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## Appeal Decision

Inquiry Held 22 – 24 February and 1 and 3 March 2022

Site visit made on 7 March 2022

**by K Ford MSc MRTPI**

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

**Decision date: 9<sup>th</sup> May 2022**

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**Appeal Ref: APP/Q3305/W/21/3285335**

**Land at 366440 152493 Beauchamps Drive, Stratton on the Fosse, Somerset**

- 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 Gleeson Strategic Land against the decision of Mendip District Council.
  - The application Ref 2021/0157/OTS, dated 19 January 2021, was refused by notice dated 26 May 2021.
  - The development proposed is the development of up to 75 dwellings with associated access and highway works, drainage and attenuation, open space, play area and landscaping (access to be determined, all other matters reserved).
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### Decision

1. The appeal is allowed and outline planning permission is granted for the development of up to 75 dwellings with associated access and highway works, drainage and attenuation, open space, play area and landscaping (access to be determined, all other matters reserved) in accordance with the terms of application, ref 2021/0157/OTS, dated 19 January 2021, subject to the conditions in the attached Schedule.

### Application for Costs

2. At the Inquiry an application for costs was made by Gleeson Strategic Land against Mendip District Council. This application is the subject of a separate Decision.

### Preliminary Matters

3. The planning application is in outline with all matters reserved except access. Illustrative plans have been submitted to indicate what the scheme may look like, including a landscaping buffer. The appeal has been considered taking the illustrative drawings into account.
4. There is dispute between the parties regarding whether drawing 20-212/003H or 20-212/003I should be used in the determination of the appeal. Both plans were submitted as part of the appeal. The differences between the 2 plans are that in 20-212/003I the following changes have been made:
  - The colour of the markings identifying the carriageway, footways and verge

- The centre line on Wells Road is extended
  - There is additional text explaining that the impact on the existing drainage and levels would be reviewed as part of a prospective S278 design
  - Existing road markings are identified
  - Identification of proposed bus stop lining in existing laybys
  - Correction to the highway boundary
5. I am of the view that the changes provide clarification of the existing proposals rather than scheme alterations. Whilst the appeal process is not the place to further a scheme, the changes do not either individually or cumulatively represent a material change to the proposal. The revised drawing was also discussed at the Inquiry. Interested parties would not therefore be prejudiced in me accepting the revised drawing. I have therefore used drawing 20-212/003I in the determination of the appeal, along with the drawings that show related consequential updates to the swept path analysis.
6. A Section 106 Legal Agreement, signed and dated 15 March 2022 has been submitted. It will secure contributions towards affordable housing, open space, education, highways improvements and a travel plan. I have taken this into account in reaching my decision and will return to this matter later.
7. After the Inquiry closed Natural England updated advice regarding nutrient neutrality for developments, providing a new national nutrient assessment methodology. The main parties and Natural England were consulted on the potential impacts of this on the Somerset Levels and Moors Ramsar site. The site remains outside the hydrological catchment of the Somerset Levels and Moors Ramsar site and so the proposal is unlikely to have a significant effect on the designated site. I have taken this into account in the determination of the appeal.

## **Main Issues**

8. The main issues are:
- a) Whether the site would be an acceptable location for housing development, having regard to the spatial strategy in the development plan.
  - b) The effect of the proposal on the character and appearance of the area.
  - c) The effect of the proposal on highway safety.

## **Reasons**

### *Spatial Strategy*

9. The appeal is situated north of Beauchamps Drive, between the A367 Fosseway and Silver Street, south of the edge of Midsomer Norton. As such it is located outside the development limits of the settlement and in the countryside for the purposes of development plan policy.
10. Core Policy 1 (CP1) of the Mendip District Local Plan Part 1: Strategy and Policies 2006-2029 (LPP1) directs the majority of growth identified in Policy Core Policy 2 (CP2) of LPP1 to the 5 principal settlements to enable the most

sustainable pattern of growth. Midsomer Norton is not included in this list as it falls outside the administrative area of Mendip, but it is common ground between the parties that it has a service centre role with a number of supermarkets, a vibrant town centre and a range of employment opportunities. This is despite the closure of some businesses identified by interested parties.

