



## Appeal Decision

Hearing held on 11 March 2021

Site visit made on 12 March 2021

**by L Page BSc (Hons) MSc MRTPI**

an Inspector appointed by the Secretary of State

Decision date: 27<sup>th</sup> May 2021

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**Appeal Ref: APP/Y3940/W/20/3249284**

**Land South of Broad Town Primary School, Broad Town SN4 7RE**

- 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 Greystoke Land Limited against the decision of Wiltshire Council.
  - The application Ref 19/03874/OUT, dated 8 April 2019, was refused by notice dated 20 December 2019.
  - The development proposed is residential development of up to 10 entry-level affordable dwellings, with associated access roads and car parking, a community car park, a publicly accessible village green, landscaping, drainage and other associated infrastructure.
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### Decision

1. The appeal is allowed and planning permission is granted for residential development of up to 10 entry-level affordable dwellings, with associated access roads and car parking, a community car park, a publicly accessible village green, landscaping, drainage and other associated infrastructure at land south of Broad Town Primary School, Broad Town SN4 7RE in accordance with the terms of the application, Ref 19/03874/OUT, dated 8 April 2019, and the plans submitted with it, subject to the conditions set out in the attached schedule.

### Procedural Matters

2. The application was made in outline with all matters reserved. The quantum of the proposal is clear from the description of development, and all drawings relating to those matters reserved for future approval have been treated indicatively. The appeal has been dealt with accordingly.
3. The appellant submitted new evidence during the course of the appeal, including further archaeological information pursuant to amplifying the Council's reference to another site that is said to have had archaeological potential, and decisions by the Council and other inspectors which engage with the application of Paragraph 71 of the National Planning Policy Framework (the Framework), among other things.
4. The new evidence was ultimately accepted on the basis it was related to the principles at play under the appeal and did not fundamentally change the nature of the proposal or undermine the consultation process or other interested party representations made to date.

5. The Council also submitted new evidence during the course of the appeal, including a judgement relating to listed building statutory duties. For the same reasons described previously, the new evidence was ultimately accepted on the basis it was related to the principles at play under the appeal and did not fundamentally change the nature of the proposal or undermine the consultation process or other interested party representations made to date.
6. The appellant made an application for costs against the Council during the appeal. However, this application was subsequently withdrawn before the close of the hearing. Consequently, the application for costs and subsequent rebuttal have not been considered further.

### **Main Issues**

7. The main issues are:
  - (a) whether the proposal is in an appropriate location for entry level housing;
  - (b) the effect of the proposal on the character and appearance of the area;
  - (c) the effect of the proposal on non-designated heritage assets;
  - (d) the effect of the proposal on a designated heritage asset; and
  - (e) whether planning obligations are necessary and suitably provided.

### **Reasons**

#### *Location*

8. The site is a pastoral field located in the countryside adjacent to the settlement of Broad Town, which is a small village for the purposes of the Wiltshire Core Strategy 2015 (WCS). Within the wider local authority area, there is a general need for affordable housing and this need has become increasingly more acute since 2016. Consequently, lack of affordable housing appears to be a long term issue that the existing WCS spatial strategy has not been successful in addressing and needs direct intervention to resolve.
9. There is some variance in how the affordability ratios have been arrived at between the parties, but in any event, it demonstrates that the area has an affordability ratio that is particularly challenging for those seeking entry level homes, such as first time buyers. There is no evidence that entry level homes are recorded as a subset of affordable housing more generally and therefore it is impossible to determine whether local needs are being met on this basis.
10. It has been demonstrated that the Royal Wootton Bassett and Cricklade Community Area, which is the community area wherein the appeal site falls, has exceeded its requirement for housing supply more generally. Nevertheless, community area requirements and the findings within the parish plan are indicative thresholds and should not restrict or place a cap on the delivery of housing, which should be calculated and delivered based on broader housing market area requirements, within which the majority of household moves take place, and where there is no evidence to require further disaggregation to assess need.

11. On this basis, even if the Royal Wootton Bassett and Cricklade Community Area was meeting its indicative threshold, it would not provide a sound rationale for resisting development that would meet an otherwise prevailing need within the broader housing market area, where there is only 4.29 years of housing land supply. This is because, logically, those in need could move to the community area to access housing that might not otherwise be available elsewhere in the wider housing market area.
12. The proposal would deliver up to 10 units of entry level affordable housing for first time buyers that would contribute to the local authority wide shortfall in affordable housing and the shortfall of housing within the housing market area more generally. In this context, Paragraph 71 of the Framework is clear that the Council should support the development of entry-level exception sites for first time buyers unless the need for such homes is already being met within the area. The language used is quite clear, in that there is a requirement for evidence demonstrating that the need for such homes is being met, not that a need for such homes exists.
13. It would be irrational to require a developer to demonstrate that the need for such homes is already being met as this would undermine their position. Consequently, the only logical conclusion is that within Paragraph 71 of the Framework the existence of need is implicit, and the burden to demonstrate that such a need is being met sits with the Council. In considering that the Council does not record entry level homes as a subset of affordable housing more generally, it cannot be demonstrated that the need for such homes is being met in this case.
14. As will be reasoned later in my decision, Footnote 6 of the Framework is disengaged by virtue of public benefits outweighing the harm to a designated heritage asset pursuant to Paragraph 196 of the Framework. Consequently, it follows that Footnote 34, which relies on Footnote 6 therein, would also be disengaged for the purposes of applying the relevant part of Paragraph 71 of the Framework which relates to the protection given to areas or assets of particular importance.
15. It is clear that the very nature of proposals advanced pursuant to Paragraph 71 of the Framework would deliver an implicit level of landscape change at the edge of a settlement, with a certain degree of tolerance for harm built into its provisions. Accordingly, in my mind, the starting point for considering compliance with local design policies and standards in the context of Paragraph 71 of the Framework can only logically involve detailed matters about the design of housing, not matters of principal landscape change.
16. For me to consider compliance with local design policies and standards in the context of principle landscape change would be a contradiction of the provisions within Paragraph 71 of the Framework, which allow small numbers of entry level homes to emerge at the edge of a settlement on the basis that the benefits would outweigh any limited changes and potential landscape harm.
17. With this in mind, and as will be reasoned later in my decision, the existence of fundamental landscape harm would not render the proposal incompatible with Paragraph 71 of the Framework and compliance with local design policies and standards can be achieved through the flexibility inherent in an outline proposal, including the Council's and other interested parties' continued agency in relation to future reserved matters applications.

