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## Appeal Decisions

Hearing held on 3 and 4 March 2015

Site visit carried out on the afternoon of 3 March 2015

**by Mrs J A Vyse DipTP DipPBM MRTPI**

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

**Decision date: 28 April 2015**

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### **Appeal A: APP/Q3305/A/14/2221776**

#### **East site, Laverton Triangle, Norton St Philip BA2 7PE**

- 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 Lochailort Investments Limited against the decision of Mendip District Council.
  - The application No 2013/2052, dated 25 September 2013, was refused by a notice dated 9 June 2014.
  - The proposal, as described on the application form, comprises residential development of up to 20 dwellings with associated access, parking and landscaping.
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### **Appeal B: APP/Q3305/A/14/2224073**

#### **West land adjacent to Fortescue Street, Norton St Philip BA2 7PE**

- 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 Lochailort Investments Limited against the decision of Mendip District Council.
  - The application No 2013/2033, dated 25 September 2013, was refused by a notice dated 11 June 2014.
  - The development proposed, as described on the application form, comprises residential development of up to 49 dwellings with associated access, parking and landscaping.
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### **Decisions**

1. For the reasons that follow, **Appeal A** is dismissed.
2. For the reasons that follow, **Appeal B** is dismissed.

### **Application for Costs**

3. At the Hearing an application for costs was made by the Council against Lochailort Investments Limited. That application is the subject of a separate Decision.

### **Preliminary Matters**

4. Both appeals relate to outline applications with all matters reserved for future consideration. Notwithstanding the descriptions of development as set out above, which are taken from the application forms, the proposal the subject of Appeal B was amended prior to the application being determined by the Council, to include a community hall and associated parking, and an area of parking for existing village residents.
5. At the start of the Hearing, it was also requested that the scheme the subject of Appeal A should be considered as being for up to 18 dwellings, with the

Appeal B scheme being for up to 39 dwellings (reflecting the space required to accommodate the site of the proposed community hall and parking). The quantum and nature of the respective developments were clearly shown on the indicative layout plans submitted to the Council for its consideration and the Council confirmed that it had dealt with the applications on the basis of those plans, including consultation. There was no suggestion at the Hearing that I should proceed other than on the basis of those plans, and I have no reason to believe that those with an interest in the outcome of this appeal would be unduly prejudiced were I to determine the proposals on the same basis. That is what I shall do.

6. In December 2014, subsequent to the Council's determination of the applications and the lodging of the appeals, the Mendip District Local Plan 2006-2029 Part 1: Strategies and Policies was adopted. Although the Plan is currently the subject of a legal challenge (insofar as it relates to the amount of new housing required) it provides, for the time being, the starting point for planning decisions.
7. The reasons for refusal in relation to both applications include reference to the absence of a mechanism to secure the provision of affordable housing, recreation space, and the management and maintenance of surface water drainage facilities. However, Unilateral Undertakings were submitted with the appeals.<sup>1</sup> In response to queries of mine, revised Undertakings were submitted during the Inquiry and the related discussion was based on those amended documents.<sup>2</sup> I return later to the obligations secured.

### **Planning History/Background**

8. In February 2011, planning permission was granted, subject to a Section 106 Agreement, for the erection of 51 dwellings, a shop and three commercial units on a former chicken processing factory within the village (the Faccenda site).<sup>3</sup> That development, now known as Fortescue Fields, was nearing completion at the time of the Hearing. Prior to that approval, two applications for development of the site had previously been refused and were subsequently dismissed at appeal.<sup>4</sup> The larger of the two schemes included what was described in the linked appeal decisions as a small triangular shaped field to the south-east of the industrial Faccenda site. It is that land, known locally as the Laverton Triangle, which is the subject of Appeal A. Neither of the previous appeals included the land the subject of Appeal B, which lies immediately to the west/south-west of the Fortescue Fields development.

### **Main Issues**

9. The development limits for the village of Norton St Philip are defined by the Mendip District Local Plan 2002. It was confirmed at the Hearing that those limits remain extant unless and until they are revised by the eventual Part 2 Plan. Since both appeal schemes lie outside the development boundary, the proposals would conflict with policies CP1 and CP2 of the Part 1 Plan, which

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<sup>1</sup> Docs 7 and 8

<sup>2</sup> Docs 23 and 24

<sup>3</sup> Doc 5 (Application No 2010/0493)

<sup>4</sup> Doc 6 (APP/Q3305/A/01/1060390 comprising 48 residential units, 600 square metres of employment units and a village hall, and 1060970 comprising 42 residential units and 250 square metres of employment units. Both were dismissed on 21 August 2001)

seek to restrict development at Primary Villages, including Norton St Philip,<sup>5</sup> to allocated sites or sites within the development limits.