11. In rural parts of the District new development is tailored to meet local needs with a settlement hierarchy of primary villages, secondary villages and other villages and hamlets. Development in the countryside is strictly controlled but may exceptionally be permitted in line with Core Policy 4 (CP4) of LPP1. The emphasis is on maximising the re-use of appropriate previously developed sites and other land within existing settlements and then the most sustainable locations on the edge of identified settlements. Development outside development limits is strictly controlled and only permitted where it benefits economic activity or extends the range of facilities available to local communities. Given the location of the site the proposal would therefore conflict with Policies CP1, CP2 and CP4 of LPP1.
12. However, 5 years have elapsed since the adoption of LPP1 and as the Local Plan Part II: Sites and Policies (LPP2) did not re-examine the district's housing need requirements the housing requirement should now be assessed using the standard method. This equates to 599 dwellings per annum rather than the 420 dwellings per annum identified in Policy CP2 of LPP1. The main parties agree that, based on the local housing need figure, the Council can only demonstrate a 3.5 year supply of deliverable housing land.
13. I therefore conclude that by reason of its location beyond the settlement boundary of Midsomer Norton, the proposed development would be contrary to the spatial strategy for the area and conflict with Policies CP1, CP2 and CP4. However, based on the latest housing need figure, the Council has confirmed that it can only demonstrate a 3.5 year supply of deliverable housing land. Whilst the basic principles of Policies CP1, CP2 and CP4 which identify a sustainable pattern of growth focused on the 5 towns and a hierarchy of settlements in the rural areas do not conflict with the National Planning Policy Framework (NPPF), the policies are out of date to the extent that they restrict new housing. The presumption in favour of sustainable development in paragraph 11(d)(ii) is engaged. This is a material consideration in the determination of the appeal.

#### *Character and Appearance*

14. The site is a rectangular parcel of agricultural land located on a ridge with land sloping slightly towards Beauchamps Drive. It is predominantly surrounded on all 4 sides by open rural countryside with fields of varying sizes. However, the field to the north of the site is allocated for residential development (MN1) in LPP2 and is currently subject to an outline planning application. There is no reason to think that the allocation site will not be developed and so the appeal site would adjoin the new built-up edge of Midsomer Norton. The proposal would not therefore be isolated development in the countryside, even if separated from the developed parts of the parish of Stratton on the Fosse within which it sits.
15. To the northeast of the site is the White Post Inn and to the south is Norton Down Methodist Church. To the west of the site there are a group of buildings which include 3 residential dwellings which occupy the former grounds of

Norton Hall. It is also the location of the former walled gardens to Norton Hall. The site is bounded by vegetation and fencing. To the north and south this comprises metal 'estate' railings, also said to be associated with the former Norton Hall which was demolished a number of years ago.

16. At the Inquiry much was made by the Council of the historic links of the site and its surroundings to Norton Hall, with the Council's witness making reference to a quasi-parkland character. However, historical maps indicate that the appeal site never provided a parkland setting for the original hall. Moreover, the existing remnant gardenesque vegetation that may have had historical links with the hall would not be affected by the proposal. The historic railings to the north of the site could be retained and an appropriately worded planning condition could enable railings on the southern boundary to be relocated away from the visibility splays required for the site access.
17. The site is highly visible in the local landscape. The development would have an urbanising effect as a result of the built form, supporting infrastructure, including some road signage, and associated domestic paraphernalia. There would inevitably be a change in the character of the site but as the Council accepted in cross examination, it would not be a substantial adverse effect, even when first built as the assessment of the Council's witness had overestimated the significance of the visual effects.
18. The character of Beauchamps Drive would change. It is currently a pleasant tree lined quiet rural lane of some local value but this does not make it unique as suggested by the Council, even with the presence of the estate railings. The significance of the railings on the character is reduced by the vegetation, particularly in the summer when it would almost be completely screened by planting. There would be some loss of trees as part of the development along the Drive but the Council accepts that these are of poorer quality and not the most important trees to the character of the area. The most important lime trees on the south side of the Drive would be unaffected by the scheme.
19. The site is smaller than site allocation MN1 and has different features but it does not share a notably stronger relationship with the fields to the south than to the north. Post development Beauchamps Drive and the roundabout would provide a clear boundary and mark the transition to the wider open countryside. The illustrative plan shows a landscape buffer on the southern edge of the site. This demonstrates that it is possible to soften the edge of the development closest to Beauchamps Drive.
20. While the buildings of the development would not be hidden by vegetation, the impact would be softened and filtered, particularly over time as it matured. This is despite the properties being located on slightly elevated ground.
21. The development would not harm the setting of Norton Down Methodist Church which is Grade II listed. Whilst the site forms part of the wider setting for the church, it does not form part of its immediate setting and was not identified by the Council as a reason for refusal.
22. I therefore conclude that in the absence of visibly strong distinctive links to the former Norton Hall, the clear buffer of Beauchamps Drive to the wider countryside and an ability to mitigate the impacts of the scheme, the development would not cause unacceptable harm to the character and appearance of the area. As such, it would not conflict with Development Policy

1 (DP1), Development Policy 4 (DP4) and Development Policy 7 (DP7) of LLP1. Amongst other things, these policies support development that does not significantly degrade the quality of the local landscape and take into account efforts to avoid, minimise and/ or mitigate negative impacts and need for the proposal to take place in that location.