18. In terms of the stated thresholds pursuant to Paragraph 71 of the Framework, there is no scaled plan or other evidence in front of me to demonstrate that the site exceeds the 5% limit of the settlement's existing extent, or that the 5% limit relates to the size of population instead of the extent of the built form.
19. Part of the Council's first reason for refusal in relation to the location of development relates to conflict with Core Policy 44 of the WCS and countryside exception status therein, including whether there is support from the local community, such as within the parish plan, among other things. Conflict with this policy is not disputed by the appellant.
20. Core Policy 44 of the WCS has direct linkages with the wider spatial strategy for housing insofar as it relates to rural exception sites. Accordingly, in conjunction with the persistent lack of affordable housing and shortfall in housing land supply in the housing market area, which stands at 4.29 years, the only reasonable conclusion is that the current spatial strategy is not working as intended and any weight resultant from conflict with it should be reduced.
21. Overall, the proposal would conflict with Core Policy 44 of the WCS, including interlinked Core Policies 1, 2 and 19 of the WCS's spatial strategy and Saved Policy H4 of the North Wiltshire Local Plan 2011 (NWLP). Among other things, these policies require housing to come forward where it is needed. Due to the statutory nature of the development plan, any conflict with it should carry great weight. However, when considering the persistent lack of affordable housing and current shortage in housing land supply more generally, such conflict should only carry moderate weight in this case.
22. The proposal would accord with Paragraph 71 of the Framework, wherein there is no evidence of any existing entry level affordable housing, the presumption being that needs are not being met to any quantifiable extent and therefore provision of such housing should carry great weight. This weight should be further enhanced when considering the persistent lack of affordable housing and current shortage in housing land supply more generally and should therefore carry significant weight in the overall planning balance.
23. Paragraph 71 of the Framework is geared towards smaller sites, consequently, although there are relatively limited numbers of units proposed, the proposal could deliver a quantum in line with what is allowed and therefore the weight afforded to potential benefits should not be reduced for these reasons alone.

#### *Character and Appearance*

24. The pattern of development in Broad Town is centred around Broad Town Road, which runs on a north-south axis. The built form in the south comprises the core of the original village and is greater in scale compared to the built form in the north, which comprises more recent development. Both parts of the village are separated by a network of open fields.
25. In practical terms, these fields create a countryside gap, albeit without any formal designation within the development plan. The countryside gap is an important feature preventing coalescence of Broad Town's distinct pattern of development and integral to preserving the rural character and appearance of the settlement.

26. The boundary of North Wessex Downs Area of Outstanding Natural Beauty is located approximately 500 metres to the south, however there is no evidence in front of me that there are visual linkages with it or that there is potential for effects on its setting.
27. The site currently presents itself as a large undeveloped pastoral field within the countryside gap and is adjacent to Broad Town Primary School to the north and Christ Church<sup>1</sup> to the east. Consequently, it contributes to the countryside gap and helps prevent coalescence between Broad Town's distinct pattern of development.
28. The proposal would comprise up to 10 units of entry level affordable housing for first time buyers alongside a village green and community car parking area, among other things. The proposal has been submitted in outline and therefore the layout currently before me is indicative of what might be possible at reserved matters stage.
29. In this context, the proposal could deliver the residential component of the development and community car parking area in a manner where it sits directly adjacent to Broad Town Primary School, forming a block around its southern and western perimeter. The village green could be delivered to the south of the residential component of the development, directly opposite Christ Church to the east.
30. In principle terms, the proposal would deliver built form where there currently is none, and within a countryside gap that has an integral function in preventing coalescence between the north and south of Broad Town. Clearly, therefore, the proposal would erode some of the countryside gap and cause a degree of harm to the rural character and appearance of the area.
31. However, based on the indicative layout it is clear that the main built form associated with the development could have a very direct relationship with the existing built form of Broad Town Primary School. Consequently, although the wider extent of the site and red line boundary does take in an appreciable amount of the countryside gap, only a small part of it would actually give rise to residential development and hard landscaping associated with the community car parking area, among other things.
32. Furthermore, in relative terms Broad Town Primary School is located towards the northern periphery of the countryside gap and has a close relationship with the built form comprised in the north of the village. Consequently, if the residential component and community car parking area of the development were delivered directly adjacent to Broad Town Primary School in the manner indicatively proposed, it would better preserve the countryside gap than if it were detached within the open field or dispersed throughout the entirety of the wider site.
33. Altogether, the residential component and hard landscaping associated with the community car parking area of the development could potentially come forward in a manner which created a limited extension to the built form of the village's northern extent and without significantly harming the inherent function of the countryside gap or heightening the risk of coalescence.

