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 Terry G Phillimore MA MCD MRTPI**

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

**Date: 17 June 2016**

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TOWN AND COUNTRY PLANNING ACT 1990

WILTSHIRE COUNCIL

APPEAL MADE BY

MACTAGGART AND MICKEL LTD

Inquiry held on 5-7 April 2016; site visit made on 7 April 2016

Land off Coate Road and Windsor Drive, Devizes, Wiltshire

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

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**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 and 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: The appeal be dismissed.**

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**PROCEDURAL MATTERS**

1. A previous inquiry into the appeal was held by another Inspector from 8 to 11 April 2014. After receiving the Inspector's report<sup>1</sup> the Secretary of State issued a decision dismissing the appeal and refusing permission on 27 October 2014<sup>2</sup>. This decision was the subject of a challenge by way of an application to the High Court. Subsequent to this the decision was quashed by a consent order sealed on 5 May 2015<sup>3</sup>. The Secretary of State consented to redetermining the case by way of a full public inquiry that would consider all matters *de novo*. This is the inquiry I have held and am now reporting on.
2. Determination of the appeal was recovered by the Secretary of State by way of a direction dated 13 November 2013. The reason given for the recovery is that "*the appeal involves proposals for residential development of over 150 units or on sites of over 5 hectares, which would significantly impact on the Government's objective to secure a better balance between housing demand and supply and create high quality, sustainable, mixed and inclusive communities.*"
3. 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, these are to be treated as illustrative. The appeal plans listed at Annex 2 incorporate two 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. The inquiry proceeded on the basis of the amended versions, which are identified as 'Revision A'.
4. Prior to the submission of the application, a request was made to the Council for a screening opinion with regard to the possible need for an Environmental Impact Assessment (EIA). In a letter dated 18 July 2012<sup>4</sup>, the Council determined that no EIA was required. The reasons given 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. A further screening request was made

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<sup>1</sup> Document 2CD77

<sup>2</sup> 2CD76

<sup>3</sup> 2CD113

<sup>4</sup> J1 Appendix 1



when the appeal was lodged. In a letter dated 24 January 2014, the Secretary of State directed that the proposed development was not EIA development<sup>5</sup>.

5. The Council's refusal notice gave four reasons for refusal<sup>6</sup>. The fourth related to archaeology. The Council has agreed that in the light of fieldwork carried out subsequently by the appellants<sup>7</sup>, this reason could be overcome by means of a condition.
6. At the inquiry an executed Agreement dated 7 April 2016 containing planning obligations pursuant to section 106 of the Act was submitted<sup>8</sup>.
7. The inquiry sat for three days, from 5 to 7 May 2016. During this period I carried out unaccompanied visits on a number of occasions to view the appeal site and the surroundings, with a more extensive unaccompanied visit made on 7 May after the inquiry had closed.
8. At the inquiry an application for costs was made by the Council against the appellants. That application is the subject of a separate Report.
9. The previous Inspector's findings with respect to a description of the site and surroundings and of the proposal remain applicable, and for consistency I have adopted these largely unchanged in my Report.

## **THE SITE AND SURROUNDINGS**

10. 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>9</sup>. The north-eastern corridor contains the town's largest employment area, which includes the Hopton and Le Marchant industrial and trading estates.
11. The appeal site is located on the north-eastern side of Devizes, about a mile (1.6km) 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.
12. 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 (1.6km) 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 Trail footpath route runs along the canal towpath, and the Wessex Ridgeway footpath skirts the site's southern boundary.

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<sup>5</sup> J1 Appendices 4 & 5

<sup>6</sup> CD7

<sup>7</sup> A5a

<sup>8</sup> 2J6

<sup>9</sup> CD68

13. The site itself comprises about 20ha 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.
14. In its south-eastern corner, the site abuts the edge of the Wessex Downs Area of Outstanding Natural Beauty (AONB).
15. 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 PROPOSAL**

16. 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 (Annex 2) 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.
17. Detailed approval is sought for two road accesses onto Windsor Drive, as shown on drawings Nos. 2397.11 and 2397.12. The more northerly of these accesses would effectively be a remodelling of the existing Coate Road junction.

## **PLANNING POLICY**

18. The development plan for the area comprises the Wiltshire Core Strategy (adopted January 2015), the 'saved policies' of the Kennet Local Plan 2011 (adopted 2004) and the Devizes Area Neighbourhood Plan (made on 7 December 2015)<sup>10</sup>. The development plan position has changed since the Council's refusal of the appeal application, with the reasons for refusal citing the previous Local Plan and the draft Neighbourhood Plan as they were at that stage<sup>11</sup>. It has similarly changed since the previous Inspector's Report<sup>12</sup>.
19. The relevant policies in the three parts of the development plan are as follows.

### **Wiltshire Core Strategy<sup>13</sup>**

20. Core Policy 1 provides a settlement strategy which identifies the settlements where sustainable development will take place. It sets out a hierarchy of settlements with Market Towns as the second tier. Among these is Devizes. Market Towns are defined as settlements outside the Principal Settlements that have the ability to support sustainable patterns of living through their current levels of facilities, services and employment opportunities. They have the potential for significant development that will increase the jobs and homes in each town in order to help

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<sup>10</sup> 2J4 section 6

<sup>11</sup> CD7

<sup>12</sup> CD77 paras 18-54

<sup>13</sup> 2CD79

sustain and where necessary enhance their services and facilities and promote better levels of self containment and viable sustainable communities.

21. Core Policy 2 sets out a delivery strategy. In line with Core Policy 1, this seeks to deliver development between 2006 and 2026 in the most sustainable manner, including provision for at least 42,000 homes. The indicated distribution of these includes a minimum housing requirement of 5,940 dwellings in the East Wiltshire Housing Market Area (where Devizes lies). Priority is given to the release of employment land and the re-use of previously developed land to deliver regeneration opportunities, and to limit the need for development on Greenfield sites, with approximately 35% of development taking place on previously developed land. A more detailed distribution is set out in the Community Area Strategies, and development proposals should be in general conformity with these. Sites for development in line with the Area Strategies will be identified through subsequent Site Allocations Development Plan Documents and by supporting communities to identify sites through neighbourhood planning. Within the limits of development, as defined on the policies map, there is a presumption in favour of sustainable development, including at Market Towns. Other than in circumstances as permitted by other policies, identified in paragraph 4.25, development will not be permitted outside the limits of development, as defined on the policies map. The limits of development may only be altered through the identification of sites for development through subsequent Site Allocations Development Plan Documents and neighbourhood plans. The policy also lists strategically important sites.
22. Core Policy 3 deals with infrastructure requirements. All new development will be required to provide for the necessary on-site and, where appropriate, off-site infrastructure requirements arising from the proposal. Delivery will be achieved through planning conditions and obligations, and the Community Infrastructure Levy, among other means.
23. Core Policy 12 covers the Devizes Community Area. Development here should be in accordance with the Settlement Strategy set out in Core Policy 1. Over the plan period, approximately 2,500 new homes will be provided, of which about 2,010 should be at Devizes and approximately 490 in the rest of the Community Area. Growth may consist of a range of sites in accordance with Core Policies 1 and 2. Proposals will need to demonstrate how the relevant issues and considerations listed in paragraph 5.68 will be addressed. These cover traffic congestion, air quality, rail access, a reduction in the rate of development in Devizes in recognition of the need to improve local infrastructure, developer contributions, cultural heritage, retailing, employment growth, loss of green space, the rural identity of Bishops Canning and Roundway parishes, the landscape of the North Wessex Downs AONB, the Kennet and Avon Canal, and the setting of the Stonehenge and Avebury World Heritage Site.
24. Core Policy 38 deals with retail and leisure development. Core Policy 41 contains requirements for sustainable construction and low-carbon energy.
25. Core Policy 43 sets out requirements for at least 30% and 40% affordable housing provision within respective zones. Core Policy 45 seeks to meet Wiltshire's local housing needs relating to type, mix and size, and Core Policy 46 to meet the needs of vulnerable and older people.
26. Core Policy 50 deals with biodiversity and geodiversity. Under Core Policy 51, development should protect, conserve and where possible enhance landscape character and must not have a harmful impact upon landscape character, while any

negative impacts must be mitigated as far as possible through sensitive design and landscape measures. Particular reference is made to development within or affecting AONBs. Core Policy 52 seeks provision for green infrastructure, and Core Policy 53 gives support to Wiltshire's canals.

27. Core Policy 55 requires proposals which by virtue of their scale, nature or location are likely to exacerbate existing areas of poor air quality to demonstrate that measures can be taken to effectively mitigate emission levels. Core Policy 57 requires a high standard of design in all new developments, with criteria set out towards achieving this.
28. Core Policy 60 on sustainable transport aims to reduce the need to travel particularly by private car, with Core Policy 61 containing a similar objective. Core Policy 62 requires developments to provide appropriate mitigating measures to offset any adverse impacts on the transport network.
29. Core Policy 67 deals with flood risk, and Core Policy 68 with water resources.

#### **Kennet Local Plan<sup>14</sup>**

30. Policy HC34 sets out requirements for recreation provision on large housing sites.
31. Policy HC37 deals with demand for education.

#### **Devizes Area Neighbourhood Plan<sup>15</sup>**

32. The Neighbourhood Plan covers the three parishes of Devizes Town, Bishops Canning and Roundway.
33. Policy H1 states that, for the purposes of the Neighbourhood Plan, the Settlement Framework Boundary defines the limits within which sustainable development should take place. The area within the boundary will provide sufficient land capacity to accommodate the housing growth projected for the plan period. The boundary will contain the growth of the settlement and enable development to take place in a coherent manner, maintaining the structure and form of the existing settlement geography. In addition, the boundary will protect the landscape setting of the settlement and represent the transitional edge between urban and rural settlements. The Settlement Framework Boundary remains that defined by the Kennet Local Plan in 2004 and more recently carried forward into the Wiltshire Core Strategy. This will be enhanced by allocating land within that bounded by a circle of radius 1600m, centred on the Market Cross. The Boundary is shown on the Policies Map, and equates with the 'limits of development' for the purpose of Core Strategy Policy 2 and is drawn to enclose the housing allocation listed on policy H3<sup>16</sup>.
34. Under policy H2, all proposals for residential development, on the allocated sites listed under policy H3 and on any other sites within the limits of development shown on the Policies Map, should ensure that the development would be truly sustainable. This includes that they should be limited to clusters of no more than 65 dwellings.

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<sup>14</sup> CD1

<sup>15</sup> 2CD93 [Although this is labelled as the 'Referendum Version' of the Neighbourhood Plan, I was assured at the inquiry that it comprises the plan as made]

<sup>16</sup> 2C25 & 2C26 [The addition is allocated site no. 532. It was agreed at the inquiry that the boundary was intended to include this site, representing the only change from the CS limits of development]

35. Policy H3 deals with site specific allocations. A table indicates that, of the requirement for 2006-2026 of 2,010 dwellings, housing already provided for comprises 1,316 completions in 2006-2014 and 361 permitted, with a balance of 333 to be identified. Land allocated for residential development, shown on the Policies Map, is divided into two lists. The first are sites for delivery in the period 2014-2019 (totalling 222 potential dwellings) and the second are sites for delivery in the period 2019-2026 (totalling 142 potential dwellings).
36. Policy E1 requires consideration of the effect of residential development proposals on school capacity.
37. Policy T1 requires consideration of the effect of residential development proposals on the local transport network, in particular any impact on the A361 arterial route, and demonstration of how any adverse impact might be successfully mitigated.
38. Policy ESD1 sets out criteria towards achieving that additional housing should cause no significant harm to the Neighbourhood Plan Area's identify or the environment and be pleasant places where residents can lead active and healthy lives.
39. The Neighbourhood Plan was the subject of a legal challenge in the High Court made by the appellants<sup>17</sup>. This was resisted by the Council<sup>18</sup>, and rejected at permission stage on 22 February 2016<sup>19</sup>.

#### **AGREED MATTERS**

40. A Statement of Common Ground has been agreed between the appellants and the Council<sup>20</sup>. In addition to the above background matters, this records agreement on the following points.
  - Since the previous decision saved policy NR6 in the Kennet Local Plan has been replaced by Core Policy 1 and Core Policy 2 in the adopted Wiltshire Core Strategy.
  - For the purposes of the appeal and at the date of the statement (30 March 2016), the local planning authority can demonstrate a five-year supply of deliverable housing sites in the East Wiltshire Housing Market Area based on housing requirements in the adopted Wiltshire Core Strategy and a base date of April 2015. The presumption in favour of sustainable development derived from paragraph 49 of the NPPF is thus not triggered on the above basis under NPPF paragraph 14.
  - Reason for refusal no. 4 in relation to archaeological assessment is not pursued by the local planning authority.
41. There is a separate Highways Statement of Common Ground between the appellants and the Council as local highway authority<sup>21</sup>. This sets out agreement that the proposal is acceptable in terms of site access arrangements, road safety, traffic generation and distribution, with agreed off-site highway works. The site is agreed to be a suitable location to access the existing facilities and employment within Devizes on foot, and improvements to a cycle route and bus services are noted. The statement also notes that the impact of the development would be

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<sup>17</sup> 2CD124

<sup>18</sup> 2CD123

<sup>19</sup> 2CD122

<sup>20</sup> 2J4

<sup>21</sup> 2J5

sufficiently small such that the air quality in the Air Quality Management Area in the town centre would be unaffected.