### *Highways*

23. It is agreed between the parties that the immediate site access from Beauchamps Drive into the appeal site would be acceptable. However, there are a number of areas that remain in dispute.
24. Beauchamps Drive is currently lightly trafficked, operating well below capacity. Parts of the road have poor visibility with a vehicle being forced to reverse when meeting an oncoming vehicle. The scheme proposes to increase the width of the carriageway around the appeal site which would allow cars to pass each other without difficulty, as demonstrated in the swept path analysis drawings. A short section of the carriageway would still provide a pinch point for passing cars and HGVs. Nevertheless, even after the development the number of vehicles, including HGVs, is expected to remain low and in any event there would be 90 metres of forward visibility. This would avoid unsighted vehicles meeting and having to reverse and provides a betterment on the existing situation.
25. The Council says that there would be inadequate visibility to the north for vehicles on Beauchamps Drive at the junction with Silver Street due to the height of the nearby wall and that it consequently would not comply with relevant visibility requirements in the Somerset Technical Advice Notes 01/21. This is disputed by the appellant. Based on the evidence before me, along with my observations on site, I am satisfied that the height of the wall would not present a road safety concern as there would be adequate visibility over the top of it.
26. Part of the carriageway on Wells Road would be narrowed to accommodate the widening of the existing footway which would link up with the proposed footway on Beauchamps Drive. The footway would reduce the carriageway to less than 6 metres which conflicts with the Highway Guidance 'Streets in Residential Developments Design Guidance Notes' which requires a minimum of 6.5 metres. The Council's Highways witness raised concerns that this would pose a problem for visually impaired pedestrians and that it could cause vehicles to overrun the footway. However, there is little before me to substantiate this and the road safety audits for the scheme did not raise safety concerns in this regard. Based on the evidence before me the widening of the footpath would improve conditions for pedestrians compared to the current situation whilst not materially impacting on the operation of the road.
27. Concerns have been raised regarding the safety of non-motorised users post development. Proposed work on the Fosseyway includes widening the existing footway on the western side of the road and creating a pedestrian crossing across existing verges at White Post Inn. There is little to indicate that the level differences at the location of the proposed pedestrian crossing cannot be overcome. The appellant's witness confirmed that the matter is a straightforward one to resolve. Potential issues identified by the Council's witness such as the need for a retaining wall and relocation of a streetlight column, if necessary, would not be insurmountable. The findings of the

Transport Assessment do not indicate that it would generate any highway safety concerns. Any outstanding detailed design matters could be addressed at the S278 stage, as accepted by the Council's witness.

28. Secured through the Section 106 agreement, the scheme also proposes bus shelters and bus stops in the existing laybys on the western and eastern side of the Fosseyway providing opportunities to travel by means other than the car. The swept path analysis shows that traffic would still be able to pass buses that have stopped in the layby. I acknowledge the concern that bus providers have not been consulted but there is little to indicate that what is proposed would not be acceptable to them from a practical perspective.
29. There is potential for a pedestrian and cycle link to connect the site to allocation MN1 providing a route to access services and facilities nearby. However, if this did not materialise the site would still be accessible. Norton Hill Primary School and the Midsomer Norton Football and Rugby Club would be the only facilities that would see a reduction in travel distances as a result of a connection to MN1 and then only by a small amount.
30. It is accepted that there would be no specific cycle provision for those that want to cycle westwards to Silver Street from the development. However, the number of trips is predicted to be low given the scale of the development and post development Beauchamps Drive would continue to operate below capacity. There is little evidence to indicate that cyclist safety would be at risk.
31. During the course of the appeal the appellant submitted an amendment to the Travel Plan. In cross examination, the Council accepted that any outstanding matters of difference between the parties on this matter could be addressed through the implementation of the Section 106 agreement.
32. Interested parties have raised concern regarding the validity of the appellant's Transport Assessment in light of the impact of Covid-19. However, as acknowledged in the report, appropriate adjustments were made to reflect this and the roads surrounding the development do have capacity to accommodate the additional development, factoring in what has recently been developed and is planned for the area. This was not disputed by the Highways Authority.
33. I therefore conclude that the development would not harm highway safety. As such it would not conflict with the parts of Development Policy 9 (DP9) of LPP1 which requires new development to make safe and satisfactory provision for access by all means of travel, avoid causing traffic problems within the wider transport network or generates any requirement for transport improvements which would harm character or the locality.

## **Other Matters**

34. The Council made reference to a recent appeal in support of their case<sup>1</sup>. I acknowledge the similarities between the cases, including the policy basis and greenfield location outside a settlement boundary. Nevertheless, it is apparent that there are also differences between the cases. This includes the nature of the settlement and its physical character, the relationship of the appeal site to the rest of the settlement and the topography of the land. In any event, whilst there is a need for consistency in decision making, each case is determined on its own merits and my assessment is based on the information before me.