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<sup>1</sup> Grade II Listed Building

34. Indicatively, the village green would be located further south than the other components of the development, however given that there would be no built form of any scale it would not undermine the role of the countryside gap in preventing coalescence. Ultimately, my assessment is based on indicative outcomes and it is difficult to determine the extent of effects in anything other than principle terms without prejudicing the reserved matters approval process.
35. Consequently, overarching my assessment and conclusion of principle harm to the rural character and appearance of the area is the fact that the proposal is put forward in outline wherein lies a significant degree of flexibility to deliver a development that accords with local design requirements and otherwise mitigates the most serious and harmful effects. For example, the layout of units could be evolved at reserved matters and the community car parking area could be subject to robust soft landscaping measures to control the effects of built form on the countryside gap.
36. Overall, the proposal would erode part of the countryside gap and harm the rural character and appearance of the area. This would cause conflict with Core Policies 51 and 57 of the WCS and Paragraph 170 of the Framework, which among other things requires development to protect, conserve and where possible enhance landscape character, whilst mitigating negative impacts as far as possible through sensitive design and landscaping measures.
37. Notwithstanding this conflict, the flexibility inherent in an outline proposal would help mitigate this harm. Consequently, any harm derived from conflict with development plan which would normally carry great weight should be reduced to having moderate weight in this context.

#### *Non-Designated Heritage Assets*

38. Paragraph 189 of the Framework is clear that developers are required to submit an appropriate desk based assessment and, where necessary, a field evaluation. In this context, the appellant has provided an archaeological report desk based assessment and a geophysical survey field evaluation. Therefore, at a fundamental level they have complied with the provisions of Paragraph 189 of the Framework. The desk based assessment demonstrates that the site is in an area with moderate potential for Romano-British remains. The geophysical survey identified that the closest feature of possible archaeological interest was some distance away from the site.
39. Another scheme in the area, and specifically the geophysical survey therein, returned anomalies that trial trenching ground investigations helped clarify, subsequently confirming the presence of features of archaeological interest within that site. It is my understanding that these anomalies had at least some characteristics indicating that they were of possible archaeological origin, wherein further ground investigations were a proportionate course of action.
40. My understanding of the evidence submitted under this appeal and elaborated on at the hearing is that some features of archaeological interest, such as burial sites, due to their physical nature and prevailing geology, may be difficult to identify in a definitive manner. However, even if this is the case, the evidence suggests that the anomalies would still show at least some characteristics of possible archaeological origins. This logic would be consistent with the scenario from the other scheme in the area.

41. In this context, there is no evidence in front of me that there are anomalies within the geophysical survey data on this site with the necessary characteristics suggestive of features of possible archaeological origin that are of particular interest or value. The closest features of possible archaeological origin, interest or value are demonstrated to be some distance away from the site, and on the balance of probabilities I have no suspicion of significant archaeological remains on the site that would require further ground investigations to establish the principle of development.
42. In the unlikely event that features of possible archaeological origin are present, the robustness of the appellant's approach means that any such findings would likely be limited in scope and scale. Consequently, any residual risk could be addressed by a suitably worded planning condition requiring further archaeological investigations as part of the development's construction.
43. Furthermore, the flexibility inherent in an outline proposal means that in the unlikely event that features of archaeological interest are unearthed and are of such significance that would sterilise part of the site, there is scope to change the layout to balance the delivery of the development with the preservation of non-designated heritage assets.
44. Overall, the proposal would not have a harmful effect on non-designated heritage assets and would therefore accord with Core Policy 58 of the WCS and Paragraph 189 of the Framework. Among other things, these seek to ensure that heritage assets of archaeological interest are sufficiently investigated, and potential effects robustly assessed. The proposal would draw neutral weight in the planning balance in this regard.

#### *Designated Heritage Asset*

45. The site is located directly to the west of Christ Church, which derives much of its heritage significance from the artistic and aesthetic value of its construction. For example, it was constructed as an Anglian Parish Church between 1844 and 1846 out of Bath stone, tile, a stone slate roof. To a lesser degree, it also derives some heritage significance from its rural surroundings, comprising agricultural fields and low density pattern of development, all of which have slowly evolved over many years and help inform its setting.
46. In terms of views of the building in the context of the general locality, when walking along Broad Town Road from a distance, there are only glimpses due to intervening vegetation. Similarly, there are only glimpses of the building from nearby public rights of way and more distant ridgeline views for similar reasons. The building comes into more complete view when directly opposite and looking eastwards from Broad Town Road, and this is where the building's artistic and aesthetic value and heritage significance is most prominent outside of its grounds.
47. In terms of views of the building in the context of the appeal site, when walking along Broad Town Road and looking towards the building, views are mostly obscured by vegetation or held in the context of Broad Town Primary School. Consequently, the site is not necessarily contributing a great deal to the building's setting from the roadside. In addition, views in this context would be taken in the opposite direction of the site, and therefore the site itself would be peripheral. Consequently, the site's contribution to the building's setting would be further reduced.