10. The National Planning Policy Framework (the Framework) makes it clear that, in circumstances where Councils are unable to demonstrate a five year supply of deliverable housing sites, relevant development policies for the supply of housing should be considered as out of date.<sup>6</sup> Against that background, I consider that the main issues common to both appeals relate to:
- the current housing land supply position in the District;
  - and the effect of the development on the character and appearance of the area, including the Norton St Philip Conservation Area and its setting, and the setting of nearby listed buildings.

## **Reasons for the Decisions**

### *Housing Land Supply*

11. In order to determine whether policies relevant to the supply of housing in the recently adopted Part 1 Plan are to be considered as out of date, it is necessary to establish whether the Council is able to demonstrate a five year supply of deliverable housing sites.
12. The Examination into the Part 1 Plan looked, among other things, at detailed evidence relating to housing need for the District. In accordance with the recommendations of the Inspector, the adopted version of the Plan refers to the housing figures therein as minima, with any provision above the identified requirement to be provided through the subsequent site allocations process and the Part 2 Plan (currently in preparation).
13. In support of its position that it has more than a five year supply (including a 5% buffer and an allowance for uncertainties in delivery) the Council drew attention to its five year supply statement and accompanying housing trajectory, the latest versions of which are dated 1 October 2014, as corrected on 22 December 2014.<sup>7</sup> Attention was also drawn to two recent Appeal Decisions relating to residential development elsewhere in the District, issued in January and February 2015.<sup>8</sup>
14. Whilst the Statement of Common Ground confirmed agreement that the Council could demonstrate a five year supply, the appellant reserved its position pending any updated information in the event that ongoing monitoring of the Council's deliverable sites established an altered position. Shortly before the Hearing, the appellant questioned not only the supply of deliverable sites, but also other aspects of the Council's housing requirement, in particular, the Objectively Assessed Needs and the appropriate requirement against which the five year supply should be tested.

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<sup>5</sup> I understand that it is the presence of a local shop within the Fortescue Fields development that led to the uplifted designation of Norton St Philip as a Primary village. However, as readily acknowledged by the appellant, the goods offered are not very comprehensive or competitive and, at the present time, the shop does not meet the everyday needs of local residents.

<sup>6</sup> By reference to paragraph 49 of the National Planning Policy Framework

<sup>7</sup> Docs 12A, 12B and 12C

<sup>8</sup> Doc 14A (APP/Q3305/A/14/2222455 Parsonage Lane, Chilcompton) and Doc 14B (APP/Q305/A/14/224843 Green Pits Lane, Nunney)

Objectively Assessed Needs (OAN)

15. The Part 1 Plan makes provision for at least 9,635 dwellings over the whole Plan period (2006-2029) and a development rate of at 420 dwellings per annum from 2011-2029. The appellant argued that, when judged against the historic minimum requirement to 2011, the historic 'over-supply' should not be used to discount future dwelling provision, on the basis that it would cut across expression of the housing requirements as minima. In promoting that approach, my attention was drawn to the judgement of the High Court in *Zurich Assurance v Winchester City Council*.<sup>9</sup> In essence, the *Zurich* judgement found that historic shortfalls would have been included in the evidence base for the model and thus did not require to be added again. The appellant maintained that the same considerations should be applied to an historic over-supply.
16. As accepted by the court of appeal in the case of *Hunston Properties Ltd*,<sup>10</sup> it is not for me to carry out some sort of Local Plan process to arrive at an alternative housing requirement figure as part of determining an appeal. It is my understanding that the evidence presented to this Hearing in relation to the calculation of the OAN is derived, in part, from the cases being put to the judge dealing with the current challenge to the Part 1 Plan. It would be imprudent therefore, for me to come to a view on this in advance of that judgement. In the meantime, I see no good reason to depart from the view of the Local Plan Inspector as to the basis for the calculation of the OAN for the District.
17. The appellant's supplementary evidence also suggested that the then imminent 2012 based Sub-National Household Projections might support a more optimistic view of household formation and would indicate a higher figure for the District. Those figures were subsequently published on 27 February 2015. The appellant's Client Brief on those figures<sup>11</sup> acknowledges that in fact the figure for Mendip is lower, although I recognise that the figures do not, among other things, address the issue of affordability, or the requirements of the local economy in terms of integrating economic and housing strategies. That said, there is nothing there, in its generality, to undermine the OAN set out in the Plan.
18. The appellant points out that the Part 1 Plan identifies a pressing need for affordable housing in the District. However, the Planning Practice Guidance (planning guidance) indicates that the total affordable housing need should be considered in the context of its likely delivery as a proportion of mixed market and affordable housing developments (given the probable percentage of affordable housing to be delivered by market housing led developments). Accordingly, even if affordable housing provision in the District is unlikely to meet the assessed need I am not persuaded that it would, necessarily, be appropriate to increase the OAN figure in this regard, since that could have other consequences.