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<sup>1</sup> Appeal ref APP/Q3305/W/21/3280802



35. It was identified that the appellant's Heritage Statement wrongly stated that the historic parish boundary stone was not present. In amending the statement the appellant indicated that it could be relocated as part of the development and the Council did not disagree with this. An appropriately worded planning condition would ensure its safe relocation as part of the development.
36. Interested parties have raised concern regarding noise and disturbance during construction. However, it would be possible to manage the generation of noise and dust during construction through an appropriately worded planning condition requiring the submission of a Construction Methodology and Management Plan.
37. Whilst reference has been made to the impact of the proposal on a range of wildlife an Ecological Impact Assessment has been undertaken. It concludes that the development would avoid significant ecological harm and has the potential to protect, maintain and enhance the overall biodiversity interest of the site. The Council has not raised any objection, subject to a condition requiring a construction environmental management plan. I have no reason to disagree.
38. I do not have any evidence before me to substantiate claims that services and facilities such as GP surgeries would not be able to cope with the increase in demand generated by the development. Provision is made in the Section 106 agreement with regards ensuring adequate provision for primary school places. The evidence before the Inquiry demonstrated that there is sufficient capacity for early years and the Blue School secondary school.

### **Planning Obligations**

39. The Section 106 agreement covers a number of planning obligations that are required by Development Policies 9, 10, 11, 16 and 19 of LPP1 to ensure the delivery of facilities and services that are essential for development to take place or to mitigate the impact of development.
40. The Section 106 agreement would secure 30% affordable housing on site which is compliant with the requirements of Development Policy 11 (DP11) of the LPP1. The payment of a contribution for a LEAP and MUGA would enable the provision of or improvement to facilities, along with maintenance payments. The education contribution would enable the expansion of the primary school at St Vigor and St John, or an alternative if specified by Somerset County Council, to meet the needs of primary school children within the development.
41. The highways improvements would include the widening of the highway along the site frontage on Beauchamps Drive and widening and extending the existing footway along B3139. It would also enable the widening of the existing footway and addition of missing sections of the footway, adding new footway, an uncontrolled crossing point and provision of new bus stops with shelters on the A367. The requirement to produce a travel plan and associated costs and measures would enable the management of trips on the local highway network.
42. Given the policy requirements and infrastructure needs arising from the development I am satisfied that all of the above obligations are necessary to make the development acceptable in planning terms, are directly related to the development and fairly and reasonably related in scale and kind to the development. They would accord with Regulation 122 of the Community

Infrastructure Levy Regulations 2010 (as amended). Consequently, I can take all of the Section 106 obligations into account as part of my decision.

### **Planning Balance**

43. Turning to the overall planning balance, the proposal is not on land allocated for housing development and would conflict with Policies CP1, CP2 and CP4 of LPP1. However, the Council cannot demonstrate a 5 year housing land supply and so the 'tilted balance' is engaged. As identified in paragraph 11(d) of the NPPF, this means that where the most important policies for deciding a proposal are out of date, permission should be granted unless any adverse impacts of doing so would significantly and demonstrably outweigh the benefits, when assessed against the NPPF as a whole.
44. I have balanced the policy conflict with the benefits of the proposed development. I have found no material harm to the impact of the development on the character and appearance of the area or to highway safety.
45. The proposal would make provision for up to 75 dwellings. This is a significant benefit that would contribute towards meeting local housing need and would assist in addressing the shortfall illustrated by the 3.5 year housing land supply which is notably short of the minimum 5 year requirement. The Council has questioned whether the site would be deliverable within the next 5 years, primarily because it is being brought forward by a site promoter. However, there is little to indicate that this would substantially delay delivery. The evidence presented to the Inquiry by the appellant indicates that the site is being taken forward by an established site promoter that has a strong track record of delivery.
46. The development would provide up to 23 affordable dwellings, and at 30% is policy compliant. This is a significant benefit given the housing shortfall and need for affordable housing. In January 2022 there were 2044 people on the housing waiting list, a 20% increase from April 2021.
47. Housing delivery within the District is currently restricted while efforts continue to find ways to mitigate the effects on the quality of water in the Somerset Levels RAMSAR site. The Council claim concerted efforts are being made to resolve the situation. Whilst the appellant says there is nevertheless a reliance on unaffected sites such as the appeal site in the meantime, sites have already been discounted from the 5 year housing land supply to reflect this. The matter has therefore already been taken into account.
48. The scheme would deliver economic benefits during construction and from households occupying new properties. It is expected that the development would generate £1.6m additional spending within the local economy. However, this is a limited benefit as it has not been demonstrated that this would be contained within the immediate area.
49. The development would result in the provision of new publicly accessible open space. There would also be a financial contribution towards improvements to existing open space and play facilities. The proposed level of provision, secured through a planning condition and the Section 106 agreement, exceeds the standards identified in Development Policy 16 (DP16) of LPP1. I give this some weight in the planning balance.