42. The summaries of cases of the main parties now set out are based on the closing submissions<sup>22</sup>, as supplemented orally, and the written and oral evidence, with references given to relevant sources.

## **THE CASE FOR WILTSHIRE COUNCIL**

### **The relationship to the development plan**

43. The starting point for the determination of the appeal under section 38(6)<sup>23</sup> is the development plan, which is given statutory priority. This priority is recognised in the National Planning Policy Framework (NPPF), which reaffirms the importance of the plan-led system and specifically refers to it in paragraphs 11, 12, 17 and 196.
44. The development plan consists of the Wiltshire Core Strategy (adopted January 2015) and the Devizes Area Neighbourhood Plan (made December 2015)<sup>24</sup>. Both elements carry significant weight. Both were scrutinised and tested at their respective examinations following consideration of duly made objections. The Core Strategy (CS) was found sound subject to modifications recommended by the Inspector, which were taken up<sup>25</sup>, and the Neighbourhood Plan (NP) was found by the Examiner to meet the basic conditions and to be in general conformity with the CS<sup>26</sup>. Both elements are therefore lawful and up-to-date. They contain a suite of policies which provide the statutory framework for the reconsideration of the appeal scheme.
45. The three possible shortcomings of the development plan as expressed in paragraph 14 of the NPPF, namely that the plan is absent, silent or out-of-date, are three distinct concepts. A plan will be 'absent' if none has been adopted for the relevant area and the relevant period. Absence is a matter of fact. A plan may be 'silent' because it lacks policy relevant to the project under consideration. Silence is a matter of fact or a matter of construction or both. The question of whether relevant policies are no longer up-to-date will either be a matter of fact or perhaps a matter of both fact and judgment.<sup>27</sup>
46. It is clear in this case that the development plan is plainly not absent as a matter of fact. The CS and the NP are in being. The Site Allocations Development Plan Document (SADPD) is still emerging<sup>28</sup>, but the fact that part of the development plan has yet to be adopted does not mean that the plan is absent in the sense of paragraph 14 of the NPPF. Absence and incompleteness are not the same thing. The reliance of the appellants' witness<sup>29</sup> on the suggestion that the SADPD is absent and that this is relevant to paragraph 14 is wrong. It is erroneous to equate absence and incompleteness, which he accepted<sup>30</sup>.

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<sup>22</sup> 2C28; 2A18

<sup>23</sup> Planning and Compulsory Purchase Act; South Northamptonshire Council and Another v SSCLG and Another [2013] EWCH 11 Admin

<sup>24</sup> 2CD79; 2CD93

<sup>25</sup> 2CD78

<sup>26</sup> 2CD91

<sup>27</sup> Bloor Homes East Midlands Ltd v SofSCLG [2014] EWHC 754

<sup>28</sup> 2CD80; 2CD82-86

<sup>29</sup> A2 para 4.29

<sup>30</sup> Cross-examination of Mr Simkins

47. A plan cannot be regarded as silent if it contains a body of policy relevant to the proposal being considered and sufficient to enable the development to be judged acceptable or unacceptable in principle<sup>31</sup>. The provisions of the plan at the time of the decision may represent one stage of plan-making, and they may later be amplified or refined in another. They may be strategic rather than specific to the site, but they may still provide an ample basis for decision-making on proposals submitted and determined before any addition to the plan has been made. Whether a plan can be properly said to be silent is a matter for objective interpretation. A plan containing general policies for development control that enable assessment of whether the project should be approved or rejected cannot be said to be silent.<sup>32</sup>
48. The development plan in this case is not silent, as it plainly contains general policies for development control and identifies locations for housing growth in accordance with the sustainable development strategy and spatial vision in the CS. Taking the CS and the NP together, they represent a suite of policies which enable consideration to be given as to whether the scheme should be approved or rejected. The decision in this case does not have to be made in a policy vacuum. The two extant elements of the development plan provide a clear and adequate policy context in which the scheme should be considered and a decision made, notwithstanding the fact that the SADPD has yet to be finalised.
49. It therefore cannot be argued with any degree of seriousness that the development plan in this case is absent, silent or out-of-date.

### **Core Strategy**<sup>33</sup>

50. The CS is an important articulation of local policy, identifying a sustainable development strategy. Core Policy 1 identifies the most suitable locations for growth through the hierarchy of settlements, reflecting their strategic roles. It has the important objective of promoting 35% of development on previously developed land in order to safeguard the countryside from unnecessary development. This is re-emphasised in Core Policy 2 which expressly discourages the use of greenfield sites. It also creates a presumption in favour of sustainable development within the defined limits of development at the Principal Settlements, Market Towns (including Devizes) and Local Service Centres and Small Villages. Housing beyond the limits is confined to certain exceptions. Core Policy 2 identifies the mechanism through which the settlement boundaries or limits of development are to be altered, by way of SADPDs and community-led neighbourhood plans.
51. Core Policy 2 also sets out the strategic housing requirement against defined Housing Market Areas (HMAs). The purpose of this is to clarify that whilst the strategic housing requirement is identified for HMAs, indicative requirements are provided for the Principal Settlements, Market Towns and Community Areas to deliver the most suitable and sustainable patterns of growth. The disaggregation of the HMA requirements into Community Areas provides a strategic context for the preparation of the SADPDs and NPs. Specific policies relating to each Community Area then reflect these requirements through the Community Spatial Strategies, the aim being to prevent settlements receiving unbalanced levels of growth justified by under or over delivery elsewhere. This is an important part of the policy.

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<sup>31</sup> Bloor Homes East Midlands Ltd v SofSCLG [2014] EWHC 754 paras 50-55

<sup>32</sup> Bloor Homes East Midlands Ltd v SofSCLG [2014] EWHC 754 paras 52-53

<sup>33</sup> 2CD79

52. Core Policy 12 provides the spatial strategy for the Devizes Community Area, identifying the scale of housing and employment development to support the sustainable distribution of growth over the plan period.
53. An important aspect of Core Policy 2 is the emphasis on the re-use of previously developed land rather than greenfield sites. That objective is in line with the core planning principles in paragraph 17 (bullet point 8) of the NPPF. It should be given significant weight in circumstances where there is a five-year supply of housing land in the East Wiltshire HMA and where the NP has sought to reinforce this point. This aspect of Core Policy 2 has not been considered by the appellants.
54. The appeal site is greenfield land in the open countryside and lies beyond the defined settlement boundary of Devizes in both elements of the development plan. As an unallocated site, development of it as proposed is contrary to Core Policies 1, 2 and 12 of the CS in addition to policies in the NP.

### **Review of settlement boundaries and the housing land position**

55. Great emphasis is placed by the appellants on the fact that the settlement boundaries have been carried over from the previous local plan into the CS<sup>34</sup>. They contend that this makes the boundaries 'out-of-date' for the purposes of paragraph 14 of the NPPF, and further that the process of reviewing and altering development limits can only be concluded following the SADPD exercise. They assert that the NP alone is not sufficient to achieve the review in advance of the SADPD<sup>35</sup>.
56. That is patently incorrect. The fact that there are other development plan documents which will deal with site allocations and settlement boundary reviews does not make the CS incomplete or silent. Nor is it out-of-date in respect of Devizes, as the settlement limits here have as a matter of fact been reviewed through the NP, in accordance with the process envisaged by the CS itself<sup>36</sup>.
57. There is no legal or policy basis for asserting that the SADPD has to come first. There is ample judicial scrutiny of the issue and policy guidance in the national Planning Practice Guidance, which establishes that a neighbourhood plan can be made before a local plan<sup>37</sup>. The same principle applies for the examination of the NP preceding the SADPD<sup>38</sup>.
58. The question of whether settlement boundaries in the CS are 'out-of-date' for the purposes of paragraph 14 of the NPPF has been expressly considered in the context of a section 78 appeal relating to a site in Oaksey, Malmesbury<sup>39</sup>. The Inspector rejected an argument relating to the settlement limits being out-of-date due to the delays in the Chippenham SADPD process, where there was an agreed five-year housing land supply. She concluded that to take that approach would effectively be to sanction residential development in the countryside without regard to the quantified need for it. She found no reason to treat relevant policies as out-of-date for the purposes of paragraph 14 of the NPPF and concluded that the appeal should

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<sup>34</sup> CA2 pp17-19

<sup>35</sup> CA2 para 5.15

<sup>36</sup> 2CD79 para 4.13; Core Policy 2

<sup>37</sup> R (oao Gladman Developments) v Aylesbury vale DC [2014] EWHC 4323(Admin) (2CD 106); (1)BDW Trading Limited (t/a Barratt Homes)(2) Wainhomes Developments Limited v Cheshire West and Chester BC and others [2014]EWHC (2CD 107); R (oao Crownhall Estates Limited v (1) Chichester District Council (2) Loxwood Parish Council [2016] EWHC 73 Admin (2CD 108) and Policy guidance-NPPG-paragraph 009 Reference ID: 41-009-20140306)

<sup>38</sup> 2CD123

<sup>39</sup> 2C12 Appendix 1



therefore be determined in accordance with the development plan unless material considerations indicated otherwise<sup>40</sup>. Another Inspector on an appeal in Mendip rejected a suggestion that settlement limits were out-of-date simply because they had been carried forward from an expired Local Plan into a revised one<sup>41</sup>. These decisions serve to demonstrate that the appellants' approach to the settlement boundary issue is misconceived.

59. It is important to recognise that the CS has been found sound notwithstanding the fact that the current settlement boundaries may be the subject of review at some future date. That is not unique to this District or to the CS. The examining Inspector envisaged that this process would be achieved in a plan-led manner through SADPDs which would complement community-led planning<sup>42</sup>. He gave no priority to which should come first, and in terms of timescale considered that a "timely" review was appropriate<sup>43</sup>. That is what the Council is undertaking within 1 year of the adoption of the CS<sup>44</sup>.
60. The appellants' suggestion that Core Policy 2 should be given reduced weight because of the delay in relation to the timescale of the SADPD is also misconceived, and designed to overcome the clear policy conflict. Core Policy 2 is a policy in an up-to-date plan which merits significant weight. It has been found sound, and clearly sets out a process through which further consideration of settlement boundaries is to be achieved. The CS was adopted in 2015. On the current timetable, it is anticipated that the SADPD will be adopted in 2017<sup>45</sup>, which is two years after the adoption of the CS. That is 'timely' and reflects what the examining Inspector anticipated.
61. Any suggestion that the SADPD was 'urgent' or had to be undertaken immediately is wrong. The previous Inspector in this appeal accepted the term 'urgent' as it had been advanced by the appellants<sup>46</sup>, but this does not coincide with the examining Inspector's actual words.
62. It is regrettable that the timetable submitted to the CS examination<sup>47</sup> could not be adhered to, but the process was recognised as posing practical challenges by the examining Inspector<sup>48</sup>. The Council is now preparing a SADPD with a revised timetable, and this is a matter which can be given weight<sup>49</sup>. Accordingly, any suggestion that the review was considered to be urgent should be rejected, and a different view to that of the previous Inspector can be taken.
63. The undisputed evidence is that there is 8.21 years supply of deliverable sites in the East Wiltshire HMA<sup>50</sup>. In that context, concerns about delay are in any event misplaced since the quantified need for this HMA can be met well beyond five years. The delay in the SADPD has no impact on the delivery of sites in the HMA even over a longer timeframe as there is ample supply at present. By 2017 there will be a SADPD in place allocating sites to deal with the longer time period of 6-10 years.

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<sup>40</sup> 2C12 para 18

<sup>41</sup> 2C12 Appendix 5 paras 25 & 26

<sup>42</sup> 2CD78 paras 36-37

<sup>43</sup> 2CD78 para 37

<sup>44</sup> 2CD99

<sup>45</sup> 2A12 para 4.55

<sup>46</sup> 2CD77 paras 86 & 208

<sup>47</sup> 2CD98

<sup>48</sup> 2CD78 para 36

<sup>49</sup> 2C14 sections 2 & 3; 2CD82-2CD86

<sup>50</sup> 2C15 section 7 table 3; 2C17 Appendix 1; 2J4 para 7.3

With 8.21 years supply already, there is no justification for reducing the weight that should be given to Core Policy 2 and releasing the appeal site for development on that basis. To do so would effectively sanction residential development in the countryside without regard to the quantified need for it and would be at odds with the core planning principle of the NPPF that planning should genuinely be plan-led (paragraph 17).