Appropriate Buffer

19. Paragraph 47 of the Framework indicates that local planning authorities should identify and update annually a supply of specific deliverable sites sufficient to provide five years worth of housing against their housing requirements, with an

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<sup>9</sup> *Zurich Assurance v Winchester City Council and South Downs National Park* [2014] EWHC 758 (Admin)

<sup>10</sup> *St Albans City and District v Secretary Of State For Communities and Local Government* [2013] EWCA Civ 1610

<sup>11</sup> Doc 13

additional buffer of 5% moved forward from later in the plan period. This buffer should be increased to 20% where there has been a record of persistent under delivery of housing.

20. In Mendip, the Council has adopted a 5% buffer, based on the findings of the Local Plan Inspector. In essence, it appears that he assessed performance in relation to the period 2006-2011,<sup>12</sup> a time when there was a modest over-supply. In suggesting that there should be a 20% buffer, the appellant drew attention to two court judgements,<sup>13</sup> arguing that they indicate that the most appropriate time period is the immediately preceding five years.
21. In fact the court cases referred to make it clear that the precise period of time against which to assess whether there has been persistent under-delivery of housing is a matter of judgement for the decision maker, the evidence suggesting that there is flexibility to consider a range of timescales.
22. The more recent planning guidance advises that the assessment of a local delivery record is likely to be more robust if a longer term view is taken, such an approach being likely to take account of the peaks and troughs of the housing market cycle.<sup>14</sup> Given the economic difficulties of the last few years, I am not persuaded that looking just at the last five years is a sufficient period of time over which to judge the Council's record on housing delivery.
23. The appellant advises that, as noted by the Local Plan Inspector, there had been a shortfall of 89 houses over the 1991-2011 Structure Plan period. However, allowing for fluctuations, I am not persuaded that, of itself, that necessarily equates to a record of persistent under-delivery when considered in the context of a 20 year period, sufficient to warrant a 20% buffer.
24. The table of figures provided in the appellant's supplementary evidence, covers the period 1996/7 to 2013/14. It indicates that, when measured against the Structure Plan, there was an undersupply in just two out of the six years 1996/7 – 2001/2. When measured against the Structure Plan, the Local Plan 2002-2016 and the Part 1 Plan, there was an undersupply in just two of the next 6 years (2002/3- 2007/8). I recognise, however, that between 2008/9 – 2013/14, when measured against all the above plus the 2008 and 2011 household projections, there appears to have been an undersupply in four out of the last six years, and in four out of the last five years.
25. On the evidence of the appellant therefore, there has been an undersupply in eight out of the last eighteen years against the various measures of need identified or, alternatively, in five out of the last ten years. On balance, therefore, I am not persuaded that there is a 'record of persistent under delivery of housing' here and see no reason to believe, on the basis of the evidence before me, that the application of a 5% buffer is anything other than appropriate at the present time. I note that the Inspector came to the same conclusion in the decision referred to earlier.

#### Site Delivery

26. The appellant suggested that the Council had been somewhat over-optimistic in

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<sup>12</sup> For the reasons set out at paragraph 120 of Doc 22

<sup>13</sup> Cotswold DC v SSCLG & Fay and Son Ltd(1) and Cotswold DC v SSCLG & Hannick Homes and Development Ltd (2 & 3) [2013] EWHC 3719 (Admin);

<sup>14</sup> ID 3-035-20140306

terms of the delivery of some sites in its housing land supply. However, of the sites referred to, the Council confirmed that the site at TH White Limited, Vallis Road, Frome, referred to was not included in its five year supply figures and that the Mendip Lodge Hotel site in Bath was not relied on, the first six houses already having been built.