50. The retention of trees and hedgerows on the site would be a mitigation rather than a benefit and so I give this neutral weight. The proposed biodiversity benefits could be achieved on the site with or without the development and so this would be a minor benefit. The proposed pedestrian footway improvements which would benefit existing nearby residents would also be a minor benefit of the development.
51. In summary therefore Section 38(6) of the Town and Country Planning Act states that decisions shall be made in accordance with the development plan unless material considerations indicate otherwise. National planning policy is a material consideration. It states that where policies which are the most important for determining planning applications are out of date, planning permission should be granted unless the application of policies in the NPPF that protect areas or assets of particular importance provides a clear reason for refusing development or any adverse impacts of doing so would significantly and demonstrably outweigh the benefits when assessed against the policies in the NPPF taken as a whole.
52. In this case, I have identified no material harm to the character and appearance of the area or to highway safety. The proposal would bring about significant social and economic benefits associated with the delivery of new market and affordable housing. As a result, based on the evidence before me, the other material considerations justify a decision not in accordance with the development plan.

### **Conclusion and Conditions**

53. For the reasons identified and having regard to all other matters raised, including those from interested parties, the appeal is allowed subject to necessary planning conditions.
54. In attaching conditions I am mindful of paragraph 55 of the NPPF which states that they should only be imposed where they are necessary, relevant to planning and to the development to be permitted, enforceable, precise and reasonable in all other respects.
55. In addition to the standard time limitations for the submission of reserved matters and commencement, I have imposed a condition specifying the relevant drawings as this provides certainty.
56. A pre-commencement condition requiring the submission of existing and proposed ground levels is necessary before development commences to safeguard the character and appearance of the area. A pre-commencement condition requiring a construction management plan is necessary before development starts to safeguard the operation of the highway, the character and appearance of the area and the living conditions of nearby residents during construction. Similarly, a construction Environmental Management Plan secured through a pre-commencement condition is necessary to prevent biodiversity harm. A pre-commencement condition requiring a landscape and ecological management plan is necessary to prevent ecological harm and provide biodiversity gain and a pre-commencement condition requiring a Reptile Mitigation Strategy is necessary to prevent ecological harm.
57. I have included conditions including a pre-commencement condition requiring a surface water drainage scheme to ensure a satisfactory level of surface water

drainage, improve water quality and prevent flooding. A drainage Plan is necessary to safeguard the long term maintenance and operation of the proposed drainage system. A pre-commencement condition requiring a scheme for the disposal of foul drainage is necessary to ensure the provision of satisfactory drainage and to avoid environmental pollution.

58. A pre-commencement condition requiring an Arboricultural Method Statement and a condition requiring compliance with it's contents are necessary to ensure the retention of trees that contribute to the character and appearance of the area are not adversely affected. A hard and soft landscaping scheme is necessary to ensure an appropriate landscaping setting. I have added in reference to the estate railings within this condition to ensure appropriate consideration is given to the replacement of the estate railings. A requirement to provide a minimum of 1.44ha of open space as part of the scheme will ensure the amount of open space proposed as part of the outline application will be delivered.
59. A pre-commencement condition requiring compliance with the submitted drawing showing access, footways, visibility splays and highways works along with a condition requiring details of estate roads and associated infrastructure will ensure suitable provision for highway safety. A condition requiring the provision of footpaths, carriageway and turning spaces will ensure properties are served by an access prior to occupation. A pre-commencement condition requiring a condition survey of the existing public highway is necessary to ensure any damage during construction is made good by the developer.
60. I have included a condition requiring details of the relocation of the historic boundary stone to ensure it is retained and appropriately relocated as part of the development.
61. A condition requiring compliance with actions and measures identified in the Ecological Impact Assessment is necessary to prevent ecological harm and provide biodiversity gain and an external lighting condition is necessary to avoid harm to bats and wildlife.
62. A condition requiring the installation of electric vehicle charging points is necessary to maximise opportunities for electric vehicles to be accommodated within the development and a Sustainability Strategy Statement is necessary to ensure development meets climate change objectives.
63. A condition requiring provision and storage of waste and recycling containers is necessary in the interests of the living conditions of occupants, the character and appearance of the area and highway safety. A contaminated land condition is necessary to ensure land is suitable for the intended use and that there are no risks to human health or the environment.
64. The Council suggested a draft planning condition concerning materials. However, as this is a reserved matter that is not before me, I have excluded it from the schedule.