64. The concern about the delay in relation to the revision of settlement boundaries in Devizes is also somewhat academic since the NP, in accordance with the process identified in Core Policy 2, has undertaken that review<sup>51</sup>. This is a matter which should also be given significant weight.
65. If the appellants consider that the review through the NP is incomplete and that the appeal site should be allocated for housing, they can make representations to that effect through the SADPD. That is indeed what they intend doing<sup>52</sup>. The matter can then be considered further in line with the plan-led process set out in the CS and anticipated by the examining Inspector. He indicated that this process was intended to be complementary<sup>53</sup>.
66. The suggestion that, had the examining Inspector known that the SADPD would be delayed, he would not have found the CS sound is speculative and misconceived. In the case of Devizes and its settlement framework boundary, there has been no delay, so the point is not well-founded. In addition, the CS was found sound in the light of the examining Inspector's express acknowledgment that the review of settlement limits posed practical challenges and could not be achieved immediately across the District in a comprehensive way. Rather than delay the adoption of the CS, he considered the process of the review occurring through complementary and timely community-led planning and SADPDs to be the appropriate way forward. He thus found the CS sound even though site allocations and settlement boundaries were to be re-considered at a later stage. Had he considered that the review was fundamental or a pre-requisite to the soundness of the CS, he could not have reached the conclusion that it was a sound plan. That means that the CS and its policies, in particular Core Policy 2, are sound for present purposes and should be given significant weight.
67. The Council's commitment to progressing with the SADPD is evidenced by the fact that it has already embarked on the process of the Chippenham SADPD, albeit that the process has been delayed. For the avoidance of doubt, that SADPD is accepted<sup>54</sup> as not being directly relevant in the context of this appeal.
68. As for the suggestion of delay in respect of the review of the CS, it has to be recognised that this was adopted just over one year ago. The suggestion that the Council is failing to undertake this in accordance with the examining Inspector's recommendation is not borne out by the evidence, which clearly demonstrates that, within one year of the adoption, steps have been taken to progress necessary evidence gathering to identify the scope of the review. A joint Strategic Housing Market Assessment with Swindon has been commissioned and initial outputs from the work will be available in July 2016<sup>55</sup>. It is accepted that there has been a delay

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<sup>51</sup> 2CD87-2CD93

<sup>52</sup> Cross-examination of Mr Simkins

<sup>53</sup> 2CD78 para 37

<sup>54</sup> Cross-examination of Mr Simkins

<sup>55</sup> 2C14 section 4; 2C18 section 4

in the process but that is not unreasonable or significant in the circumstances. It is a timely review in accordance with the examining Inspector's recommendation.

69. In respect of other issues raised by the appellants, reliance on the 'off-set' point is misconceived in circumstances where there is in excess of five years supply in the East Wiltshire HMA and there is clear evidence that delivery rates in the Tidworth/Ludgershall community area are increasing now that the CS has been adopted<sup>56</sup>. That is indicative of the fact that the CS is taking effect and the trajectories are reliable. There is no requirement to off-set any shortfall in respect of housing delivery which arises in one HMA, by locating additional housing in another where there is a five-year supply of deliverable sites<sup>57</sup>. In the CS, disaggregation was accepted by the examining Inspector as an important facet of the delivery of the housing requirement in the District as a whole<sup>58</sup>. The suggestion that the cumulative effect of under delivery will become more significant over a longer period is misconceived. Land supply is dynamic. At present there is a shortfall in the North Wiltshire HMA, but that will not remain the position over a longer period. Allowing the appeal scheme in the East Wiltshire HMA would not alleviate any shortfall in other HMAs. This is a non-point which should be given no weight. In any event, the potential for off-set should be considered in a comprehensive manner through the SADPD process, so that if necessary it can be assessed in the context of a comparative assessment of all potential sites rather than through ad-hoc planning appeals.
70. The CS and the relevant policies should therefore be given significant weight. There is clear conflict with Core Policy 2 which militates against the grant of permission.

### **Neighbourhood Plan**

71. Coupled with the weight to be attached to the CS is that to be given to the NP. This is a lawfully made plan which the local community supports. It has been subjected to independent examination, with all duly made representations taken into account by the examiner. In his Report he concluded<sup>59</sup> that, subject to the modifications he recommended, the basic conditions<sup>60</sup> were met. He considered that the NP was in general conformity with the CS, particularly in relation to Core Policy 2 and the prioritisation given to development of previously developed land rather than greenfield sites. He concluded that the NP was in "*full conformity with Core Policy 2*"<sup>61</sup>.
72. He noted<sup>62</sup> that the CS clearly provides the freedom for the limits of development to be re-defined in NPs. He took account of the criticisms levelled at the approach adopted by the steering group in reviewing the development limits, and confirmed that he sought clarification as to the precise intentions with regard to the redefined settlement framework boundary. Exercising his planning judgment, he was satisfied that, despite the criticism that the approach to redefining the boundary was simplistic, it was fully compatible with the objectives of the plan, in general conformity with the CS and clearer for the purpose of implementing NP policies<sup>63</sup>.

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<sup>56</sup> 2A12 paras 4.106-127; 2C18 paras 2.5-2.7

<sup>57</sup> 2A12 paras 4.128-4.133; 2C18 paras 3.1-3.3

<sup>58</sup> 2CD78 para 43

<sup>59</sup> 2CD91 para 4.1

<sup>60</sup> as required by Schedule 4B to the Town and Country Planning Act 1990 (as amended)

<sup>61</sup> 2CD91 para 3.10

<sup>62</sup> 2CD91 para 3.17

<sup>63</sup> 2CD91 paras 3.20-21

He concluded that such an approach met the basic conditions, and recommended that the NP should combine maps 2 and 6 to form a Policies Map to show the revised limits of development, which was duly done.

73. He also considered a range of other relevant matters including whether the plan contributed to the achievement of sustainable development in accordance with the NPPF, site specific allocations, deliverability of the chosen sites, the appropriate scale of development, and other issues relating to education, sustainable transport and open spaces. It is clear from the Report that he adopted a comprehensive approach to the examination and reached clear conclusions in respect of the relevant matters, and made specific recommendations to improve the plan.
74. The appellants are no doubt dissatisfied with the outcome of the examination process as the NP has not allocated the appeal site for development. It lies outside the reviewed settlement framework boundary. Their legal challenge to the NP<sup>64</sup> was a tactical device<sup>65</sup> and failed as it was unmeritorious and wrong in law<sup>66</sup>. The appellants' continued criticisms of the NP<sup>67</sup> are on grounds similar to those considered by the High Court to be misconceived and rejected at the permission stage. They were points which had no reasonable prospect of succeeding in the NP being quashed, leading to the almost immediate withdrawal of the claim rather than a renewal of the application for permission. If those arguments were without sufficient merit to sustain a challenge to the lawfulness of the NP in the High Court, they remain misconceived and should be given no weight in the determination of this appeal.
75. The NP includes a number of policies relevant to housing growth. Policy H1 relates to the Settlement Framework Boundary (SFB) and is supported by a Policies Map. The objective of the policy is to ensure that all new housing is built within the SFB. It provides:
- "The SFB is shown on the Policies Map. It equates with the "limits of development" for the purposes of Core Strategy Policy 2 and is drawn to enclose the housing allocation listed on policy 3".<sup>68</sup>*
76. The appeal site is located outside the SFB and the grant of permission for the scheme would be in direct conflict with the express provisions of policy H1 of the recently made NP.
77. Policy H2 applies to all new housing development and sets out relevant criteria which seek to ensure that residential developments will integrate into existing communities and the built environment to reduce urban sprawl. Housing development is limited to clusters of no more than 65 dwellings, to achieve the objectives of the policy.
78. Policy H3 relates to site specific allocations within and on the edge of the existing urban area of Devizes as shown on Plan 2. The SFB is identified as the black line that is drawn around the urban area and the outer edge of the allocated sites so that they are included in the boundary<sup>69</sup>. The site selection process took account of a number of issues relevant to the identification of sustainable sites as shown in the

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<sup>64</sup> 2CD124

<sup>65</sup> 2CD 123

<sup>66</sup> 2CD 122

<sup>67</sup> 2A12 pp221-25

<sup>68</sup> 2CD93

<sup>69</sup> 2CD93 Plan Two [See paragraph 33 above - there is in fact only one additional site]

tables<sup>70</sup>. The ranking of sites was not based predominately on the issue of community preference.

79. The proposed development of the appeal site for up to 350 dwellings significantly exceeds the scale identified by policy H2 as appropriate for Devizes. The scheme therefore also conflicts with the NP on this basis.
80. The NP should be given significant weight in the determination of this appeal, as it forms part of the up-to-date development plan, is lawfully made and contains relevant and clear policies, which reflect the objectives of the NPPF and are in general conformity with the CS. Of particular relevance is the fact that the NP has reviewed the settlement boundaries in accordance with the process identified in Core Policy 2. There is simply no basis for ignoring the clear policies in the NP or giving them limited weight.
81. Paragraphs 183-185 of the NPPF are relevant<sup>71</sup>. Clear and cogent contributions to the debate were made at the inquiry by representatives of the local community, some of whom were involved in the NP process. They all oppose the scheme on the basis of its conflict with the NP. From their representations it is clear that they regard the NP as reflecting the important principles and objectives in the NPPF relating to the achievement of sustainable development, and in particular to the ability of local communities to have the power to develop a shared vision for their neighbourhood and to set policies to determine decisions on planning applications. They no doubt believed, once the NP was made, having been found to have met the basic conditions and to be in general conformity with the CS after thoroughgoing examination, that it would deliver the right types of development for their community. That confidence in the neighbourhood planning process would be significantly undermined if the NP is given no weight on the basis advanced by the appellants. Far from giving this local community the power to shape the scale and locations of new development in line with the adopted CS, a grant of permission would deprive them of the benefit of achieving sustainable development in their area through the mechanism of a newly made NP. That is contrary to the intentions of paragraphs 183-185.
82. Paragraph 198 of the NPPF provides that, where a planning application conflicts with a NP that has been brought into force, planning permission should normally be refused. That aspect of national policy is particularly pertinent in the circumstances of this appeal and the NP. It is not a matter that was considered by the previous Inspector. The NP and its policies should be given significant weight. The scheme does not accord with relevant policies in the plan. Those policies are not only in general conformity with the CS but are clear and are designed to achieve the relevant objectives set out in the NPPF. Planning permission should be refused for the scheme on the basis of its conflict with the NP.
83. Adopting that approach would be consistent with the Secretary of State's decision in the Sayers Common appeal where substantial weight was given to the conflict with the recently adopted NP, despite that the Council could not demonstrate a five-year supply of deliverable housing sites and the benefits of the scheme<sup>72</sup>. That decision identifies the correct approach to the application of paragraph 198 of the NPPF.

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<sup>70</sup> CD60

<sup>71</sup> 2C12 paras 3.14-15

<sup>72</sup> 2C13 Appendix 7 paras 23-27

84. The appeal scheme is therefore in conflict with both elements of the development plan, neither of which can with any degree of credibility be suggested to be out-of-date and therefore of limited weight. This conflict should be given significant weight and patently militates against the grant of permission. In the section 38(6) context, the 'other material considerations' would need to be compelling to be capable of outweighing the conflict with the development plan. Careful scrutiny of the matters relied on by the appellants<sup>73</sup> discloses that they do not outweigh the conflict at all.

### **Whether sustainable development**

85. Whether the scheme represents sustainable development needs to be considered in the context of the NPPF as a whole and not just in relation to the dimensions set out at paragraph 7. Whilst the economic, social and environmental dimensions are important, the NPPF promotes an explicitly plan-led system. Paragraph 14 does not endorse the unfettered release of greenfield sites that are 'technically' unobjectionable, a point accepted by the appellants' witness<sup>74</sup>.

86. Whether or not a development is genuinely plan-led, as endorsed by paragraphs 196 and 197 of the NPPF, is an important facet of sustainability, albeit one that may not be decisive in itself.

87. The appellants' assertion that the proposal should be considered in the context of the NPPF's intention to significantly boost the supply of housing, in accordance with paragraph 47, has to be assessed in the context of the NPPF as a whole. The primary intention is for such a boost to be delivered through the plan-led system where the development plan is, as here, up-to-date.

88. Paragraph 14 of the NPPF is not engaged in this case. The first bullet point cannot apply on the misconceived basis advanced by the appellants that the scheme "*broadly*" accords with the development plan<sup>75</sup>. The first bullet point states that development proposals that "*accord*" with the development plan should be approved. This is an important distinction. In addition, paragraph 14 does not apply on the basis that the development plan is out-of-date or that it is absent or silent for the reasons referred to above.

89. In the event that this submission is not accepted, there is clear evidence that the scheme would result in significant and demonstrable harm arising from the conflict with development plan policy, in particular Core Policies 1 and 2 of the CS and the relevant policies of the NP. In addition, the proposal would cause harm to the spatial strategy and vision of the CS and does not represent sustainable development to the extent that it is not plan-led.

90. The Council does not pursue any objection to the scheme on transport, air quality or archaeological grounds. It also does not contend that it would cause specific landscape harm other than in terms of the encroachment of 20ha of open countryside. However, that in itself would be harmful and should be weighed in the balance. The previous Inspector concluded that this represented harm<sup>76</sup>, and that has not changed. The scale of the scheme is significant and would result in the urbanisation of this part of the countryside beyond the recently reviewed settlement framework boundary of Devizes.