27. In December 2014, outline planning permission was granted for up to 450 dwellings on land to the east of Southfield Farm, Frome. The Council's latest trajectory shows the site as providing the first 40 completions in 2016/17. The appellant indicated that further applications are still required to deal with the reserved matters, all of which were reserved and, once approved, certain infrastructure is required to be provided prior to completion of the first dwellings. As a consequence, it was maintained that completions are unlikely until 2017/18. However, that view and is not supported or backed up by any communication with Hallam Land Management who secured the permission. At the Hearing, the Council confirmed that a forward funding loan had been secured, to assist with bringing the development forward as soon as possible. In the absence of any firm information to support the appellant's position, I see no reason to discount the anticipated completions from the supply at the present time.
28. Outline permission was granted for residential development at Thales, Wookey Hole Road, Wells in April 2013. The indicative layout shows 188 dwelling units. The reserved matters application submitted in August 2014 was still pending consideration at the time of the Hearing. I was also advised that whilst demolition had commenced, work was not as advanced as had been anticipated. On that basis, the appellant argued that the contribution of the site should be reduced by 35 units for 2015/16. I note, however, that the Council's latest trajectory indicates a total of 30 dwellings on this site for that year. Even so, it does seem unlikely that all 30 would be completed by March 2016, given the work that remains to be done. However, even if I were to discount the entire anticipated completions on this site for 2015/16, I am not persuaded that it would undermine the trajectory to such a degree that the Council would not be able to demonstrate the required supply of housing land.

#### Conclusion on Housing Land Supply

29. It might be that, in due course, the OAN figure is found to be greater than that set out in the recently adopted Part 1 Plan and thus, that there is a shortfall in supply of housing land. However, on the basis of the information that is before me on these matters, I am satisfied that it is appropriate, for the purposes of this appeal, to use the OAN referred to in the Plan which, for the time being, is the starting point in decisions such as this. I am also satisfied that, for the reasons given, a 5% buffer is appropriate here and that, in all likelihood, the supply identified in the Council's trajectory provides as realistic an assessment as is possible in relation to matters such as this, demonstrating that the supply is sufficient to meet the identified requirement without the need for additional housing in the countryside beyond that already committed. In coming to that view, I am mindful that the Council's housing figures make no allowance for windfall sites and that they adopt a cautious approach to development on brownfield land. Indeed, the Government's very recent 2012-based Sub-National Household Projections, issued just before the Hearing opened, seem to suggest that the figures used appear to be of the right order.

30. Whilst I recognise that the figures in the Part 1 Plan are expressed as minima, given the housing land supply situation that I have identified, it is still appropriate to accord due weight to policies CP1 and CP2 of the Part 1 Plan, which do not support general housing development in the countryside, where the appeal sites are located.
31. I am also mindful that, in relation to housing provision in Norton St Philip, Table 8 in the Part 1 Plan shows that housing completions and existing commitments in the village had, by March 2013, already exceeded the planned target (some 73 completions or permissions against the 45 dwelling requirement for the entire Plan period). Since those figures were compiled, further dwellings have been allowed at appeal with the consequence that a total of 107 dwellings have now been approved/built in the village since 2006. In effect, the village has accommodated more than 200% of the identified allocation in the first 8-9 years of the Plan period, amounting to an increase of some 35% in the housing stock of the village, well above the 'proportionate' 15% growth anticipated by the Part 1 Plan for villages such as this. Whilst I recognise that the figures in the Plan are expressed as minima, the need to plan for proportionate levels of growth remains an essential consideration in accordance with the spatial strategy set out in Core Policy 1. The addition of up to a further 57 dwellings would undermine that strategy.

#### *Character and Appearance/ Heritage Assets*

32. The village of Norton St Philip has medieval origins deriving from its relationship with the foundation of the nearby Carthusian Priory at Hinton. It has a dispersed plan form with two nuclei, the area in the west developing around the grade II\* listed church (which dates from the C14 with later additions) and later school, whilst development in the east is centred around the market place and the substantial grade I listed George Inn (C14-C15) a large hostelry owned by the Priory, located at the complex junction of two routes – the High street/North Street route (on the line of the old Bath to Salisbury road) which extended out to a crossing of the River Frome, and an east/west route.
33. The elevated position of the settlement, on a pronounced west facing ridge and down its west facing slopes overlooking the valley of Norton Brook, means that it dominates the surrounding farmland and is visible from lower ground to the west and south-west. I saw that the older buildings of High Street and The Plain, including the George Inn, form a strong skyline in longer range views and when viewed from Church Mead, a large rectangular area of open space within the village. That space faces open countryside to the south and is described in the Conservation Area Appraisal as being an essential landscape and amenity component of the Area.
34. The character and appearance of the Conservation Area is defined by the interplay between medieval, vernacular Cotswold type and classical architecture, mixed in with some positive Victorian contributions, and its coherent, tightly-knit character, particularly when experienced from the main through routes. The Appraisal notes that one of the Area's great assets is the visual and psychological contrast between 'urban' and rural elements. As a consequence, the significance of the Conservation Area derives not only from its historic settlement pattern and its many listed and historic buildings, but also from the abundance of green space both within it (which, as noted by the

appellant,<sup>15</sup> ranges from small residential gardens, to the church/churchyard and Church Mead) and its rural landscape setting. That setting allows for an understanding and appreciation of its significance, providing an historical context for this ridge-top village, marking it as a rural settlement.