48. It is only from within the grounds, nearby public rights of way or distant ridgeline vantage points where the site makes an appreciable contribution to the building's setting. Even in this context, views are heavily obscured by intervening vegetation and topography, held against the backdrop of existing development or otherwise diminished due to the distances involved. Consequently, there are difficulties in discerning features of heritage significance therein.
49. The proposal would deliver built form where there currently is none, and therefore would erode part of the site and rural setting of the building, harming its heritage significance in principle terms. However, based on indicative layouts, this harm would be tempered by a number of factors.
50. Outward views from the grounds of the building directly westwards would be preserved due to the potential siting of the village green. In addition, views towards the dwellings and the community car parking area would be held against the existing urbanised backdrop of Broad Town Primary School. These views could potentially be further mitigated by soft landscaping measures.
51. Views from public rights of way behind the site looking towards the building would continue to be obscured by vegetation, and these heavily filtered views would be preserved by the potential siting of the village green. Consequently, in taking these factors into account the proposal would generate less than substantial harm on the heritage significance of Christ Church.
52. In terms of public benefits, notwithstanding the merits behind the village green and community car parking area, it is not clear how they can be advanced in support of the proposal as tangible benefits when their delivery is left open ended and uncertain.
53. There is no mechanism for these components to come forward in tandem with the residential component of the proposal. Consequently, the residential component of the proposal could exist for several years before details of the village green and community car parking area are brought forward.
54. Furthermore, the appellant has made it clear that these components would not be brought forward by themselves. It follows that without a delivery body or a delivery mechanism to provide certainty that these components will come forward, they may never come forward at all. Consequently, any potential harms resultant from the development that the benefits would purportedly seek to offset would potentially be left to persist in an unmitigated fashion.
55. Accordingly, the tenuous association with the delivery of the residential component of the proposal means they cannot be regarded as real benefits. On this basis, other than concluding they should not be weighed in the balance, it would serve no purpose under the appeal for me to consider the potential merits of these components any further.
56. Overall, the proposal would conflict with Core Policy 58 of the WCS, which among other things seeks to ensure conservation of the historic environment. The harm derived from this conflict with the development plan would normally carry great weight, however given the policy does not include provision for balancing potential benefits and is therefore plainly inconsistent with Paragraph 196 of the Framework, any harm should be reduced to carrying moderate weight in this context.

57. The benefits associated with delivering entry level affordable homes pursuant to Paragraph 196 of the Framework, that were quantified earlier in my decision, generate significant weight in favour of the proposal. Great weight is afforded to less than substantial harm to the significance of designated heritage assets pursuant to Paragraph 193 of the Framework.
58. Consequently, the balancing exercise required by Paragraph 196 of the Framework, wherein I have given considerable importance and weight to the statutory duty to preserve the building, would conclude in the proposal's favour, acting as a material consideration to be weighed in the overall planning balance.
59. Notwithstanding the significant weight generated through the delivery of entry level affordable housing pursuant to Paragraph 71 of the Framework, in volume housebuilding terms, the proposal is relatively small scale. Consequently, construction related benefits, such as employment among other things, would be limited.
60. In terms of biodiversity and planting benefits, there is no quantifiable evidence in front of me (through the adoption of an appropriate metric analysis or similar) to demonstrate the existing value of diversity and potential net gains. Consequently, these benefits would carry limited weight and have not been determinative when undertaking the balancing exercise under Paragraph 196 of the Framework.

#### *Planning Obligations*

61. In accordance with Paragraph 56 of the Framework and pursuant to the Community Infrastructure Levy Regulations 2010, planning obligations must only be sought where they are necessary to make the development acceptable in planning terms, among other things.
62. In the context of my assessment of the potential benefits of the proposal earlier in my decision, it is clear that the benefits associated with the delivery of entry level affordable housing are sufficient to make the proposal acceptable in planning terms independent of other potential benefits.
63. In this context, the planning obligations relating to the community car parking area and village green, irrespective of whether the delivery mechanism is sufficiently robust to realise the purported benefits, would fail the relevant test of necessity under Paragraph 56 of the Framework, thus triggering any related 'blue pencil clauses' within the submitted unilateral undertaking.
64. Affordable housing planning obligations are necessary to ensure that the entry level homes proposed and advanced as benefits in favour of the development are secured in perpetuity. They are directly related to the development having been advanced pursuant to Paragraph 71 of the Framework and related in scale and kind to the policy provisions therein.
65. Furthermore, the affordable housing planning obligation in Schedule 1, not to submit any reserved matters application without having (at least one month previously) submitted an affordable housing scheme to the Council is necessary to ensure that such a scheme is agreed so that the provision of affordable housing within subsequent reserved matters is adequate.

66. At the hearing, it was disputed whether or not contributions towards monitoring costs were necessary. I have not seen any such obligations within the unilateral undertaking or additional commentary within the updated compliance statement on what sum should be paid and whether it is fairly and reasonably related in scale and kind to the development. Consequently, I have not dealt with the matter further. For the avoidance of doubt, my assessment of the planning obligations is based on the unilateral undertaking and component parts dated 24 March 2021.