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<sup>73</sup> 2A12 section 4

<sup>74</sup> Cross-examination of Mr Simkins

<sup>75</sup> 2A12 para 6.3

<sup>76</sup> 2CD77 para 215

91. Taking these matters together, the adverse impacts of the scheme would cause demonstrable and significant harm and outweigh the presumption if, contrary to the Council's view, it is considered to apply in this case.
92. None of the matters relied on by the appellants as other material considerations<sup>77</sup> outweigh the significant harm arising from this proposed development and its conflict with policy and encroachment on a significant area of open countryside.
93. For the avoidance of doubt, the Council is not pursuing a prematurity case<sup>78</sup>. It is relying on the clear conflict of the scheme with the development plan, which is significant and is not outweighed by other material considerations.
94. It is accepted that the infrastructure needs arising from the development could be adequately secured through the proposed section 106 obligations<sup>79</sup> and the proposed conditions<sup>80</sup>.

### **Overall balance**

95. The planning balance to be undertaken in this case inevitably leads to a conclusion different to that reached by the previous Inspector<sup>81</sup> as a result of the material change in circumstances relating primarily to the development plan. This should be given priority and carries significant weight, representing the up-to-date statutory framework for the consideration of planning proposals.
96. At that stage the scheme was considered in the context of the expired Kennet Local Plan which met the needs of the District up to 2011. The previous Inspector gave limited weight to Core Policy 2 of the draft CS as it then was<sup>82</sup>. In addition he concluded that the NPPF requirement for a deliverable five-year supply was not met in the East Wiltshire HMA<sup>83</sup>. He did not give the emerging NP significant weight due to its relatively early stage in the plan making process at that time<sup>84</sup>. He took the view that in the context of rectifying the shortfall of housing land in the East Wiltshire HMA, the conflict with the emerging NP and draft Core Policy 2 was not a sufficient reason to withhold permission<sup>85</sup>.
97. The Inspector concluded that, applying paragraph 14 of the NPPF, the development plan was not only out-of-date with regard to policy NR6 and the settlement boundaries, but was also absent in terms of making any provision for housing from 2011. In his view therefore the presumption in the final bullet point of that paragraph was engaged<sup>86</sup>. Weighing up the benefits of the scheme against the adverse impacts as he assessed them and in the policy context at that time, he concluded that the benefits outweighed the harm<sup>87</sup>. In the overall planning balance he gave greater weight to the housing needs of the HMA and to the benefits of providing housing to make up the lack of a five-year land supply in the area<sup>88</sup>. Accordingly he recommended that the appeal be allowed.

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<sup>77</sup> 2A12 section 4

<sup>78</sup> Ms Smith's response to Inspector's questions

<sup>79</sup> 2J6

<sup>80</sup> 2J4 Appendix 9

<sup>81</sup> 2CD77 para 267, 275-276

<sup>82</sup> 2CD77 paras 209-210

<sup>83</sup> 2CD77 para 199

<sup>84</sup> 2CD77 para 225

<sup>85</sup> 2CD77 para 232

<sup>86</sup> 2CD77 para 262

<sup>87</sup> 2CD77 para 266

<sup>88</sup> 2CD77 para 267

98. Those conclusions are no longer applicable in the light of the current development plan, the weight to be attached to the relevant policies and the up-to-date land supply position in the HMA. It is clear that the development plan merits greater weight in the planning balance. The existence of a five-year supply of housing land<sup>89</sup> means that paragraph 14 of the NPPF is not engaged by virtue of paragraph 49. Nor is it engaged on any other basis. The development plan now warrants refusal of permission for the proposal on the basis that it does not accord with policies which seek to achieve sustainable development in line with the strategy and vision of the CS, and also conflicts with policies in the recently made NP. It would cause harm in addition to the conflict with policy which is significant and demonstrable and is not outweighed by the benefits advanced.
99. In relation to the overall planning balance, notwithstanding the acceptability on some points, the assessment of harm against benefits merits refusal of permission for the scheme. The adverse impacts significantly and demonstrably outweigh the benefits in the circumstances of the appeal. The development does not represent sustainable development. It is not plan-led and conflicts with the up-to-date development plan.
100. On the basis of the current evidence planning permission should not be granted for this scheme for all the reasons advanced.

## **THE CASE FOR MACTAGGART AND MICKEL LTD**

### **The relationship of the proposal to the development plan**

101. The question is whether the proposal is in conflict with the development plan viewed as a whole. The Statement of Common Ground cites a raft of policies of the Wiltshire Core Strategy (CS) as being "*relevant to the determination of the appeal*"<sup>90</sup>. The Council's policy witness accepted that the proposal is in conformity with all of these except for Core Policies 1, 2 and 12 of the CS<sup>91</sup>. The starting point is therefore agreement that the proposal is in conformity with the vast majority of relevant policies in the CS, which is the senior part of the development plan.
102. The Council's policy witness agreed that Core Policy 1 is a broad strategic policy which seeks to direct development to the most sustainable locations within the Council's area<sup>92</sup>. She also accepted that Devizes, as a market town, is such a location, that it is capable of accommodating the appeal proposal, and that further development of this scale in the market towns would be beneficial to the public interest by helping to sustain services and facilities. In each regard she accepted that the proposal supports and advances the objectives of Core Policy 1.
103. The conflict with the CS is thereby reduced to the contention that Core Policy 2 and Core Policy 12 prescribe boundaries with which the proposal conflicts. The development plan must be read as a whole and in context. The essential context here is the limited weight that those boundaries should attract for the reasons set out below together with the manner in which the proposal would boost the supply of housing land in a highly sustainable location.
104. The Council seeks to apply a rigid demarcation of numerical thresholds, but that misreads the plan's approach. The figures in the plan are variously described as

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<sup>89</sup> 2J4 para 7.3

<sup>90</sup> 2J4 para 6.3

<sup>91</sup> Cross-examination of Ms Smith

<sup>92</sup> Cross-examination of Ms Smith



"indicative" and "minima"<sup>93</sup>. This implies that there is nothing objectionable about exceeding these thresholds provided no harm would be caused. Thus the plan does not prescribe an inflexible limit on housing provision in sustainable locations. To the extent that the Council's case rests on the premise that it does, that case is wrong.

105. The Devizes Area Neighbourhood Plan (NP) is subordinate to the CS. It has to be understood in the context of paragraph 184 of the NPPF, which requires that

*"Neighbourhood plans must be in general conformity with the strategic policies of the local plan" and "Neighbourhood plans...should not promote less development than set out in the local plan or undermine its strategic policies".*

106. Core Policy 1 is a strategic policy in the CS which promotes significant development in Devizes as a market town. To the extent that the NP restricts development in or around Devizes by reference to rigid numerical limits, it is in conflict with both aspects of the above advice in the NPPF. This matter is further discussed below.

107. The conflict with the development plan is more apparent than real. The proposal is in conformity with the vast majority of what are agreed to be the relevant policies in the CS. For the two policies (Core Policy 2 and Core Policy 12) where conflict arises, it does so only on the basis of out-of-date town boundaries which cannot attract weight. The NP cannot operate in conflict with the strategic policies of the CS, nor can it restrict development by reference to numerical limits which conflict with its numerical provision.

108. Whether the proposal is in conflict with the development plan is a question of planning judgment. In the appellants' submission the proposal strongly advances the interests of the development plan in that it would provide significant and highly desirable development in a sustainable location. There is a minor conflict with second order policies which attract little weight for reasons discussed below.

109. As a matter of judgment, the conclusion should be that the proposal is in conformity with the development plan. If that submission is accepted, then the first bullet point of paragraph 14 of the NPPF 14 on "*Decision Taking*" applies, and the proposal should be approved without delay.

110. The remaining issues only fall to be considered if that primary submission is rejected.

### **The implications for housing land supply of the Council's progress of the SADPD**

111. The Council's housing supply witness agreed that the Housing Market Area (HMA) is the relevant area to be considered when assessing the approach to housing land supply<sup>94</sup>. He further agreed that it is also relevant to consider the 6-10 year period and the whole plan period. The evidence of the Council's policy witness was inconsistent with this. She asserted that the existence of a five-year supply is sufficient and that this should provide an embargo on any further grants of permission. That is wrong, contradicting both the evidence of the housing supply witness and the Council's position at the previous inquiry<sup>95</sup>. It also conflicts with

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<sup>93</sup> 2CD79 paras 4.20-4.34; Core Policy 2

<sup>94</sup> Cross-examination of Mr Henderson

<sup>95</sup> 2CD77 para 180

paragraph 47 of the NPPF which provides the central injunction to “*boost significantly*” the supply of housing.

112. There is still a significant amount of additional land to be allocated in the East Wiltshire HMA without any margin to ensure that housing requirements are actually delivered<sup>96</sup>. The addition of 350 dwellings on the appeal site would result in a margin of only around 6% over and above the total HMA requirement of 5,940 dwellings. This would be a benefit. There is also the question of potential flexibility or “off-set” between Community Areas as envisaged in the CS<sup>97</sup>. In this HMA there is a clear case for such potential off-set in relation to the Tidworth and Ludgershall Community Area, where performance rates and factors relating to the military re-basing programme mean that the share of the requirement there is unlikely to be met. It can be noted also that there is not a five-year housing land supply in the North and West HMA<sup>98</sup>.
113. Consideration needs to be given to the implications for the development plan of the Council’s progress in bringing forward the Site Allocations Development Plan Document (SADPD) and the early review of the CS<sup>99</sup>. The implications of these factors bear on weight. Specifically, the failure of the Council to progress the review and the SADPD reduce the weight which may be attached to those parts of the CS which depend on the production of those documents.
114. The Council’s housing supply witness fairly agreed that the matters which the two supplementary documents address are fundamental to the substance of the CS, and that it is incomplete in their absence<sup>100</sup>. That concession is plainly correct. In the first place, there is agreement that the CS does not allocate enough land to meet its own development requirements up to 2026. Further, it is agreed and acknowledged that the settlement boundaries carried forward in development plans must be reviewed in order to bring them up-to-date. The review of those boundaries will inevitably require their expansion in order to accommodate development needs which are greater than when the boundaries were initially established.
115. The agreement here is therefore that the boundaries as they presently appear in the CS are out-of-date. They artificially constrain development by restricting the area of land to accommodate new development to that which was established in 2004.
116. It is true that those boundaries have been incorporated into the adopted CS and in that sense have been revalidated. This point was dealt with by the previous Inspector<sup>101</sup>. It makes no difference to his conclusion that the plan has moved from being draft to adopted. The principle remains that it was convenient to carry forward the out-of-date boundaries as a temporary measure pending the early, timely and swift review of those boundaries in a further plan.
117. The Council has failed to expand the housing provision contemplated by way of an early review and to reconsider the boundaries brought forward from earlier plans in the SADPD. These are the reasons why its housing supply witness conceded that the CS (in substance as distinct from form) is incomplete. This has serious implications for the weight that should be ascribed to those relevant parts of the

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<sup>96</sup> 2A12 paras 4.106-4.127

<sup>97</sup> CD79 paras 4.30-4.34

<sup>98</sup> 2A12 paras 4.128-4.133

<sup>99</sup> 2A12 section 4

<sup>100</sup> Cross-examination of Mr Henderson

<sup>101</sup> 2CD77 para 207

plan affected by these issues (Core Policy 2 and Core Policy 12), which should be reduced. As a consequence of this, a conflict with Core Policy 2 and Core Policy 12 should not be considered significant. These are all questions of weight, assessment and judgment.

118. In ascribing weight it is highly relevant to consider the circumstances in which this situation has arisen. The draft CS could not have been found sound with these gaping holes in its substantive provision. The Council recognised this, and overcame the problem by promising the examining Inspector that these matters would be attended to. He was assured about the speed with which that work would be undertaken, described as "immediately", "timely", "swiftly" and "early"<sup>102</sup>. The Council in fact specified a precise timescale, with the Inspector told the SADPD would be complete by summer 2015<sup>103</sup>. It is now known that the timetable has slipped repeatedly, such that the latest estimate is for adoption in December 2017<sup>104</sup>. The Council's policy witness conceded that she cannot provide any assurance that the timetable will not further slip to some distant date for final adoption<sup>105</sup>.
119. That is very different from the assurance given to the Inspector at the examination, where it was suggested the SADPD would follow quickly behind the adopted CS. These considerations affect the weight that can be accorded to the established boundaries in the development plan, since those boundaries were procured by making representations to the examining Inspector which have subsequently been shown to be inaccurate and unreliable. Policies in a development plan secured on that basis cannot attract weight.
120. The Inspector who dealt with an appeal at Malmesbury<sup>106</sup> was not presented with these facts or this argument, and this provides a proper basis for departing from her conclusions. There is a further reason for setting aside her analysis, which is the surprise declaration by the Council's policy witness that the boundaries carried forward from the 2004 Kennet Local Plan should now be disregarded<sup>107</sup>. That is a very different case to the one considered by the Malmesbury Inspector, which involved an argument about the differing weight to be attributed to boundaries in pre-existing plans brought forward into the CS. That argument does not arise here in view of the Council's evidence that those boundaries, as they apply to Devizes, should now be disregarded.

### ***Neighbourhood Plan – distinct but complementary functions***

121. The role and purpose of the NP has been clarified through the inquiry process by the clear and helpful submissions presented by the steering group amongst others. The NP clearly engaged the interest and active participation of the local community. Further, it has been through the statutory process of examination<sup>108</sup> and has survived a legal challenge<sup>109</sup>. In each respect it promotes the policy in paragraphs 183-185 of the NPPF and is a document which is entitled to be treated with weight.