### Appeal A

35. This triangular site, which lies between the Fortescue Fields development to the west (from which access to all but one of the dwellings indicated would be taken) and Mackley Lane to the east (which would provide access to the other indicative dwelling) fronts on to Town End, the main approach to the village from the south east.
36. At present, the land is used as a contractors' compound in relation to the adjacent development. It contains plant, machinery and building materials and, at the time of the site visit, the top soil had been scraped off and was banked up against the site boundaries. However, that is a temporary arrangement. On completion of the Fortescue Fields development the land would (pending any planning permission for its development) be returned to its previous grassed and undeveloped state. I am mindful, in this regard, that the Fortescue Fields scheme necessitated the felling of a row of protected trees along the boundary with the appeal site. As secured by the accompanying Planning Agreement, replacement planting is to be carried out in a 15 metre wide band along that shared boundary but *wholly within* the Triangle site. Due to the current use of the land as a compound, that planting has not, as yet been carried out.
37. Whatever the purpose of the original trees as planted, or the purpose of the replacement tree belt to the south of the Fortescue Fields development as currently proposed, there was no disagreement that there is currently a requirement for that planting to be carried out. I have assessed the appeal scheme therefore, on the basis of the contribution of the site to the character and appearance of the area as an open field in its fully restored state, as anticipated by the Fortescue Fields permission.
38. Immediately opposite to the appeal site on the eastern side of Town End, lying within the Conservation Area, are a small grade II listed cottage (Townsend) and a new, larger detached dwelling in traditional style (adjacent to the junction of Tellisford Lane with Town End). The appeal site is considerably higher than the land opposite, its frontage defined by a rubble retaining wall to the bank along Town End that runs along the back of the carriageway here, topped by a hedge. Whilst the frontage wall and hedging, together with a strip of land behind lies within the Conservation Area, the remainder of the site lies adjacent to, but outwith it, forming part of its rural setting. Given that the significance of the Conservation Area derives in part from its rural landscape setting and the historic approaches through that setting, I am in no doubt that, in its anticipated restored state, the Triangle site would continue to play a role in allowing for an appreciation of the significance of the Conservation Area, contributing to its significance.
39. The listed two storey Townsend (also known as Papillon) which dates from the C17, is of rendered rubble stone with a steeply pitched clay tile gabled roof and coursed rubble stone end chimney stacks. Windows to the front and right hand

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<sup>15</sup> Built Heritage Statement

return elevations are set in step chamfered stone mullion frames. The entrance lies within a lean to addition at the northern end of the building. Another grade II listed cottage, Townend, lies further away to the north. The special interest of Townsend derives not only from its age and history, but also its form and appearance. The elements of setting that contribute to its significance include its relationship with the street, and its immediate plot. In that context, I consider that the appeal site contributes little, if anything, to the significance of the listed building or its setting. The same applies to the setting of Townend.