*K Ford*  
INSPECTOR

## SCHEDULE OF CONDITIONS

1. The development hereby approved shall be begun either before the expiration of 3 years from the date of this permission, or before the expiration of 2 years from the date of approval of the last of the reserved matters to be approved whichever is the latest.
2. Application for approval of the reserved matters shall be made to the Local Planning Authority before the expiration of 3 years from the date of this permission.
3. Approval of the details of the (a) layout (b) scale (c) appearance and (d) landscaping of the site (hereinafter called the reserved matters) shall be obtained from the Local Planning Authority before any development is commenced.
4. This decision relates to the following drawings and documents:
  - Drawing no. 20053\_200 Red Line Boundary Plan
  - Drawing no. 20053\_402A Illustrative Masterplan
  - Drawing no. 20053\_403A Illustrative Masterplan indicative masterplan (for information only)
  - Drawing no. 20053\_600 Parameter Plan
  - Drawing no. 20-212/003I Proposed Access & Off-Site Improvements
  - Planning Statement prepared by Origin3, January 2021
  - Design and Access Statement prepared by Origin3, January 2021
  - Heritage Statement prepared by RPS, January 2021
  - Ecological Impact Assessment prepared by EAD Ecology, January 2021
  - Report on Landscape and Visual Matters prepared by David Williams Landscape Consultancy, January 2021
  - Transport Assessment prepared by Odyssey, January 2021
  - Residential Travel Plan prepared by Odyssey, January 2021
  - Energy and Resource Efficiency Statement prepared by Daedalus, January 2021
  - Preliminary Investigation Report prepared by Soils Limited, September 2020
  - Main Investigation Report prepared by Soils Limited, October 2020
  - Revised Flood Risk Assessment & Drainage Strategy prepared by Patrick Parsons, March 2021
  - Technical Note – Response to SCC Highways prepared by Odyssey, April 2021
  - Technical Note – Response to SCC Highways prepared by Odyssey, October 2021
  - Revised Arboricultural Impact Assessment prepared by Alderwood Consulting Limited, February 2022
5. No development shall commence until details of the existing and proposed ground levels have been submitted to and approved in writing by the Local Planning Authority. The development shall thereafter be undertaken in accordance with the approved details.
6. No development shall take place until a Construction Management Plan has been submitted to and approved in writing by the local planning authority in consultation with Somerset County Council. The Statement shall provide for:

- a) Construction vehicular routes to and from site.
  - b) Expected number of construction vehicles per day.
  - c) The parking of vehicles of site operatives and visitors.
  - d) Loading and unloading of plant and materials.
  - e) Storage of plant and materials used in constructing the development.
  - f) Wheel washing facilities.
  - g) Measures to control the emission of dust and dirt during construction.
  - h) Delivery and construction working hours.
  - i) Specific measures to be adopted to mitigate construction impacts in pursuance of the Environmental Code of Construction Practice.
  - j) A scheme to encourage the use of public transport amongst contractors.
  - k) The development shall thereafter be constructed in accordance with the approved Construction Management Plan.
7. A Landscape and Ecological Management Plan (LEMP) shall be submitted to and be approved in writing by the Local Planning Authority prior to the commencement of the development. The content of the LEMP shall include the following:
- a) Description and evaluation of features to be managed.
  - b) Ecological trends and constraints on site that might influence management.
  - c) Aims and objectives of management.
  - d) Appropriate management options for achieving aims and objectives.
  - e) Prescriptions for management actions.
  - f) Preparation of a work schedule (including an annual work plan capable of being rolled forward over a five-year period).
  - g) Details of the body or organization responsible for implementation of the plan.
  - h) On-going monitoring and remedial measures.

The LEMP shall also include details of the legal and funding mechanism(s) by which the long-term implementation of the plan will be secured by the developer with the management body(ies) responsible for its delivery. The LEMP shall also set out (where the results from monitoring show that conservation aims and objectives of the LEMP are not being met) how contingencies and/or remedial action will be identified, agreed and implemented so that the development still delivers the fully functioning biodiversity objectives of the originally approved scheme. The approved LEMP shall thereafter be implemented in accordance with the approved details.

8. No development shall take place (including demolition, ground works, vegetation clearance) until a Construction Environmental Management Plan (CEMP: Biodiversity) has been submitted to and approved in writing by the Local Planning Authority. The CEMP (Biodiversity) shall include the following:
- a) Risk assessment of potentially damaging construction activities.
  - b) Identification of 'biodiversity protection zones'
  - c) Practical measures (both physical measures and sensitive working practices) to avoid or reduce impacts during construction, including nesting birds habitat clearance measures, badgers buffer zones,

- reptile/amphibian sensitive habitat clearance, and safeguarding measures for bats.
- d) The location and timing of sensitive works to avoid harm to biodiversity features.
- e) The times during construction when specialist ecologists need to be present on site to oversee works.
- f) Responsible persons, lines of communication and written notifications of operations to the Local Planning Authority.
- g) The role and responsibilities on site of an Ecological Clerk of Works (ECoW) or similarly competent person including regular compliance site meetings with the Council.
- h) Use of protective fences, exclusion barriers and warning signs.
- i) Ongoing monitoring, including compliance checks by a competent person(s) during construction and immediately post-completion of construction works.

The approved CEMP (biodiversity) shall be adhered to and implemented throughout the construction period strictly in accordance with the approved details, unless otherwise agreed in writing by the Local Planning Authority.

9. No works comprised in the development, including vegetative clearance and ground works, shall take place until there has been submitted to and approved in writing by the Local Planning Authority a detailed reptile mitigation strategy. The detailed reptile mitigation strategy shall include details of:
- a) The proposed construction working practices to avoid harming reptiles.
  - b) Details of proposed location, to accommodate any reptiles discovered during works.
  - c) The timing of works to minimise the impact on reptiles.
  - d) If required, details of the location and status of the translocation site.