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<sup>102</sup> 2CD98 Council's response Matter 1; 2CD78 paras 36-37, 98

<sup>103</sup> 2A12 paras 4.54-4.56

<sup>104</sup> 2A12 para 4.55

<sup>105</sup> Cross-examination of Ms Smith

<sup>106</sup> 2C13 Appendix 1

<sup>107</sup> Cross-examination of Ms Smith

<sup>108</sup> 2CD91

<sup>109</sup> 2CD122

122. The question is whether the proposal is in conflict with it. In order to answer this, it is essential to understand what function the NP is seeking to perform and how that relates to the purpose pursued by the CS.
123. The NP has been found to be in accordance with the NPPF. It must therefore be construed and understood in accordance with its policy, in particular paragraph 184. This requires that the NP must be in conformity with the strategic policies of the local plan.
124. When read in this way the dual functions of the CS and the NP become easy to explain and reconcile. The NP addresses development within the built-up urban boundary of Devizes. It allocates land for development within the boundary of Devizes, specifies the maximum yield from each allocated site and prescribes other requirements as to the form and nature of that development.
125. What it does not do – or purport to do – is address the development requirements which arise elsewhere in either the Devizes Community Area or the East Wiltshire Housing Market Area. It is the role and function of the CS to address those needs.
126. The appeal site is not within the built-up area boundary of Devizes, and thus the relationship between the NP and the appeal proposal is neutral. The proposal is neither in conflict nor conformity with the NP because it affects a site which is not addressed by the plan.
127. The suggestion that the NP excludes development on land outside the built-up area boundary cannot be right. The strategic policies of the CS allow land to come forward to meet the national policy objective to boost significantly the supply of housing land, provided such development is sustainable and does not cause unacceptable harm. The suggestion that the NP imposes an embargo on development outside the built-up area boundary would bring it into conflict with the strategic policies of the CS. As already explained, such an interpretation is impermissible because it would bring the NP into conflict with the advice in paragraph 184 of the NPPF.
128. Overall, the boundaries around Devizes in the development plan are out-of-date. This applies regardless of whether it is considered that the Kennet Local Plan boundaries are brought forward into the CS or the boundaries are established by the NP. Both boundaries are substantially the same. Core Policies 2 and 12 derive their efficacy from the boundaries. If the boundaries cannot attract weight, then neither can the policies which give effect to them. In that case a breach of those policies is not a serious impediment against the grant of permission.

### **The degree of harm caused by the proposals to transport, landscape and air quality**

129. It is important here that there are a number of agreed matters. These are that there is no site specific or technical constraint to the development of the site and that the appeal proposal is deliverable; it is acceptable in transportation terms; there would be no adverse impact on landscape or scenic quality and no adverse effect on the setting of the town. It is also agreed that the effects on air quality would be imperceptible, and that there would be no adverse effect on archaeological interests.<sup>110</sup>

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<sup>110</sup> 2J4 section 7; 2J5 including para 3.4.5

130. There is therefore agreement that the appeal site could be brought forward straight away with no adverse consequences for any interests of acknowledged importance.
131. The significance of this is increased when the wider possibilities for sustainable development within this administrative area generally and in this HMA in particular are considered. The Council's policy witness agreed that the HMA is heavily constrained by a combination of Area of Outstanding Natural Beauty and Special Policy Area interests<sup>111</sup>. She asserted that most large development opportunities will have to come forward on the edge of market towns. That is precisely the location of the appeal site.
132. In this regard it is relevant to record that the Council has undertaken a sift of sites which had been identified in the Strategic Housing Land Availability Assessment<sup>112</sup>. That exercise was carried out thoroughly and conscientiously (according to the Council's policy witness<sup>113</sup>) in strict conformity with the SEA Directive. That led to the identification of the appeal site as one of the few areas around Devizes capable of accommodating future development needs.
133. The conclusion is that the proposal could be brought forward immediately without causing any harm. In a heavily constrained location such as this HMA it is inevitable that the site will be brought forward sooner or later. The real question is one of timing rather than principle, and the Council admitted as much by the SEA exercise. The national policy imperative to boost significantly the supply of housing land, taken together with the absence of harm, militates in favour of bringing this site forward sooner rather than later.

### **Whether the proposal would have an acceptable effect on infrastructure taking into account the section 106 Agreement**

134. The section 106 Agreement<sup>114</sup> read together with the suggested conditions agreed between the parties<sup>115</sup> would satisfactorily address the external costs of the development, and no suggestion has been made otherwise.
135. In her written evidence the Council's policy witness suggested the proposal would lead to the town's "...infrastructure being seriously overstretched"<sup>116</sup>. That statement has no credibility. When invited to point to any evidence which showed how, or in what way, the proposal would adversely impact on the town's infrastructure, she conceded there was no such evidence<sup>117</sup>.

### **The overall balance of harm and benefits and whether the proposals are sustainable**

#### ***The correct approach***

136. Section 38(6) is the starting point, with the question of whether the proposal is in accordance with the development plan. The answer to this is 'yes', and permission should therefore be granted.

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<sup>111</sup> Cross-examination of Ms Smith

<sup>112</sup> 2A12 paras 4.57-4.82; 2CD80-86

<sup>113</sup> Cross-examination of Ms Smith

<sup>114</sup> 2J6

<sup>115</sup> 2J4 Appendix 9

<sup>116</sup> 2C12 para 5.18

<sup>117</sup> Cross-examination of Ms Smith

137. Were it to be concluded that the answer is 'no', then other material considerations must be considered, chief among which is the NPPF. If the boundaries in the development plan are out-of-date as contended, then the special presumption in paragraph 14 of the NPPF applies.
138. The Council's policy witness endorsed the approach of an Inspector in another appeal who said that sustainability needs to be considered on a spectrum taking into account accessibility, relationship to the environment and infrastructure and delivery<sup>118</sup>. For the reasons discussed above, the appeal proposal appears at the high end of the spectrum. It is accessible, deliverable and beneficial in its impact on the environment and infrastructure. It would have the added advantage of absorbing development pressures and thereby deflecting them away from other vulnerable and sensitive locations around Devizes and its wider hinterland.
139. As recognised by the previous Inspector in his conclusions on sustainability<sup>119</sup>, the site is well located in relation to modes of transport other than the private car and is close to employment, retail and education facilities. With regard to the economic dimension, the proposal fully supports growth. It would provide a significant number of jobs, including some permanent jobs in the local centre, and as a consequence of supply chain investment. It would also support significant expenditure on local goods and services and generate a substantial CIL payment.<sup>120</sup>
140. In relation to the social dimension, it would provide up to 105 affordable homes and 245 market homes, thus significantly boosting housing supply in a situation where housing requirements are expressly not intended to be ceilings, limits or targets. It would also provide significant open space including access to an improved canal towpath, and provide a local centre as a focus for the development which would also be available to the existing community.<sup>121</sup>
141. Finally in relation to the environmental dimension, the economic benefits could be delivered with minimal impact. The only harm in environmental terms would arise from the simple fact that the site lies outside existing settlement limits. The improvement of the canal side and associated open space would be an environmental benefit.<sup>122</sup>
142. The proposal is by any standards a sustainable development. The proposal would simultaneously advance the three limbs of sustainable development, and the benefits that would be provided are profound. No significant harm has been shown, and certainly no harm that could be said to significantly and demonstrably outweigh the benefits.
143. If, contrary to the appellants' case, it is found that the development plan is up-to-date, then the question is whether the accumulated benefits of the proposal overcome the harm inherent in a development which is brought forward in conflict with the development plan. The harm would be only an abstraction of policy, with no actual harm on the ground. In contrast to that, the benefits are significant and profound.
144. Whichever approach to the decision is taken, a grant of permission qualified by section 106 obligations and conditions is invited.

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<sup>118</sup> 2C12; CD37

<sup>119</sup> 2CD77 paras 216-218

<sup>120</sup> 2A12 para 4.13

<sup>121</sup> 2A12 para 4.14

<sup>122</sup> 2A12 para 4.15

## **THE CASES FOR OTHER PARTIES WHO GAVE EVIDENCE AT THE INQUIRY**

### **The Case for Laura Mayes**

145. Ms Mayes is a Wiltshire Councillor for Roundway.
146. The community has worked hard together in preparing the Neighbourhood Plan, and this is seen as important in controlling development. It is a very solid document which outlines where the community wants development to take place.
147. There has been a huge amount of development in Devizes in the last 10-15 years. Many local people are concerned about this issue. The application was rejected unanimously by the Strategic Planning Committee as being outside the development limits.
148. All levels of government have previously rejected the proposal.

### **The Case for Roger Giraud-Sanders<sup>123</sup>**

149. Mr Giraud-Sanders is the Devizes Town Mayor.
150. The town has a very long history. It remains largely a medieval town and serves a rural community which in parts is very remote. It has been considered as a suitable centre of housing development in the past and its population has greatly increased, but its infrastructure has not kept pace.
151. The community has a strong sense of place and cares passionately about the environment. It is understood that the town cannot stay the same and there is an increasing need to find homes, but changes need to be carefully planned with every effort made to mitigate the negative impact. The Neighbourhood Plan has followed a very clear vision that Devizes should grow in a manner which enables its residents to live a sustainable lifestyle, with a reduced need to travel, easy access to open space and the public realm, and the scale and ambiance of built environment that promotes wellbeing. This has been done by setting policies such as requiring housing sites to be smaller in size, the promotion of reusing previously developed sites and ensuring designs have tangible characteristic links to existing buildings. The approach will spread the burden of additional housing on the need for school places.
152. The location of developments should minimise the impact on people's ability to get around the town safely and conveniently. Any development using the A361 causes concern about impact on an already congested route.
153. The proposal meets none of the policy intent set out in the Neighbourhood Plan. It would materially impact on existing residents whilst not creating any sense of being a member of the Devizes community for those moving in. It is the worst kind of urban sprawl which would result simply in the bolting on of a block of new houses to an area of easily developed agricultural land on the edge of the town with very little connection with the community.

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<sup>123</sup> 20P20

### **The Case for Sam Fisher<sup>124</sup>**

154. Mr Fisher spoke on behalf of the Devizes Area Neighbourhood Plan Steering Group.
155. A Neighbourhood Plan has been developed to sit alongside the Wiltshire Core Strategy, to ensure that all new housing developments deliver the required housing in a way that protects the character of the town, reduces unwanted and unnecessary urban sprawl, and minimises the impact on the town's already overstretched infrastructure. It was adopted in 2015 following a 90% vote in favour at referendum, and fully embraces the concept of localism and community led development. Within the plan a number of sites are allocated to meet the town's housing needs in a way that will ensure they integrate into the current built environment and minimise impact on the town.
156. In compiling the Neighbourhood Plan a review of the settlement boundary for the town took place. The area set out in the Core Strategy is the largest of all Market Towns, but has a relatively low density. It was therefore concluded that on the whole the existing boundary needed no amendment, but an area was marked out in an initial search extending to 1600m from the town centre to allow for sites that may come forward should there be a further need. The proposal does not fall within the boundary of the area of first search.
157. Many of the 2,010 houses required by the Core Strategy for the period to 2026 are already being delivered. The remainder will be met by sites with permission and those set out in the Neighbourhood Plan. The Core Strategy recognises that Devizes has infrastructure limitations and states that the rate of development should reduce compared with existing trends in recognition of the need to improve infrastructure. The remaining housing allocation should be met with smaller integrated developments providing opportunities for urban regeneration and reuse of redundant sites.
158. Sites were allocated in the Neighbourhood Plan on the basis of conformity with the content of the plan using a matrix. This gives a degree of flexibility in allowing replacement sites to come forward in accordance with the ranking. The appeal site was ranked 35 out of 37 sites.
159. The Neighbourhood Plan intends to ensure that new housing comes with a sense of place and as part of the community. It is the embodiment of democracy and local decision making, and to ignore it is to turn your back on localism.

### **The Case for John Kirkman<sup>125</sup>**

160. Mr Kirkman is Chairman of the Wiltshire Branch of the Campaign to Protect Rural England.
161. The site is outside the current limits of development. It is unsustainable. There is no evidence to show that building 350 dwellings on an area of 20ha of green fields would contribute to a strong, responsive and competitive economy as the NPPF requires. It would actually create a problem for the local economy by introducing some 400-500 job-seekers into the area with no guarantee of the equivalent number of new job opportunities. Distributing these in smaller

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<sup>124</sup> 2OP21

<sup>125</sup> 2OP22



developments throughout Devizes would cause fewer problems of congestion from out-commuting and school-running.