### **Planning Balance**

67. The proposal would conflict with the development plan in terms of its lack of exception site status and general lack of conformity with the spatial strategy. However, the perennial shortage of affordable homes in the area, in conjunction with the current lack of sufficient housing land supply more generally would mean the harm derived from conflict with the development plan would be reduced to carrying moderate weight.
68. The proposal would also conflict with the development plan in terms of its effects on a countryside gap and character and appearance of the area. However, due to flexibility inherent in an outline proposal, any harm derived from conflict with the development plan which would normally carry great weight should be reduced to having moderate weight in this context.
69. The proposal would also conflict with the development plan in terms of its effects on designated heritage assets. However, there is no provision to consider public benefits and this is inconsistent with Paragraph 196 of the Framework. Consequently, any harm derived from conflict with the development plan which would normally carry great weight should be reduced to having moderate weight in this context.
70. The proposal would accord with the development plan in terms of effects on non-designated heritage assets and generate neutral weight, insofar as there is no compelling evidence of possible features of archaeological interest and where the flexibility inherent in an outline proposal in conjunction with conditions would help mitigate any potential harmful effects.
71. Overall, the proposal would conflict with the development plan when taken as a whole. Furthermore, the cumulative effect of the identified conflicts, which individually carry moderate or neutral weight, would elevate the harm so that when taken together any harm becomes significant.
72. The proposal would accord with Paragraph 71 of the Framework, wherein there is no evidence of any existing entry level affordable housing, the presumption being that needs are not being met to any extent and therefore provision of such housing should carry great weight. This weight should be further enhanced when considering the perennial lack of affordable housing and current shortage in housing land supply more generally and should carry significant weight as a public benefit in this context.
73. This significant weight as a public benefit overcomes the less than substantial harm to the significance of Christ Church as a designated heritage asset and the great weight it is afforded in the balancing exercise under Paragraph 196 of the Framework.

74. In this context, resultant from the lack of housing land supply Paragraph 11 d) of the Framework is engaged. The outcome of the balancing exercise under Paragraph 196 of the Framework, and pursuant to Paragraph 11 d) i. means that the application of policies in the Framework that protect areas or assets of particular importance does not provide me with a clear reason for refusing the development proposed. Consequently, Paragraph 11 d) ii is engaged.
75. The proposal would generate both significant harm and significant benefit in roughly equal measure, and in essence this would have a neutralising effect within the planning balance. Consequently, the only logical conclusion is that the adverse impacts of granting permission would not significantly and demonstrably outweigh the benefits. Accordingly, and overall, the proposal would benefit from a presumption in favour of sustainable development that would tip the overall planning balance in its favour.

### **Other Matters**

76. A large number of representations have been received in response to the application and appeal objecting to the proposal. A significant proportion of the matters raised have been covered when dealing with the main issues. However, there are a number of other matters raised not disputed by the main parties. In terms of biodiversity, a preliminary ecological survey was carried out on the wider site, which identified poor semi-improved grassland habitat, among other things. Subsequent, studies were carried out for other protected species such as bats, reptiles, and water voles. There is no evidence that the proposal would have an unacceptable effect on biodiversity in this context.
77. The proposal in front of me is for a single development up to 10 dwellings and there is no evidence of an intention to add additional phases of development. In any event, if further proposals were to come forward, this would be a matter for the Council in the first instance under standard planning application procedures. The planning history of the site, or the planning history associated with other sites in the area, may involve some of the same principles, but the exact details of each case are different. The case in this instance has been determined on its own merits, in accordance with the evidence presented, the development plan and other material planning considerations.
78. In principle terms, there is no evidence in front of me that there is a particular parking problem along Broad Town Road or that the proposal, at its potential maximum, would be of a scale that would introduce parking or other highway related capacity issues. More detailed transport matters, including the final number of dwellings and parking provision for future occupants would be dealt with under reserved matters, as would details of lighting and security, among other things. In terms of flooding, the size of the site in conjunction with its position within a lower tier flood zone means that the risk of flooding is low, and no formal assessment was required. A drainage strategy pursuant to managing surface water has been provided and there is no evidence that this is deficient.

### **Conditions**

79. The Council originally suggested 21 conditions, whilst the appellant provided comments in response. These were all considered against the Framework and Planning Practice Guidance. Conditions were subject to minor amendments in the interests of consistency, clarity and running order.

80. Some conditions were removed to avoid duplicating provisions dealt with by planning obligations. All the conditions set out in the attached schedule are considered necessary to make the development acceptable in planning terms.
81. In broad terms, the inference of my conclusion on the necessity of planning obligations, where the proposal could come forward without the potential benefits of the village green and community car parking area, is that planning conditions of a similar kind that control the timing of these components of the development would also be unnecessary.
82. Accordingly, as the residential component of the permission does not rely on the village green or community car parking area it would be unreasonable to prevent it coming forward in advance of these other components. I am satisfied with the appellant's suggested amendments to the Council's schedule of conditions, in that the submission of reserved matters (and other conditions where there were originally interdependencies within the Council's drafting) can relate to constituent parts of the proposal without detriment.
83. Standard conditions setting out the time limits, and securing compliance with the approved plans, are necessary to provide certainty. The statutory time limits should apply in this case as there is no evidence suggesting that a reduction in such time limits should be advanced against Paragraph 71 type housing.
84. Restricting dwelling numbers is necessary to define the extent of the permission to be granted pursuant to the description of development. Removing the housing mix requirements is necessary to avoid duplicating planning obligations submitted within the unilateral undertaking. Further details on site levels and restrictions on building heights are required to ensure that development comes forward in a manner that integrates with the surrounding topography, built form and natural features of the site.
85. Measures to protect and mitigate the effects of construction as a result of the development are necessary in the interests of preserving and enhancing the ecological integrity of those receptors identified as part of the proposal. Similarly, measures for controlling external lighting are necessary in the same context, particularly in relation to protected species such as bats.
86. A written programme of archaeological investigation is necessary to amplify the desk based assessment and geophysical survey undertaken as part of the proposal to date, and to provide certainty in relation to potential archaeological features at the site. This will also enable the proposal to react flexibly and preserve any unidentified features.
87. The Council's drafting of the written programme of archaeological investigation requirements is deemed fairly and reasonably relevant to the development being permitted because it is necessary to identify potential archaeological remains across the whole site subject to ground works, such as utility works, and not just principal areas of site development, such as areas for housing. Otherwise, such ground works could commence without prior investigation, potentially to the detriment of unidentified archaeological features.
88. An arboricultural method statement is necessary to amplify the details submitted in support of the proposal to date, and to ensure the protection of trees on site during construction.