40. There is modern development on the eastern side of the approach to the village from the south. However, land to the west comprises open fields. Whilst there is a very small cluster of older properties at the junction of Mackley Lane with Town End, they are incidental to the very rural aspect of this side of the road. Indeed, the previous Inspector noted that the *'hedges, glimpses of the field through the field gate and the impression of openness beyond all assist in giving the traveller along [Mackley] lane the perception of being in the countryside. The houses on the southern side of the lane near to the junction are well screened by banks, hedges, shrubs and trees and so do not obviously intrude..... In short, the land [the Triangle site]...appears to be part of the countryside and not the village.'*
41. That observation was made notwithstanding the industrial buildings and structures on the Faccenda site. That industrial development has since been replaced with the Fortescue Fields development. Nonetheless, the impression of countryside when approaching the site from the south, and along Mackley Lane, is maintained right up to the junction with Town End, the presence of the Laverton Triangle site helping the countryside to flow into this part of the village. The previous Inspector concluded that *'The loss of the Laverton Triangle to built development would mean that the built boundary of the village would move markedly westwards, out into the open countryside. Houses on the field would be seen above the hedges, as the land lies above the adjacent roads. The built impact of the proposal would be seen as an incursion into the open countryside.'* Whilst the appeal scheme would not extend any further west than the Fortescue Fields development, the other observations hold true today.
42. The indicative layout does not include space for the replacement tree planting belt required in connection with the Fortescue Fields scheme, either along the shared boundary or elsewhere within the appeal site. There was much discussion in this regard, as to the purpose of the required planting. It seems to me however, that not only would it eventually screen the approved housing development from the adjacent countryside, but it would also provide a soft edge between the development and the adjacent countryside. When the Fortescue Fields scheme was being considered by the Council, the officer noted that whilst *'the screening function was no longer there,'* the tree belts themselves had become an important landscape feature, providing a green backdrop to the development proposed. Absent the development currently proposed, I am in no doubt that the replacement tree belt remains necessary in the anticipated location in connection with Fortescue Fields development.
43. The indicative layout before me does suggest areas of what are referred to as *'significant planting of semi-mature trees'* at the northern and southern ends of the frontage to Town End. However, even acknowledging that the plan is

indicative, it appears to amount to not much more than two or three trees in each location, at the back of parking areas, together with retention of the existing boundary hedgerow. To my mind, that is no substitute for the conditioned 15 metre wide planting belt that should be here, which would provide a much softer verdant edge to the extent of built development, screening the new housing.

44. As the land lies above the level of the adjacent roads, particularly Town End, I consider that houses on the appeal site would be seen above the hedges, the indicative sections through the appeal site submitted with the appeal doing nothing to allay my concerns in this regard, especially the relationship of dwellings with Town End. Whilst there would be no harm to the significance of the nearby listed cottages, and whether or not there is a need for the tree belt in relation to the Fortescue Fields development, I am in no doubt that the built impact of up to 18 dwellings on this site would be seen as an incursion into the open countryside that would cause substantial harm to the character and appearance of the area. There would be conflict therefore, with policies DP1, DP4 and DP7 of the Part 1 Plan, which together seek to ensure that new development is appropriate to its local context and that it contributes positively to the maintenance and enhancement of local identity and distinctiveness in a manner that is compatible with the pattern of natural and man-made features.
45. There would also be harm to the setting of the Conservation Area, an integral part of its significance on this approach. Whilst, in the parlance of the Framework, that harm would be less than substantial, there would still be real and serious harm. There would also be conflict therefore, with policy DP3 of the Part 1 Plan, which is only supportive of schemes that would preserve, and where appropriate enhance the significance and setting of the District's heritage assets.

#### Appeal B

46. This site comprises an area of agricultural land directly to the south of Church Mead and is adjoined to the east by the Fortescue Fields development from which access would be taken.
47. There are numerous listed buildings in the locality. However, the grade I listed George Inn and the grade II\* listed parish church are the most significant of those that have intervisibility with the appeal site. The George has a C14 core with subsequent alterations and additions over the centuries and is a striking building located at the highest point of the village, close to the market place. The ground floor is of coursed rubble Douling stone, whilst the C16 upper floors are jettied out with an exposed timber frame. The street elevation contains central porch with a moulded four-centred archway which gives access to the Inn and a central courtyard.
48. The significance of a heritage asset derives not only from its physical presence, but also from its setting, the setting comprising all of the surroundings in which it is experienced, or that can be experienced from or with that asset.<sup>16</sup> Due to its historic importance and its location, the George has a complex setting. Its primary aspect is to the north-east and The Plain, where it is seen as a key part of the group of historic buildings here including the listed Fleur de Lys, rendering legible the historic development of this part of the village. Whilst

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<sup>16</sup> English Heritage *The Setting of Heritage Assets*