162. Local people have shown through the Neighbourhood Plan that they accept the need for new housing in Devizes in the next 10 years, but have made it clear that they do not wish to see an urban extension sprawling over the existing eastern boundary of the town onto green fields. For social and environmental reasons they would prefer new housing to be distributed in smaller parcels through the existing town area, wherever possible on brownfield sites, with minimum adverse impact on schools, health resources, roads, air quality and landscape. There are sufficient sites available within the town area to satisfy the proposals for Devizes in the Core Strategy.
163. The Council can demonstrate a five-year housing land supply. Speculation about what will be contained in the Site Allocations Development Plan Document does not justify the proposal. The slowness of the emergence of the DPD has not breached a specified time limit for its production, or invalidated the judgment of the Core Strategy as sound.
164. The Neighbourhood Plan has been assessed and judged sound as it stands. The proposal is not in conformity with the Core Strategy or the Neighbourhood Plan and should not be permitted.
165. It has not been explained how the creation of a single agglomeration of 350 houses would be a more sustainable, lower-carbon alternative to providing the same number of houses in an integrated fashion across the town.
166. This is a test of the Localism Act and the NPPF. The vision of the local people of Devizes should be recognised and supported, and the appeal be dismissed.

### **The Case for Eric Clark<sup>126</sup>**

167. Mr Clark is the Clerk to Bishops Cannings Parish Council and speaks on their behalf.
168. The Parish Council is a partner with Devizes Town Council and Roundway Parish Council in preparing the Devizes Area Neighbourhood Plan. As such it absolutely opposes the proposal. The community enthusiastically engaged with the principle of the Localism Act. Everyone had opportunities to review all of the potential housing sites, and the appeal site was ranked among the lowest in preference.
169. The development would have a substantially negative effect on the character of the neighbourhood. It is outside the limits of development and therefore fundamentally conflicts with Core Policies 1 and 2 of the Wiltshire Core Strategy. The community values the landscape setting of the town, which has a distinctive and special character. The north eastern side of Devizes is in the Pewsey Vale landscape character area, which has an essentially rural, agricultural character within which only small-scale sensitively designed development can be accommodated without adverse impact. The proposed development also lies very close to the North Wessex Downs AONB, abutting it at one point.
170. The proposal substantially conflicts with Core Policy 51 and would represent the loss of a much prized area of countryside adjacent to the town. Furthermore,

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<sup>126</sup> 20P23

building on greenfied sites is not an efficient use of land, with the NPPF and the Neighbourhood Plan encouraging the use of previously developed land.

171. A second major factor in the low ranking of the site is the impact such a large development would have on the quality of life for residents in the hamlet of Coate. This is largely focussed on the likely traffic overspill from the A361. The settlement of Coate is particularly unsuitable for even modest volumes of additional traffic. Experience shows that congestion motivates drivers to use the country roads with a detrimental effect on tranquillity and safety for residents.
172. Upholding the appeal would have significant social implications due to the loss of empowerment. People have been genuinely caught up in the process of producing the Neighbourhood Plan in the belief that their vision of their future environment will count. The Neighbourhood Plan has delivered what was asked of it in terms of the number of new homes required, and revisiting this issue yet again amounts to a challenge to the principle of localism.

### **The Case for Andy Geddes<sup>127</sup>**

173. Mr Geddes represents Roundway Parish Council.
174. The Devizes area has already undergone extensive development over the last 10 years, with an increase in population of some 24%. In the Parish of Roundway, where the proposal is located, the population has more than doubled over the period. This concentration of the increase in one locality, largely on the north-eastern boundary of the town, has outstripped the capacity of the infrastructure to bear it and placed an enormous burden on services and facilities. Traffic congestion on the only through route, and main access to town centre facilities, is already an everyday occurrence, leading to breaches of air quality standards. The proposed development beyond the limit of reasonable walking distance from the town centre cannot fail to make these problems more acute. Local experience shows that most would choose to make the journey by car.
175. It is recognised that there is a need for more, especially affordable, housing within the Devizes community. Appropriate development to meet growth targets is welcomed. However, large developments on greenfield sites on the periphery of the town are not the way to address that need. The Neighbourhood Plan, which has met all of the statutory requirements and gained local support, shows that there is a more sustainable alternative.
176. Assessed on the matrix criteria of the Neighbourhood Plan the site scores very poorly against alternative development sites within the town. This is especially so in relation to the defined development boundary, the location on the A361 corridor, and size and distance from the town centre. The proposal fails to meet the criteria established in the Neighbourhood Plan and is not to be preferred to the more sustainable alternative development sites identified within it.
177. The proposal would not make a sustainable contribution to future needs, would be harmful to the town, its environment and setting, and should be rejected.

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<sup>127</sup> 20P24

## **The Case for Julie Rose**

178. Ms Rose is Devizes Town Councillor and a Member of the Neighbourhood Plan steering group.

179. The Neighbourhood Plan gives power to the community. It has a focus on housing, with other elements to follow. The proposal would undermine this and all other neighbourhood plans.

## **WRITTEN REPRESENTATIONS**

### **Representations Made at Appeal Stage**

#### *Previous inquiry*

180. Around 43 written representations had been received prior to the previous inquiry. Most of these were objections covering the same matters as the cases of third parties made in oral submissions at the inquiry. Among them, Devizes Town Council supported the NP and argued that the appeal proposal would exceed the whole of the town's five-year housing requirement. Bishops Cannings Parish Council raised particular objection to the development's effects on the landscape setting of Devizes and the visual amenity of the Kennet and Avon Canal.<sup>128</sup>

181. The original written representations included one third party letter of support pointing out that the appeal site has derelict buildings on it and arguing that the location compares favourably with the Lay Wood site, where the Council granted planning permission for housing in January 2014.

182. A number of post-inquiry third party representations raising concerns relating to air quality and air pollution were submitted<sup>129</sup>.

183. Prior to the current inquiry, some 15 further individual written representations had been received<sup>130</sup>. These cover very similar issues to the previous submissions, in particular objections citing the preparation of the Neighbourhood Plan.

### **Representations Made at Application Stage**

184. The representations received by the Council as a result of its consultation on the planning application were summarised in the Committee report<sup>131</sup>. The report records that **63 third party objections were received**. It provides an analysis of the matters raised in the objections, which are generally are on grounds repeated at appeal stage.

185. The report also sets out the responses from **consultative bodies** to the application<sup>132</sup>.

## **CONDITIONS**

186. The Statement of Common Ground includes a list of recommended conditions in the event of the appeal being allowed<sup>133</sup> taken from the previous Inspector's

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<sup>128</sup> 2CD77 paras 164-167; OP1,OP2

<sup>129</sup> 2CD77 paras 5 & 168

<sup>130</sup> 2OP19

<sup>131</sup> CD6 section 8

<sup>132</sup> CD6 section 7

<sup>133</sup> 2J4 Appendix 9

Report<sup>134</sup>. These are endorsed by the main parties, along with the addition of one further condition relating to sustainable energy<sup>135</sup>. Third parties were made aware of the conditions in a session at the inquiry, but no comments were made.

## **OBLIGATIONS**

187. The submitted section 106 Agreement<sup>136</sup> is between the Council, the landowners and the developer.
188. The Agreement takes account of the Council's adoption of the Wiltshire Community Infrastructure Levy (CIL) Charging Schedule on 12 May 2015. This precludes the need for obligations on some matters on the basis that these are now dealt with under CIL.
189. Schedule 1 requires the owner to make various financial contributions. These are for primary education (£560,307 on a phased basis towards extra classrooms at a named school), highways (£105,000 towards the cost of improving the canal bank and the towpath in the vicinity of the site), and waste (£31,850 for the provision of refuse and recycling facilities for the dwellings). Schedule 2 requires at least 30% of the proposed new dwellings to be provided as 'affordable housing', with clauses dealing with the design, transfer, phasing, allocations and other mechanisms relating to the future use of these units. Schedule 3 requires the owner to carry out certain highway works through a Section 278 Agreement, 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. Schedule 8 contains covenants by the Council relating to its role in implementing the obligations.
190. The contributions would be index linked (clause 11).
191. The Council has provided a statement in support of the obligations<sup>137</sup>. This evidence addresses the tests in Regulation 122 of the Community Infrastructure Levy Regulations 2010 and explains in each case why it is considered that the obligations meet these on the basis of dealing with needs that would arise from the development. Relevant policies in the development plan and local guidance documents covering the relevant matters are identified. With respect to the requirement of Regulation 123 relating to a maximum number of projects for pooling, the statement confirms that in no case would the limit be breached.

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<sup>134</sup> 2CD77 Annex 3

<sup>135</sup> 2C24

<sup>136</sup> 2J6

<sup>137</sup> 2C23

## **CONCLUSIONS**

192. The numbers in square brackets in this section are references to previous paragraphs in the Report which are particularly relied upon in reaching the conclusions.

### **Main Considerations**

193. Having regard to the Council's reasons for refusal of the application, the relevant policy context and the evidence to the inquiry, the main considerations that need to be addressed are as follows:

- a) the relationship of the proposal to the development plan;
- b) whether there are factors that warrant giving reduced weight to the development plan;
- c) the degree of environmental harm that would result from the proposal including in terms of landscape, transport and air quality;
- d) whether infrastructure needs arising from the development could be satisfactorily provided for including by way of planning obligations and conditions;
- e) whether the proposal amounts to sustainable development and the overall balance of harm and benefits.

#### **a) The relationship of the proposal to the development plan**

194. The development plan for the area comprises the Wiltshire Core Strategy (adopted January 2015), the 'saved policies' of the Kennet Local Plan 2011 (adopted 2004) and the Devizes Area Neighbourhood Plan (made on 7 December 2015). This is a significant change since the previous inquiry held into the appeal in April 2014, when the development plan comprised only the saved policies of the Kennet Local Plan, and both the Core Strategy (CS) and Neighbourhood Plan (NP) were still emerging. [18,44,96]

195. Core Policy 1 of the CS provides a settlement strategy which identifies the settlements where sustainable development will take place. Market towns, including Devizes, are at the second level in a hierarchy of settlements. The policy refers to these as settlements outside the Principal Settlements that have the ability to support sustainable patterns of living through their current levels of facilities, services and employment opportunities. They are also recognised as having the potential for significant development that will increase the jobs and homes in each town in order to help sustain and where necessary enhance their services and facilities and promote better levels of self containment and viable sustainable communities. [20,50-51,102]

196. In terms of quantification of development, Core Policy 2 sets out a delivery strategy in line with Core Policy 1. This seeks to deliver development between 2006 and 2026 in the most sustainable manner, including provision for at least 42,000 homes. The indicated distribution of these includes a minimum housing requirement of 5,940 dwellings in the East Wiltshire Housing Market Area (HMA) (where Devizes lies). The policy refers to a more detailed distribution set out in the Community Area Strategies, and requires that development proposals should be in general conformity with these. [21,50-51,53]

197. Core Policy 12 covers the Devizes Community Area. Development here should be in accordance with the Settlement Strategy set out in Core Policy 1. Over the plan period, approximately 2,500 new homes will be provided, of which about 2,010 should be at Devizes and approximately 490 in the rest of the Community Area. Growth may consist of a range of sites in accordance with Core Policies 1 and 2. [23,52]
198. It is clear that, under these policies, the town of Devizes is in principle identified as a sustainable location, with potential for a substantial amount of new development including residential during the plan period. [102,106]
199. However, the policies also provide further direction on the location of development and on the role of later plans. According to Core Policy 2, sites for development in line with the Area Strategies will be identified through subsequent Site Allocations Development Plan Documents and by supporting communities to identify sites through neighbourhood planning. Within the limits of development, as defined on the policies map, the policy sets out that there is a presumption in favour of sustainable development, including at Market Towns. Other than in circumstances as permitted by other policies, identified in paragraph 4.25, development will not be permitted outside the limits of development, as defined on the policies map. In addition, the policy provides that the limits of development may only be altered through the identification of sites for development through subsequent Site Allocations Development Plan Documents and neighbourhood plans. It also lists strategically important sites. [21]
200. The indicated approach of a boundary defining limits of development and the identification of specific sites is taken forward in the Devizes Area NP. Policy H1 states that, for the purposes of the Neighbourhood Plan, the Settlement Framework Boundary defines the limits within which sustainable development should take place. It adds that the area within the boundary will provide sufficient land capacity to accommodate the housing growth projected for the plan period. The policy confirms that the boundary remains that defined by the Kennet Local Plan in 2004 and which has been carried forward into the Wiltshire Core Strategy. At the same time, reference is made to an enhancement of the defined area by the allocation of land within that bounded by a circle of radius 1600m, centred on the Market Cross. Finally, it is confirmed that the boundary as shown on the Policies Map equates with the 'limits of development' for the purpose of Core Policy 2 of the CS and is drawn to enclose a housing allocation listed in policy H3. [33,55,75-78,103]
201. Policy H3 deals with site specific allocations. A table indicates that, of the requirement for 2006-2026 of 2,010 dwellings, housing already provided for comprises 1,316 completions in 2006-2014 with 361 permitted, leaving a balance of 333 to be identified. Land allocated for residential development, shown on the Policies Map, is divided into two lists. The first are sites for delivery in the period 2014-2019 (totalling 222 potential dwellings) and the second are sites for delivery in the period 2019-2026 (totalling 142 potential dwellings). This gives a total of 364 dwellings. [35]
202. The appeal site is not allocated for housing development in either the CS or the NP. It lies beyond the limits of development incorporated in the CS, and does not meet any of the exceptions for built development cross-referred to in paragraph 4.25, such that the general preclusion on development in this location under Core Policy 2 of the CS applies. The site also lies outside the Settlement Framework Boundary shown in the NP. The latter part of the development plan clearly

indicates the function of this boundary as serving the purpose of defining limits of development set out in the CS. Therefore, despite the general support given for development at Devizes, and the indicative nature of housing numbers in the CS (which are set out as minima), the site is not one anticipated for development in the development plan, in fact an approach of restraint on development applies. This position is reiterated by the greenfield nature of the site, set against the emphasis of the CS on the re-use of previously developed land. [54,103-104]