89. Further details on what the village green, community car parking area and landscaping should include are necessary to guide the submission of reserved matters. As already reasoned, triggers for the submission of details relating to the village green and community car parking area do not need to be dependent on the residential component of the proposal.
90. Details on the maintenance of open space are necessary to ensure that any such space that comes forward as part of the development is appropriately maintained and does not deteriorate or detract from the character and appearance of the area over time. The appellant's negatively worded drafting is reasonable and in accordance with Planning Practice Guidance<sup>2</sup> which allows such conditions to prohibit development authorised by the planning permission until a specified action has been taken.
91. A construction management plan is necessary to ensure that effects of construction are suitably controlled in a manner that protects the environment, for example by preventing pollution through surface water runoff, among other things. A scheme for surface water drainage is necessary to ensure that the proposal incorporates sustainable drainage and preserves the water environment. The appellant's drafting of the condition is reasonable as it is consistent with the disaggregation of the component parts of the proposal, the principle of which has already been reasoned earlier in my decision.
92. Paragraph 53 of the Framework is clear that planning conditions should not be used to restrict national permitted development rights unless there is clear justification to do so. In this context, the site is on the edge of settlement and any additional harms resultant from the urbanisation of the site need to be strictly controlled so that the integrity of the overall planning balance is preserved. Consequently, restrictions to permitted development rights are necessary in this case.

## **Conclusion**

93. There is conflict with the development plan, but Paragraph 11d of the Framework is a material consideration that has been decisive in this case, indicating that a decision should be taken otherwise than in accordance with the development plan. Consequently, the appeal is allowed, and planning permission is granted subject to conditions in the attached schedule.

*Liam Page*

INSPECTOR

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<sup>2</sup> Paragraph: 005 Reference ID: 21a-005-20190723

## Schedule of Conditions

- 1) The development hereby permitted shall be begun either before the expiration of three years from the date of this permission, or before the expiration of two years from the date of approval of the last of the reserved matters to be approved, whichever is the later.
- 2) No development shall commence within any part of the site until details of the following matters (in respect of which approval is expressly reserved) for that part of the site have been submitted to, and approved in writing, by the Local Planning Authority:
  - a. The scale of the development;
  - b. The layout of the development;
  - c. The external appearance of the development;
  - d. The landscaping of the site;
  - e. The means of access to the site.

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

- 3) Applications for the approval of all of the reserved matters for the residential element of the development hereby permitted as shown indicatively on drawings P18-2550\_07 Rev D or Rev E shall be made to the Local Planning Authority before the expiration of three years from the date of this permission.

Applications for approval of all of the reserved matters for the car park and village green elements of the development hereby approved as shown on the same plans shall be made to the Local Planning Authority before the expiration of five years from the date of this permission.

- 4) The development hereby permitted shall be carried out in accordance with the following approved plans unless otherwise varied by details submitted to and approved in writing by the Local Planning Authority in accordance with the conditions of this planning permission: Location Plan P18-2550\_03 – submitted on 16th April 2019
- 5) The number of dwellings hereby permitted shall not exceed 10.
- 6) No development shall take place until full details of the proposed site levels (above ordnance datum), together with the finished floor slab levels of the proposed buildings and structures (including roads and footpaths), in relation to existing ground levels have been submitted to and approved in writing by the Local Planning Authority. The development shall be carried out in accordance with the approved details.
- 7) No dwelling hereby approved shall exceed 8 metres in height as measured from finished floor level and shall not exceed two storeys.