The development shall thereafter be carried out in accordance with the approved Reptile Mitigation Strategy and shall be permanently retained in accordance with the approved details.

10. No part of the development shall commence until a surface water drainage scheme for the site, based on sustainable drainage principles and an assessment of the hydrological and hydrogeological context of the development, has been submitted to and approved in writing by the Local Planning Authority. The scheme shall include a programme of phasing, implementation and maintenance for the lifetime of the development and subsequently be implemented in accordance with these approved details.
11. No part of the development shall be occupied or brought into use until a plan for the future responsibility and maintenance of the surface water drainage system has been submitted to and approved by the Local Planning Authority. The approved drainage plan shall be completed and maintained in accordance with the details agreed.
12. No part of the development shall commence until a detailed scheme for the disposal of foul drainage from the development has been submitted to and approved in writing by the Local Planning Authority. The development shall

thereafter be carried out in accordance with the approved details.

13.No part of the development shall commence, other than those required by this condition, until a Detailed Arboricultural Method Statement following the recommendations contained within BS5837:2012 has been submitted to and approved in writing by the Local Planning Authority. The Detailed Arboricultural Method Statement shall contain full details of the following:

- a) Timing and phasing of arboricultural works in relation to the approved development.
- b) Construction exclusion zones.
- c) Protective barrier fencing.
- d) Ground protection.
- e) Details of any works within the RPA (Root Protection Area) and the proposed arboricultural supervision.
- f) Service positions.
- g) Details of any special engineering requirements, including 'no dig construction'.
- h) A Tree Protection Plan

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

14.The development hereby permitted should make provision for a minimum of 1.44ha of open space.

15.The proposed estate roads, footways, footpaths, cycleways, verges, junctions, street lighting, sewers, drains, retaining walls, service routes, surface water outfall, vehicle overhang margins, embankments, visibility splays, accesses, carriageway gradients, drive gradients, car, motorcycle and cycle parking, street furniture and tactile paving shall be constructed, laid out and maintained in accordance with details to be approved by the Local Planning Authority in writing before the construction of any aspect of the new section of the highway begins. For this purpose, plans and sections, indicating as appropriate, the design, layout, levels, gradients, materials, method of construction and proposals for future maintenance shall be submitted to the Local Planning Authority.

16.Each dwelling comprised in the development shall not be occupied until it is served by a properly bound and compacted footpath, carriageway and turning space(s) where applicable to at least base course level between the dwelling and the existing adopted highway.

17.The vehicular access hereby approved shall not be brought into use until it has been constructed in accordance with drawing number 20-212/003I. The vehicular access shall thereafter be permanently retained in accordance with the approved drawings.

18.The details of the boundary stone relocation which will be required to facilitate the new access shall be submitted to the Local Planning Authority and approved in writing prior to or as part of the approval of reserved matters. The development shall thereafter be carried out in accordance with the approved details.



19. No occupation of the development shall commence until the footways approved have been constructed in accordance with drawing number 20-212/003I. The footways shall thereafter be permanently retained in accordance with the approved drawings.
20. Prior to commencement of the development, the proposed highway works to Beauchamps Drive, B3139 and A367 on drawing Ref: 20-212/003I shall be provided in accordance with a detailed scheme to be submitted to and approved in writing by the Local Planning Authority. The development shall not be occupied unless the agreed measures are being implemented in accordance with the agreed timetable.
21. At the proposed access there shall be no obstruction to visibility greater than 300 millimetres above adjoining road level within the visibility splays shown on the submitted plan, drawing number 20-212/003I. Such visibility splays shall be constructed prior to the occupation of the development hereby permitted and shall thereafter be maintained at all times.
22. Positive drainage shall be provided, to prevent the discharge of water from private land to the adopted highway. It may also be considered necessary to take measures to prevent the 'run off' of water from the adopted highway onto private land. Details of such an arrangement should be approved by the Highway Authority prior to implementation. The development shall be carried out in accordance with the approved details.
23. A Condition Survey of the existing public highway will need to be carried out and agreed with the Highway Authority prior to any works commencing on site, and any damage to the highway occurring as a result of this development is to be remedied by the developer to the satisfaction of the Highway Authority once all works have been completed on site.
24. All ecological measures and/or works shall be carried out in accordance with the details contained in Appendix 12 of the Ecological Impact Assessment (EAD Ecology January 2021).
25. No occupation shall commence until a hard and soft landscape scheme has been submitted to and approved in writing by the Local Planning Authority. The scheme shall include the following details:
  - a) Size, species and positions for new trees and plants.
  - b) Boundary treatments including replacement railings on relevant boundaries.
  - c) Surfacing materials (including roadways, drives, patios and paths).
  - d) Any retained planting / hedgerows.
  - e) A detailed programme of phasing and implementation.