203. The appellants suggest that the NP addresses development only within the built-up urban area of Devizes, and that it does not deal with the development requirements which arise elsewhere in either the Devizes Community Area or the HMA. It is argued that it is the role and function of the CS to address those needs. On this basis it is contended that the relationship between the NP and the proposal is neutral. Certainly the NP sets out specific requirements for development on allocated sites and within the limits of development, including under policy H2 that residential proposals should be limited to clusters of no more than 65 dwellings. However, in addition to indicating that there is enough land within the Settlement Framework Boundary to accommodate housing growth projected for the plan period, the NP in policy H1 ascribes a specific purpose to the boundary. This is that it is intended to contain the growth of the settlement and enable development to take place in a coherent manner, maintaining the structure and form of the existing settlement geography. In addition, the policy states that the boundary will protect the landscape setting of the settlement and represent the transitional edge between urban and rural settlements. Having regard to these intentions it is evident that the boundary is part of a policy relating to the acceptability of potential development beyond the boundary. The firm indication of this is that land outside the boundary is expected to be treated differently from land inside it. The NP is therefore not neutral towards the proposal in that respect, with the site excluded from the area within the boundary and not allocated for development. Further, read with Core Policy 2 of the CS, the development plan as a whole imposes a restriction on development outside the limits of development of Devizes which precludes the appeal proposal. [33-34,70,72,75-76,101,107-109,124-127]

204. Drawing together the above, I find the proposal to be contrary to Core Policy 2 of the CS and policy H1 of the NP. These policies and Core Policy 12 give effect to the development strategy set out in policy Core Policy 1, which are intended to be implemented in combination, such that the proposal is therefore also in conflict with these policies. Given the fundamental nature of the policy conflict, and the scale of the proposal, the proposal is not in accordance with the development plan as a whole on the location of new residential development.

**b) Whether there are factors that warrant giving reduced weight to the development plan**

205. The National Planning Policy Framework (NPPF) sets out a presumption in favour of sustainable development. Paragraph 14 indicates that, for decision-taking, this means, where the development plan is absent, silent or relevant policies are out-of-date, granting permission unless any adverse impacts of doing so would significantly and demonstrably outweigh the benefits, when assessed against the policies in the Framework taken as a whole; or specific policies in the Framework indicate development should be restricted.

206. The CS has only recently been adopted and the NP recently made. They represent plans for the relevant area and relevant period. A legal challenge made

to the NP was unsuccessful at the permission stage, and has not been pursued. The development plan in this case is not absent. [39,45-46,74,80]

207. Given the conclusion I have reached above with respect to the proposal being contrary to the development plan, I consider that the plan in this case enables such an assessment, and therefore it is not silent. [45,47-48]
208. A number of allegations are made by the appellants with respect to the plan being out-of-date. These are secondary to the primary submission that the proposal is in conformity with the development plan, or that any conflict is only minor. I will now deal with the out-of-date points of contention in turn. [110,137]
209. The limits of development boundaries in the Core Strategy were carried forward from the Kennet Local Plan of 2004. As set out above, Core Policy 2 provides for alteration of the limits of development through the identification of sites for development through subsequent Site Allocations Development Plan Documents (SADPD) and neighbourhood plans. It is apparent that the examining Inspector recognised the longevity of the existing boundaries, and anticipated that a review of the boundaries would be "*timely*", with an indication given by the Council at that stage that it would be complete by summer 2015. Nevertheless the plan was found sound and adopted on the basis of a subsequent review following adoption, notwithstanding the implied necessity of this. [55,58-59,67-68,113-120,128]
210. There has been slippage in the timetable for the preparation of the SADPD, with the latest estimate for adoption being December 2017. However, as well as through the SADPD, Core Policy 2 envisages possible alteration of limits boundaries through subsequent neighbourhood plans. In the case of Devizes, the preparation of the NP included a review of the boundary, which was endorsed by the Examiner. The boundary which forms part of the made NP can therefore be regarded as up-to-date, and is not simply a rolling forward of the 2004 boundary. This is notwithstanding that in the future there might be found to be a need for a further review of the boundary, which could have implications for the appeal site. The delay in the SADPD is therefore not a fundamental factor in this respect. [56-64,113-120,128,133]
211. The NPPF sets out an aim in paragraph 47 to boost significantly the supply of housing. It requires that local planning authorities should use their evidence base to ensure that their Local Plan meets the full, objectively assessed needs for market and affordable housing in the housing market area, as far as is consistent with the policies set out in the Framework. They should identify and update annually a supply of specific deliverable sites sufficient to provide five years worth of housing against their housing requirements, with an additional buffer of 5% (moved forward from later in the plan period) to ensure choice and competition in the market for land. The NPPF indicates that the buffer should be increased to 20% where there has been a record of persistent under delivery of housing.
212. According to paragraph 49 of the NPPF, relevant policies for the supply of housing should not be considered up-to-date if the local planning authority cannot demonstrate a five-year supply of deliverable housing sites.
213. It is common ground for the purposes of the inquiry that the local planning authority is able to demonstrate a five-year supply of deliverable housing sites in the East Wiltshire HMA. This is based on housing requirements in the CS and a base date of April 2015. In fact the undisputed evidence is that there is 8.21 years' supply of deliverable sites in the HMA. Relevant policies for the supply of housing in



the CS and NP should therefore not be regarded as out-of-date pursuant to paragraph 49 for the reason of a five-year supply not being demonstrated. [40,63,88,111]

214. This represents a significant change from the findings of the previous Inspector that there was not a five-year supply at the time of the first inquiry. [96]
215. The CS allows for some flexibility in terms of the indicative disaggregation of the HMA minimum requirements by Community Areas. However, with the current delivery record in Tidworth and Ludgershall and the overall position in the HMA there is no strong justification for additional provision in the Devizes Community Area on the basis of off-setting. There is no requirement under the development plan to off-set any shortfall in respect of housing delivery which arises in one HMA by locating additional housing in another where there is a demonstrated five-year supply of deliverable sites. The present agreed shortfall in the North Wiltshire HMA therefore also does not change the position as it affects the appeal site. [69,112]
216. As part of boosting significantly the supply of housing, the NPPF at paragraph 47 further requires local planning authorities to identify a supply of specific, developable sites or broad locations for growth for years 6-10 and, where possible, years 11-15. It is therefore relevant also to consider these longer timescales. There is agreement that the CS does not allocate enough land to meet its own development requirement up to 2026. This was recognised by the CS examining Inspector. In addition to the timely advancement of the SADPD, it is apparent that he envisaged an early review of the CS in order to make good this shortfall. [111]
217. The Council advises that it has commissioned a joint Strategic Housing Market Assessment with Swindon and expects that initial outputs from the work will be available in July 2016 to inform the review. It accepts that there has been a delay but considers that this is not unreasonable or significant in the circumstances. There is in this respect disagreement on whether the process underway represents an early review in accordance with the examining Inspector's understanding. It is a reasonable expectation that the Council should proceed expeditiously. However, there is currently an agreed housing land supply of 8.21 years and the CS was adopted only just over a year ago. Bearing these factors in mind, I concur with the Council that there is no justification at the present time for reducing the weight that should be given to policy CP2 and releasing this greenfield site for development on the basis of either the agreed need for a future review or the degree of progress to date on this. Again, I find that the development plan is not out-of-date. [68,113-120,132-133]
218. Suggestions are made that the NP is out-of-date by reason of conflict with aspects of both the CS and the NPPF. Consideration of soundness and of whether the basic conditions were met with regard to the CS and NP respectively, made as part of their examinations, included the question of consistency with the NPPF, among other things on the pursuit of sustainable development. Conformity with the strategic policy of the CS also formed part of the test for the NP, including that it met strategic need. Both plans successfully passed their examination stages recently, and there is no firm reason to now take a different view. I have already dealt with the appellants' argument that the NP can only be regarded as in conformity with the CS on the basis that it does not address land outside the development limits. [71-72,74,105-106,122-127]
219. I conclude that there are no strong grounds to warrant giving reduced weight to the development plan.

**c) The degree of environmental harm that would result from the proposal including in terms of landscape, transport and air quality**

220. It is common ground between the appellants and the Council (as local highway authority) that, with agreed off-site highway works, the proposal is acceptable in terms of site access arrangements, road safety, traffic generation and distribution. Although there are third party concerns on these matters, there is no evidence to support a conclusion different to that jointly reached, which is based on a technical assessment of highways impact. [40,90,129]
221. The common ground also includes that the impact of the development would be sufficiently small such that the air quality in the Air Quality Management Area in the town centre would be unaffected. Although there are local concerns relating to air quality, there is again no firm reason to disagree with the technical assessment. [41,90,129,182]
222. A reason for refusal related to the potential effects of the development on archaeology. Following further assessment and with an agreed proposed condition, the Council has confirmed that it does not pursue any objection to the scheme on archaeological grounds. [5,40,90,129]
223. With respect to impact on landscape, the Council does not contend that the proposal would cause specific harm other than in terms of the encroachment of development on 20ha of open countryside. There would be no material impact on the adjacent Wessex Downs Area of Outstanding Natural Beauty, and the development would be visually intrusive to no more than a localised degree. The location has no particular landscape or natural environment interest, and is not of notable value in these terms. Nevertheless, with the scale of the scheme and the present obvious character of the site as agricultural land, there would be a degree of harm to the countryside as a result of an extension of urbanisation beyond the existing edge of the built-up area of the town. The harm in principle is reflected in a significant level of local objection on this ground, and it can be given weight as an adverse consequence of the proposal. [14,90,129,153,155,161,169-170,175,180]

**d) Whether infrastructure needs arising from the development could be satisfactorily provided for including by way of planning obligations and conditions**

***Conditions***

224. The main parties have endorsed the conditions recommended to be imposed on a grant of permission by the previous Inspector. I see no reason to depart from these proposed conditions (Annex 3) or the justification given for them set out as follows, including where relevant the infrastructure needs that the conditions are intended to address. [186]
225. 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.
226. 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.

227. 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.
228. 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.
229. 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 previously 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.
230. The parties propose an additional condition relating to sustainable energy. On the basis that Core Policy 41 of the Core Strategy creates a need to achieve at least level 4 of the now withdrawn Code for Sustainable Homes, such a condition is warranted in the interests of energy conservation. [24,186]

### **Obligations**

231. The NPPF sets out policy tests for the seeking of planning obligations, and there are similar statutory tests contained in Regulation 122 of the Community Infrastructure Levy Regulations (2010) which must be met for obligations to be given weight. Core Policies 3, 43, 52 and 61 of the Core Strategy and policies HC34 and HC37 of the Kennet Local Plan and the contents of local guidance documents on development requirements are also relevant. [22,25,26,28,30-31,191]
232. The obligations in the submitted section 106 Agreement for payments with respect to education, highways and waste would deal with needs that can be anticipated would arise from residents of the new development, and are appropriately justified. The on-site open space and leisure provision and the off-site highway works would also address needs arising from the development. The evidence indicates that none of these contributions would lead to a breach of the limit for pooled contributions in Regulation 123. With respect to affordable housing, provision towards this is required under local and national policy. [6,25,30-31,187-191]
233. The obligations all meet the relevant policy and statutory tests of being necessary, directly related to the development and fairly and reasonably related to it, and can be accorded weight in support of the proposal.
234. Taken together, the suggested conditions, the obligations and CIL payments would deal satisfactorily with the impact of the development on infrastructure and the environment, with no firm evidence to indicate otherwise despite local concerns on this ground. [94,134-135,151-152,171,174]

### **e) Whether the proposal amounts to sustainable development and the overall balance of harm and benefits**

235. The NPPF sets out that the purpose of the planning system is to contribute to the achievement of sustainable development. It states that the policies in its

paragraphs 18 to 219, taken as a whole, constitute the Government's view of what sustainable development means in practice. [85]

236. Paragraph 7 identifies three dimensions to sustainable development: economic, social and environmental. [85,142]
237. In economic terms, the development would be supportive of growth. This effect would arise from the provision of jobs, including some permanent jobs in the proposed local centre, and as a result of supply chain investment. The development could also be expected to lead to significant expenditure on local goods and services and generate a substantial CIL payment. The potential economic benefits can be given significant positive weight. [138-139]
238. As part of the social dimension, the proposal would provide up to 105 affordable and 245 market dwellings, representing a substantial boost to housing supply and helping to address housing needs. This is also a significant positive aspect, despite that there is not an established current shortfall in the five-year housing land supply for the housing market area. Further social benefits for the community would result from the new open space, canal-side improvements and the availability of the local centre. [140]
239. In environmental terms, it is common ground that the site is a suitable location from which to access the existing facilities and employment within Devizes on foot, and improvements to a cycle route and bus services are noted. The open space and canal benefits would also be of an environmental nature. On the negative side would be the degree of harm to the countryside as a result of an extension of urbanisation onto undeveloped agricultural land beyond the existing edge of the built-up area of the town. [138-139]
240. Based on this assessment against the three dimensions, the proposal can be regarded as a sustainable development.
241. However, there is also a need to take account of the principle in paragraph 17 of the NPPF that planning should "*be genuinely plan-led, empowering local people to shape their surroundings, with succinct local and neighbourhood plans setting out a positive vision for the future of the area*". Paragraph 183 of the NPPF refers to neighbourhood planning as giving communities direct power to develop a shared vision for their neighbourhood and deliver the sustainable development they need. According to paragraph 198, where a planning application conflicts with a neighbourhood plan that has been brought into force, planning permission should not normally be granted. Both the CS and NP were recently found in examination to support sustainable development, and this includes with respect to the hierarchical classification of settlements and the provision for the Settlement Framework Boundary in Devizes. [73,81-83,85-87,98,121]
242. The conclusion is reached above that the proposal is in conflict with the development plan as provided by the CS and the NP. Having regard to the importance given by the Government to the plan-led system including neighbourhood planning, as well as the statutory status of the development plan, the conflict with the development plan carries very substantial weight. A decision to allow the appeal could be expected to be viewed as an undermining of a neighbourhood plan that has been widely supported by the local community, which would be a negative outcome. [81,84-89,142-143,146,151,155-159,162-166,168,172,179,180,183].