- each of those buildings has individual significance, their significance is enhanced by being part of that group.
49. Later alterations have also provided the George with a range of views from the rear, to the south and south-west, which are afforded by its elevated position in relation to the surrounding countryside. From the beer garden, there are broad views across the falling land to the south-west. Those views encompass Church Mead and the countryside beyond, including the appeal site. I am in no doubt therefore that appeal site lies within the setting of the George. However, the views from the George over the appeal site seem to me to be more 'opportunistic' than designed and I am not persuaded that, of itself, the contribution of the appeal site to the *significance* of the George Inn is anything more than neutral.
50. The church of St Philip and St James also dates from the C14 with later adaptations. As noted in the list description, its architectural style is unorthodox and somewhat eccentric, though generally perpendicular. It is of coursed rubble Douling stone, with a stone slate roof and includes a three stage tower. Like the George, because of its historic importance to the village, and its height, it has a complex setting. In addition to the churchyard, which contains ten listed tombstones, its main aspect is to the east, uphill across Church Mead towards the George. There are also views of the church from various vantage points, demonstrating its links with the surrounding village. Clearly, the appeal site lies within the setting of the church. Again, however, I am not persuaded that, in the absence of any functional link, the appeal site makes anything more than a neutral contribution to the *significance* of the church.
51. So, whilst the development proposed would result in change to the setting of the George Inn and the church, together with other listed buildings in the locality, that is not the same, necessarily, as causing harm. Whilst it would be seen, I am satisfied that the scheme proposed would not affect the ability to understand or appreciate the *significance* of the listed buildings.
52. Moving on then to the Conservation Area. The appeal site lies immediately adjacent to but outwith the Conservation Area boundary here and thus lies within its setting. Church Mead is an integral part of the character and appearance of the Conservation Area, forming a transition between the village and the adjacent open countryside. It is adjoined by built development to the north/northeast (centred on the George Inn) and to the west (around the church). Whilst the Conservation Area is generally inward looking, its significance also derives from outward views afforded by its elevated position in the landscape. That is amply demonstrated in the sudden, quintessentially English view out from the George car park and the summit of Bell Hill over the lower slopes, including Church Mead which forms an important visual link between the centre of the village and the countryside beyond. I am in no doubt that the open undeveloped nature of the appeal site has a positive role in the significance of the Conservation Area, allowing for an appreciation and understanding of the historic evolution of Norton St Philip.
53. Even with reinforcement of the hedge/tree line along the northern boundary of the appeal site, the development proposed would create a much stronger urban presence than is currently the case in those views and would intrude into the experience of the Conservation Area. On completion, the development would

also link the Fortescue Fields site with other parts of the village, including recently approved residential development on land to the west. As a consequence, Church Mead would be enclosed on all sides by built form and the crucial link through to the open countryside beyond would be obliterated.

54. The planning guidance confirms that substantial harm may arise from works to an historic asset or from development within its setting. I recognise that substantial harm is a high test and may not arise in many cases. In this case however, I consider that the development proposed would have a considerable adverse impact on the setting and significance of the Conservation Area, completely altering its historic development pattern and plan form, with significant consequences for one of the most important and clearly cherished views into and out of the Area. To my mind, the scale of that harm verges on substantial. There would be corresponding harm to the established character and appearance of the area more generally. There would be conflict therefore with policies DP1, DP3, DP4 and DP7 of the Part 1 Plan DP3 of the Part 1 Plan.

#### *Other Matters*

55. In relation to Appeal B, the reasons for refusal included impact on ecology and biodiversity, and traffic movements. In relation to biodiversity, the appellant submitted a preliminary ecological appraisal dated August 2014,<sup>17</sup> which confirms that any impact on protected species and breeding birds etc would, at worst, be negligible and could be managed through careful timing of operations and through the use of planning conditions were the appeal to succeed. Conditions could also secure enhancements in this regard. No evidence was produced by the Council or others to refute the findings and conclusion of that evidence and I have no reason to take a different view.
56. I was also advised that the Highway Authority had withdrawn its objection following the submission of further information by the appellant relating to traffic movements associated with the proposed community hall and the performance of the Fortescue Fields junction with High Street.<sup>18</sup> Again, in the absence of any substantiated evidence to the contrary, I have no reason to take a different view. That said, the developments would clearly increase traffic through the village. That has caused significant local concern, given existing problems. However, the increase, even when considered cumulatively with other committed/ permitted development, would be in the order of 5-6% which, with regard to industry standards, is not significant. The Highway Authority raises no concerns in this regard and has made no request for any measures in relation to the flow of traffic through the village.
57. Local residents spoke eloquently about flooding problems experienced not only in the past, but also since the introduction of the substantial surface water attenuation and drainage scheme provided in relation to the Fortescue Fields development. The Council confirmed that, historically, the former factory on the Fortescue Fields site extracted water from boreholes, which appears to have lowered the local water table, with local residents suggesting that, since those operations ceased, the water table has risen. There was concern that the additional development proposed would exacerbate existing problems. Although the initial concerns of the Environment Agency were addressed

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<sup>17</sup> Appendix S of the appellant's statement

<sup>18</sup> Appendix R to the appellant's statement

through the submission of further information, the Council and local residents still have significant concerns.