- 8) Prior to commencement of development, an Ecological Construction Method Statement (ECMS) will be submitted to the Local Planning Authority for its written approval. The document will address the protection and detailed mitigation measures of all receptors within or adjacent to the site likely to be affected by the development process as detailed in the Preliminary Ecological Appraisal Survey Report Version 002 (Acorn Ecology, April 2019) and the Ecology Note Email from Alexander Heath (Grassroots Ecology, 11 November 2019). The ECMS will also detail that no external lighting will be permitted during the construction phase unless details are first submitted to and agreed in writing by the Local Planning Authority. The construction of the development shall only be carried out in accordance with the approved ECMS.
- 9) Together with the first reserved matters application, a plan showing the locations and specifications of all measures labelled as ecological enhancements in Section 5.4 the Preliminary Ecological Appraisal Survey Report Version 002 (Acord Ecology April 2019), together with a schedule of works to ensure the measures are retained and maintained in the approved form shall be submitted to and approved in writing by the Local Planning Authority. All reserved matters applications shall accord with the approved details and the development shall be undertaken in strict accordance with those details. The approved measures shall be retained and maintained in the approved form without modification.
- 10) No external lighting shall be installed in the publicly accessible areas of the site unless or until plans, showing the type of light appliance, the height direction and position of fitting, illumination levels and light spillage in accordance with the appropriate environmental zone standards set out by the Institute of Lighting Engineers in their publications "Guidance Notes for the Reduction of Obtrusive Light (ILE, 2005)" and Guidance Note 08/18 Bats and Artificial Lighting in the UK (which shall take precedence) have been submitted to and approved in writing by the Local Planning Authority. The submission shall:
  - a. Identify those areas / features on the whole site that are particularly sensitive for foraging / commuting bats;
  - b. Show how and where external lighting will be installed (through the provision of appropriate lighting contour plans and technical specifications, including a Lux plot) so that it can be clearly demonstrated that areas to be lit will not disturb or prevent the above species using their territory or having access to their breeding sites and resting places; and
  - c. Specify luminaries, heights and positions of fittings, direction and other features, e.g. cowls, louvers or baffles

The approved lighting shall be installed and thereafter maintained in accordance with the approved details and no additional external lighting shall be installed in the publicly accessible areas of the site.

- 11) Prior to the submission of the first reserved matters application, a written programme of archaeological investigation, on land outlined in red as shown on the Location Plan P18-2550\_03, including a timeframe for onsite work and off site work such as the analysis, publishing and archiving of the results, shall be submitted to and approved in writing by the Local Planning Authority.

For the avoidance of doubt the results of the trial trenching agreed as part of the written programme of archaeological investigation shall be submitted together with the first reserved matters application including the details of the measures to ensure that any archaeological interest found in the trial trenching, with are demonstrably of national significance shall be preserved in situ in accordance with the agreed scheme.

Following an initial phase of trenching, no development, including any ground works shall take place on any part(s) of the site where it is necessary to preserve in situ heritage assets of archaeological interest which are demonstrably of national significance.

In the case of remains of lower significance being located in the trenching, a written programme of archaeological investigation for archaeological excavation will be required to be approved and implemented prior to the commencement of any groundworks on site. The programme shall be carried out in accordance with the approved timeframe.

- 12) No demolition, site clearance or development shall commence on site until an Arboricultural Method Statement (AMS) prepared by an arboricultural consultant providing details of construction works in relation to trees has been submitted to, and approved in writing by, the Local Planning Authority. All works shall subsequently be carried out in strict accordance with the approved details. In particular, the method statement must provide the following:
- a. A specification for protective fencing to trees during both demolition and construction phases which complies with BS5837:2012 and a plan indicating the alignment of the protective fencing;
  - b. A specification for scaffolding and ground protection within tree protection zones in accordance with British Standard 5837: 2012;
  - c. A schedule of tree works conforming to British Standard 3998: 2010;
  - d. Details of general arboricultural matters such as the area for storage of materials, concrete mixing and use of fires;
  - e. Plans and particulars showing the siting of the service and piping infrastructure;
  - f. A full specification on how the construction of the access road and parking spaces will be achieved within the RPA of T16 including details of any no-dig method. Details of the length of

G1 to be removed to facilitate the pedestrian access along with clarification of the impacts on G17.

- g. Details of the works requiring arboricultural supervision to be carried out by the developer's arboricultural consultant, including details of the frequency of supervisory visits and procedure for notifying the Local Planning Authority of the findings of the supervisory visits; and
  - h. Details of all other activities, which have implications for trees on or adjacent to the site.
  - i. In order that trees to be retained on-site are not damaged during the construction works and to ensure that as far as possible the work is carried no demolition, site clearance or development should commence on site until a pre-commencement site meeting has been held, attended by the developer's arboricultural consultant, the designated site foreman and a representative from the Local Planning Authority, to discuss details of the proposed work and working procedures.
  - j. Subsequently and until the completion of all site works, site visits should be carried out on a monthly basis by the developer's arboricultural consultant. A report detailing the results of site supervision and any necessary remedial works undertaken or required should then be submitted to the Local Planning Authority. Any approved remedial works shall subsequently be carried out under strict supervision by the arboricultural consultant following that approval.
- 13) For the avoidance of doubt, the village green as submitted as part of the reserved matters applications pursuant to conditions 2 and 3 shall include details of:
- a. Proposed tree planting both to the boundaries and within the space;
  - b. Surfacing materials (if applicable) and species planting, including areas of turfing to allow for its use as a village green;
  - c. Any seating areas, minor artefacts, means of enclosure ;
  - d. Existing and proposed contours if applicable;
  - e. Envisaged proposed community uses and demonstration the design of the area is conducive to the community uses, in consultation with Broad Town Parish Council and the community in the parish of Broad Town the congregation of the Christ Church and Broad Town School.

Once provided the village green shall be retained and maintained in the approved form without modification.