The development shall thereafter be carried out in accordance with the approved details. Any trees or plants indicated on the approved scheme which, within a period of five years from the date of planting, die, are removed or become seriously damaged or diseased shall be replaced during the next planting season either with the same tree/plant as has previously been approved, or with other trees or plants of a species and size that have

first been approved in writing by the Local Planning Authority.

26. No part of the development or other operations shall take place except in complete accordance with the approved Arboricultural Method Statement. A signed certificate of compliance with the approved Arboricultural Method Statement for the duration of the construction works shall be provided by the appointed arboriculturalist to the Local Planning Authority on completion and prior to the first occupation.
27. In the event that contamination which was not previously identified is found at any time when carrying out the approved development, it shall be reported in writing immediately to the Local Planning Authority and further development works shall cease unless alternative arrangements have been first agreed in writing with the Local Planning Authority. An investigation and risk assessment shall be undertaken and where remediation is necessary, a revised remediation scheme shall be submitted to and approved in writing by the Local Planning Authority. The revised scheme shall thereafter be implemented as approved. The requirements of this condition shall also apply if other circumstances arise during the development, which require a reconsideration of the approved remediation scheme.
28. No new external lighting shall be installed within the boundary of the application site unless in accordance with details that shall have first been submitted to and approved in writing by the Local Planning Authority. Such details shall include the location, number, luminance, angle of illumination and type of each luminaire or light source and a lux diagram showing the light spill from the scheme. The lighting shall thereafter be installed, operated and maintained in accordance with the approved details.
29. Prior to first occupation of the development electric vehicle charging points shall be installed (and shall be fully operational) in accordance with an Electric Vehicle Charging Point Plan/Strategy showing electronic charging points for each dwelling which shall have first been submitted to and approved in writing by the Local Planning Authority.
30. A detailed Sustainability Strategy Statement shall be submitted to and approved in writing by the Local Planning Authority as part of the reserved matters application. This shall demonstrate how the development has incorporated all practical measures through siting, layout and design, and maximised the opportunities for the use of sustainable construction techniques, renewable energy on site and water efficiency measures. The development will thereafter be carried out in full accordance with the approved details.
31. No construction of the external walls of the development shall commence until a schedule of materials and finishes, and samples of the materials to be used in the construction of the external surfaces, including roofs, have been submitted to and approved in writing by the Local Planning Authority. The development shall thereafter be carried out only in accordance with the approved details.
32. The development hereby approved shall not be occupied until provision for the storage of recycling and waste containers has been made within the site

in accordance with details that have first been submitted to and approved in writing by the Local Planning Authority.

## **Appearances**

### **For the Appellant**

Mr John Litton QC of Counsel, instructed by Geoff Armstrong of Armstrong Rigg Planning

He called:

David Williams (Hons), Dip (Hons) LA CMLI, Director of David Williams Landscape Consultancy Ltd

Richard Harrison BSc (Hons) Transport Management and Planning CMILT, MCIHT, Associate Director of Odyssey LLP

Geoff Armstrong BA (Hons) Town Planning MRTPI, Director of Armstrong Rigg Planning

### **For the Council**

Mr Hashi Mohamad of Counsel, instructed by Martin Evans, Solicitor at Mendip District Council

He called:

Mr Charles Potterton, Chartered Member of the Landscape Institute and Director of Potterton Associates Ltd

Mr Ben Sunderland, Principal Planning Liaison Officer, Highways Development Management Team, Somerset County Council

Mr Andre Sestini, Principal Planning Policy Officer, Mendip District Council

Ms Tessa Hampden, Team Leader in Development Management, Planning and Growth Team, Mendip District Council

### **Interested persons who spoke at the Inquiry:**

Mr Malcolm Daniels on behalf of Stratton on the Fosse Parish Council

## **Inquiry Documents**

INQ1 Appellant's opening

INQ2 Hallam Land Management Ltd v Secretary of State for Communities and Local Government [2017] EWHC 2865

INQ3 Hallam Land Management Ltd v Secretary of State for Communities and Local Government [2017] EWHC 2865 case summary

INQ4 Council's Opening

INQ5 Appeal Ref APP/Q3305/W/21/3280802

INQ6 Mr Daniels on behalf of Stratton on the Fosse Parish Council Statement

INQ7 Suggested site visit route

INQ8 Agreed draft conditions

INQ9 Housing Delivery Tables: Amended GA5A and GA5B

INQ10 Site visit plan – highways

INQ11 Addendum to Built Heritage Assessment

INQ12 List of agreed draft conditions

INQ13 Additional proposed open space condition

INQ14 Revised draft S106 and attachments and track changes version

INQ15 Appellant's application for costs

INQ16 Council's Closing Submissions

INQ17 Appellant's Closing Submissions

INQ18 Council response to Addendum to Built Heritage Assessment

INQ19 Email from Alan Muir to Richard Harrison and Anna Penn (cc'd to others) regarding drawing 20/212/003H

INQ20 Draft conditions on boundary stone relocation and estate railings

INQ21 Council's response to appellant's application for costs

INQ22 Appellant's response to Council's response to costs application