243. Bringing these factors together, I reach an overall judgment having regard to the NPPF as whole that the harmful impact of allowing the proposal would outweigh the benefits.

### **Overall Conclusion**

244. I have found that the proposal does not comply with the policies of the Core Strategy and the Neighbourhood Plan on the location of new residential development. Given the fundamental nature of this finding, the proposal is not in accordance with the development plan as whole.
245. The development plan is not silent or absent. Progress on the SADPD and review of the CS has been slower than anticipated by the CS examining Inspector. However, the settlement boundary of Devizes has been reviewed through the NP. There is also considerably in excess of a five-year supply of deliverable housing sites in the HMA. Taking these factors together with the relatively recent preparation of the CS and NP, the development plan should not be regarded as out-of-date. There are no firm grounds on which to reduce the weight carried by the development plan.
246. The proposal would not lead to material detriment in terms of highway matters or air quality. There would be limited harm to the character and appearance of the area involving the loss of the existing undeveloped countryside. Infrastructure and other environmental impacts could be satisfactorily addressed.
247. In many respects the proposal would contribute positively to sustainable development objectives as set out in the NPPF. However, the NPPF also aims for planning to be genuinely plan-led and emphasises the important role of neighbourhood plans. The undermining of this approach by allowing the proposal would be a negative impact that is in addition to the harm that would result to the countryside.
248. There have been significant changes in material circumstances since the Report of the Inspector on the previous inquiry recommending the grant of permission for the proposal. In particular, new elements of the development plan have come into force, and there is now a demonstrated five-year housing land supply in the relevant area. These factors alter the balance of considerations. Planning decisions have to reflect current circumstances, and it is possible that these may change again with respect to the acceptability of the appeal scheme in the future, including in the context of further plan preparation. However, I find that the overall balance is against the grant of permission.
249. I therefore conclude that there is no overriding reason to reach a decision other than as indicated by the development plan.

### **RECOMMENDATION**

250. I recommend that the appeal be dismissed.

*T G Phillimore*

INSPECTOR

## **ANNEX 1: APPEARANCES**

### FOR THE LOCAL PLANNING AUTHORITY:

Nadia Sharif of Counsel	Instructed by Ian Gibbons, Solicitor to the Council
She called:	
Mark Henderson BSc(Hons) MA MRTPI	Manager of the Monitoring and Evidence Team, Wiltshire Council
Tracy Smith BA(Hons) BTP MRTPI	Team Leader of Spatial Planning Team, Wiltshire Council

### FOR THE APPELLANTS:

Anthony Crean QC	Instructed by Christopher Simkins
He called:	
Christopher Simkins BA(Hons) MRTPI	Director of Planning and Strategy, RPS

### INTERESTED PERSONS:

Laura Mayes	Wiltshire Councillor for Roundway
Roger Giraud-Sanders	Devizes Town Mayor
Sam Fisher	Devizes Neighbourhood Plan Steering Group
John Kirkman	CPRE Wiltshire
Eric Clark	Clerk to Bishop's Cannings Parish Council
Andy Geddes	Roundway Parish Council
Judy Rose	Devizes Town Councillor

## **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: 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 as 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 shall 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.

RC14 The dwellings hereby approved shall achieve a level of energy performance at or equivalent to Level 4 of the Code for Sustainable Homes. No dwelling shall be occupied until evidence has been submitted to and approved in writing by the local planning authority which demonstrates that this level or equivalent has been achieved.

## **ANNEX 4: INQUIRY DOCUMENTS**

### **1. Documents carried forward from previous inquiry**

#### **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 Rachel Foster – proof of evidence (archaeology)
- C2 Edgar White – summary
- C3 Edgar White - proof of evidence (planning policy)
- C4 Neil Tiley – summary
- C5 Neil Tiley - proof of evidence (housing supply)
- C6 Appendices to Mr Tiley’s proof
- C7 Neil Tiley - rebuttal proof with appendices attached
- 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

#### **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
- A4 Christopher Simkins - rebuttal proof
- A5 Ian Barnes – proof of evidence (archaeology) with bound-in appendices
- 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
- 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 14th 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

## **2. Documents submitted for current inquiry**

### **JOINT DOCUMENTS** (Blue folder No 8)

- 2J4 Statement of Common Ground dated 30 March 2016
- 2J5 Highways Statement of Common Ground dated February 2016
- 2J6 Section 106 Agreement dated 7 April 2016

### **COUNCIL DOCUMENTS** (Black ring binder and blue folder No 9)

- 2C12 Tracey Smith – proof of evidence (spatial planning)
- 2C13 Tracey Smith - Appendices
- 2C14 Tracey Smith – rebuttal proof
- 2C15 Mark Henderson - proof of evidence (housing land supply)
- 2C16 Mark Henderson – summary of proof
- 2C17 Mark Henderson - Appendices
- 2C18 Mark Henderson - rebuttal proof
- 2C19 Draft statement of compliance of s106 obligations with CIL Regulations
- 2C20 Costs application with attachments
- 2C21 Opening submissions
- 2C22 Judgments cited in opening submissions
- 2C23 Revised statement of compliance of s106 obligations with CIL Regulations
- 2C24 Additional suggested condition
- 2C25 Core Strategy plans of Devizes Community Area
- 2C26 Plans from Kennet Local Plan identifying Devizes Area Neighbourhood Plan housing allocation sites
- 2C27 Extract from Core Strategy Topic Paper 12 - Strategic site definition
- 2C28 Closing submissions
- 2C29 Additions to costs application

### **APPELLANTS' DOCUMENTS** (Blue folder No 10)

- 2A12 Christopher Simkins – proof of evidence
- 2A13 Christopher Simkins – summary proof of evidence
- 2A14 Christopher Simkins - appendices
- 2A15 Opening statement
- 2A16 Devizes Community Area plan
- 2A17 Plan of Devizes SHLAA sites
- 2A18 Closing submissions
- 2A19 Response to costs application with attachments

### **DOCUMENTS SUBMITTED BY OTHER INTERESTED PERSONS** (Blue folder No 11)

- 2OP19 Bundle of 15 written representations to the Planning Inspectorate

- 2OP20 Statement of Roger Giraud Sanders
- 2OP21 Statement by Simon Fisher
- 2OP22 Statement by John Kirkman
- 2OP23 Statement by Eric Clark
- 2OP24 Statement by Andy Geddes

**CORE DOCUMENTS** (Document box)

- 2CD76 Secretary of State's decision of 27 October 2014 – Land off Coate Road
- 2CD77 Inspector's Report of 3 June 2014 in relation to the previous inquiry for Land off Coate Road
- 2CD78 Wiltshire Core Strategy – Inspector's Report on the Examination 1 December 2014
- 2CD79 Adopted Wiltshire Core Strategy – January 2015
- 2CD80 Wiltshire Sites Allocation DPD – Reg 18 Consultation 18 March 2014
- 2CD81 Wiltshire Council Settlement Boundary Review – Informal consultation with Parish and Town Councils – Consultation leaflet, form and presentation – July 2014
- 2CD82 Wiltshire Sites Allocation DPD – Informal Consultation leaflet Feb 2015
- 2CD83 Wiltshire Sites Allocation DPD – Informal Consultation – Draft Site Selection Methodology Feb 2015
- 2CD84 Wiltshire Housing Sites Allocation DPD – Informal Consultation – Housing Supply Paper Feb 2015
- 2CD85 Wiltshire Housing Sites Allocation DPD – Presentation
- 2CD86 Wiltshire Sites Allocation DPD – refined options for Marlborough
- 2CD87 Devizes Area Neighbourhood Plan (DANP) Examination – EXAM/01 Examiner's questions March 2015
- 2CD88 DANP Examination EXAM/02 steering group's response to Examiner's questions April 2015
- 2CD89 DANP Examination EXAM/05 Examiner's further questions April 2015
- 2CD90 DANP Examination EXAM/07 steering group's response to Examiner's further questions April 2015
- 2CD91 DANP Examiner's Report May 2015
- 2CD92 DANP Decision Notice and Table of Modifications (Appendix 1) July 2015
- 2CD93 DANP Referendum Version July 2015
- 2CD94 Wiltshire CIL charging schedule May 2015
- 2CD95 Wiltshire CIL Regulations 123 List May 2015
- 2CD96 Wiltshire Planning Obligations SPD May 2015
- 2CD97 Wiltshire Council Housing Land Supply Statement September 2015
- 2CD98 WCS examination Inspector's 16th procedural letter of 15 July 2014 (EXAM/107) and Wiltshire Council's response of 28 July - (EXAM/108)
- 2CD99 Wiltshire Local Development Scheme 2015 – Jan 2015
- 2CD100 Reports and Minutes of the Swindon/Wiltshire Joint Strategic Economic Committee (JSEC) April 2015 to Feb 2016 in relation to SHMA
- 2CD101 Army Basing Masterplan June 2014
- 2CD102 Appeal decision – Land south of Clapper Lane, Bracklesham, West Sussex – APP/L3815/W/14/3000690 – 8 Feb 2016
- 2CD103 Appeal decision – Land at Sibford Road, Hook Norton, Bambury, Oxon – APP/C3105/A/14/2226552 – 7 Dec 2015
- 2CD104 Housing Land Availability April 2015 (Dec 2015)
- 2CD105 R (on the application of Larkfleet Homes Ltd) v Rutland County Council (Secretary of State for Communities and Local Government intervening) [2015] EWCA Civ 597
- 2CD106 R (on the application of Gladman Developments) v Aylesbury Vale DC [2014] EWHC 4323 (Admin)
- 2CD107 BDW Trading Limited (t/a Barratt Homes) (2) Wainhomes developments Ltd v Cheshire West and Chester Borough Council and another [2014] EWHC 1470

- 2CD108 R (on the application of Crownhall Estates Limited v (1) Chichester District Council [2016] EWHC 73 (Admin)
- 2CD109 Wiltshire Council Decision Statement (proceeding to referendum) on the DANP – July 2015
- 2CD110 Wiltshire Council’s formal making of the DANP – December 2015
- 2CD111 Appellants’ High Court Challenge to the Secretary of State’s previous decision
- 2CD112 -- [Not used] --
- 2CD113 High Court Draft Consent order dated 1st May 2015: Mactaggart and Mickel Ltd and (1) SoS for Communities and Local Government (2) Wiltshire Council
- 2CD114 Appeal Decision Kents Green Farm, Haslington, Crew (subject to Challenge by LPA) APP/R0660/A/14/2225591
- 2CD115 Hallam Land Application – Land East of Spa Road Melksham – Officers Report – 1 Feb 2016
- 2CD116 Sutton Benger Appeal - APP/Y3940/W/15/3028953
- 2CD117 Letter from Department for Communities and Local Government dated 3rd June 2015
- 2CD118 Court of Appeal – Hopkins and Richborough – 17 March 2016
- 2CD119 Wiltshire Council Waste Collection Guidance for New Development (June 2013)
- 2CD120 Community Benefits from Planning Supplementary Planning Guidance (March 2005)
- 2CD121 Costs Decision by the Appellants against Wiltshire Council (3 June 2014)
- 2CD122 Judge’s Decision on the Neighbourhood Plan
- 2CD123 Wiltshire Council Witness Statement for Neighbourhood Plan (8 February 2016)
- 2CD124 Appellants’ High Court Challenge to the Neighbourhood Plan
- 2CD125 Hopkins Homes and Richborough Estates judgment 17 March 2016



## **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 for permission 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**

With the permission of the High Court 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. 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 for leave under this section must be made within six weeks from the day after 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 leave 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**

A challenge to the decision on an application for an award of costs which is connected with a decision under section 77 or 78 of the TCP Act can be made under section 288 of the TCP Act if permission of the High Court is granted.

### **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 Inspector's report of the inquiry or hearing within 6 weeks of the day after 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.