- 14) For the avoidance of doubt, the details of the community car park as submitted as part of the reserved matters applications pursuant to conditions 2 and 3 shall include:

- a. Proposed tree planting both to the boundaries and within the space;
- b. Surfacing materials, including denotation of up to 35 parking spaces, turning areas, circulation areas to enable school drop off during peak times pedestrian access to Broad Town Road and towards the entrance gates of Broad Town Primary School and lighting;
- c. Proposed landscaping both within the site and to the car park boundaries;
- d. Any proposed means of enclosure, signage
- e. Management plan to prevent overuse by occupiers of the new dwellings
- f. A statement to demonstrate the design of the area is conducive to the community uses, in consultation with Broad Town Parish Council and the community in the parish of Broad Town, the congregation of the Christ Church and Broad Town School

Once provided the community car park shall be retained and maintained for the use of car parking maintained in the approved form without modification.

- 15) All soft landscaping comprised in the approved details of landscaping necessary for the residential element of the scheme shall be carried out in the first planting and seeding season within or following the first occupation of the dwellings hereby permitted or the completion of the residential element of the development whichever is the sooner.

All shrubs, trees and hedge planting shall be maintained free from weeds and shall be protected from damage by vermin and stock. Any trees or plants which, within a period of five years, die, are removed, or become seriously damaged or diseased shall be replaced in the next planting season with others of a similar size and species, unless otherwise agreed in writing by the Local Planning Authority.

All hard landscaping for the residential element of the development shall also be carried out in accordance with the approved details prior to the occupation of any dwelling or in accordance with a programme which shall first have been approved in writing by the Local Planning Authority.

The hard and soft landscaping related to the village green and community car park elements of the development shall not be implemented other than in strict accordance with a programme which shall first have been submitted to and approved in writing by the Local Planning Authority.

- 16) Before the development hereby permitted is commenced, a plan for landscape management (covering a period of no less than 15 years), in respect of all the land within the red line shall have been submitted to and approved in writing by the Local Planning Authority.

The landscape management plan shall include a programme for implementation, long term design objectives, long term management responsibilities including funding and maintenance schedules for all landscape areas (including hedgerows and other incidental areas) other than privately owned domestic gardens. The site shall subsequently be managed in accordance with the approved scheme.

For the avoidance of doubt the scheme shall include provisions that deal with landscape management and maintenance of the village green and community car parking area as shown indicatively on plans P18-2550\_07 Rev D or Rev E (i) prior to the implementation of those components as permitted, and (ii) following implementation of those components as permitted.

17) No development shall commence on site (including any works of demolition), until a Construction Method Statement, which shall include the following:

- a. the parking of vehicles of site operatives and visitors;
- b. loading and unloading of plant and materials;
- c. storage of plant and materials used in constructing the development;
- d. the erection and maintenance of security hoarding including decorative displays and facilities for public viewing, where appropriate;
- e. wheel washing facilities;
- f. measures to control the emission of dust and dirt during construction and prohibition on burning of materials;
- g. a scheme for recycling/disposing of waste resulting from demolition and construction works;
- h. measures for the protection of the natural environment.
- i. hours of construction, including deliveries; and
- j. drainage arrangements during the construction works;
- k. vehicle routing for construction vehicles including site access management strategy to manage access during construction works;

has been submitted to, and approved in writing by, the Local Planning Authority. The approved statement shall be complied with in full throughout the construction period. The development shall not be carried out otherwise than in accordance with the approved details.

18) No development shall commence until a scheme for the discharge of surface water from the site (including surface water from the access / driveway), incorporating sustainable drainage measures and a maintenance schedule for those drainage systems for the lifetime of the development and arrangements for the adoption by any public or statutory undertaker and any other arrangements to secure operation of

the scheme throughout its lifetime, has been submitted to and approved in writing by the Local Planning Authority.

The approved scheme shall not be implemented unless in accordance with the approved details prior to the occupation of the first dwelling on site or in accordance with a phased programme which shall first have been approved in writing by the Local Planning Authority.

- 19) Notwithstanding the provisions of the Town and Country Planning (General Permitted Development) (England) Order 2015 (or any Order revoking or re-enacting or amending that Order with or without modification), no buildings or structures (other than development permitted under Schedule 2, Part 1, Class E), or gate, wall, fence or other means of enclosure, other than those shown on the approved plans, shall be erected or placed anywhere on the site.
- 20) Notwithstanding the provisions of the Town and Country Planning (General Permitted Development) (England) Order 2015 (or any Order revoking or re-enacting or amending that Order with or without modification), there shall be no additions/extensions or external alterations to any building forming part of the development hereby permitted.

### **End of Schedule**

## **Appearances**

### *For the Appellant*

Mr Killian Garvey - Barrister

Mr David Hutchison – Planning Consultant

Ms Gail Stoten – Built Heritage and Archaeological Consultant

Mr John Gregory – Solicitor

### *For the Council*

Mr Jonathan Easton - Barrister

Ms Catherine Blow – Planning Officer

Ms Helen Garside – Conservation Officer

Ms Melanie Pomeroy-Kellinger – County Archaeologist

### *Interested Persons*

Ms Judy Conybeare – Local Resident

Mr Brian Joyce – Local Parish Councillor

## **Documents Submitted at the Hearing**

### *Document 1*

Magnetometer Survey Report at Land East of Sam's Lane, Broad Blunsdon 2018

### *Document 2*

Consultation Response from Ms Melanie Pomeroy-Kellinger pursuant to Magnetometer Survey Report at Land East of Sam's Lane, Broad Blunsdon 2018