58. At the Hearing, the appellant advised that both the appeal schemes had been designed with on-site attenuation measures sufficient to ensure that run-off from the sites would be no greater than greenfield run-off rates, confirming that the swales and basins were of sufficient capacity to adequate those additional flows. However, whilst the rainfall in the area during the winter of December 2013/January 2014 may well have been exceptionally heavy, the existing system, which should have been designed to accommodate extreme events including climate change, does not appear to have coped well. Any additional loading on that system is, therefore, a concern. However, I am not persuaded that the appeals should fail on this basis, since I have no reason to suppose that a properly engineered solution could not be achieved. Were the appeals to succeed, this is a matter that could be dealt with by condition.

#### *Unilateral Undertakings*

59. Each of the appeals was accompanied by a Unilateral Undertaking. Consideration of the obligations thus secured must be undertaken in the light of the policy set out at paragraph 204 of the National Planning Policy Framework and the statutory requirements of Regulation 122(2) of the Community Infrastructure Levy Regulations. These require that planning obligations should only be accepted where they are necessary to make the development acceptable in planning terms; are directly related to the development; and are fairly and reasonably related in scale and kind to it. For the appellant, it was argued that, as well as mitigating the impact of the development proposed, some of the arrangements secured should be considered as benefits to be weighed in the planning balance. I have therefore examined each of the provisions secured.

#### *Appeal A*

60. Affordable Housing: Policy DP11 of the Part 1 Plan requires 30% provision of affordable housing on development sites, with an 80/20% split between social rented housing and intermediate (shared ownership) housing. Whilst the arrangement secures 30% provision, the split is 70% for affordable housing for sale or rent and 30% shared ownership. The arrangement proposed does not reflect the conclusions of the Council's Housing Needs Assessment and also allows for discretion as to how the 70% would be provided in terms of tenure. That said, affordable housing is an important element of the overall provision of housing. The quantum of affordable housing proposed accords with the relevant policy and I am satisfied that it meets the tests.
61. The Parish Council was keen to ensure that any affordable housing was occupied by local people in need, rather than meeting need from across the District and raised concern at the absence of any local connection criteria in the Undertaking. However, paragraph 137 of the Inspector's Report on the Part 1 Plan confirms that it is the Council's duty to provide for people in the greatest need of housing regardless of where they come from. He goes on to say that a local occupancy condition could not, therefore, be legitimately applied as normal policy across the rural area as a whole. As a consequence, no such policy was included in the adopted version of the Plan. The absence of such a clause in the obligation does not tell against the proposal.

62. Games Area: The Undertaking secures the design and construction of a multi-use games area (MUGA) on Mackley Lane, away from the appeal site, and an arrangement to transfer that to the Parish Council is included. Although there was concern that the arrangement did not include the provision of allotments referred to by the appellant as part of the package being offered, it was agreed that, if they were found to be necessary, a Grampian type condition might be appropriate in this regard.
63. Policy DP16 of the Part 1 Plan requires new development to make a contribution towards the provision of new open space, where necessary. The provision of a MUGA has been a longstanding requirement of the Parish Council, with the land already benefitting from planning permission for both a MUGA and allotments.<sup>19</sup> I was advised that whilst a youth play facility was included in the planning obligation related to the Fortescue Fields development, the original location for that was changed due to concerns from local residents. The MUGA comprises the relocated youth play facility. I understand however, that the previous obligation only secured the land for the facility, the provision of the facility itself was not secured. The arrangement before me addresses that.
64. Based on the limited evidence available, I am satisfied that there is an existing demand for such a facility, which demand would be increased by the development proposed. I am not persuaded however, that the demand from the appeal site would, by itself, justify the MUGA but it is clear that the arrangement cannot be provided in part – it is all or nothing. On balance, therefore, it seems likely that the MUGA, which would be provided entirely at the appellant's expense could, in all likelihood, be considered as meeting the tests.
65. Planting belt to the south of Fortescue Fields: This is offered in lieu of the 15 metre planting belt secured by the Planning Agreement in relation to the Fortescue Fields scheme, which was to have been provided on the Triangle site. It would be managed thereafter by the Fortescue Fields Management Company. It was suggested that it would help improve biodiversity and would help the transition of the existing development into the wider countryside. That may be so. However, in addressing the south side of the existing development, it does not make the development proposed acceptable and would not meet the tests.
66. Landscaping Scheme: The arrangement secures the submission of a landscaping scheme and its implementation and ongoing maintenance. It also provides for the management, maintenance and any necessary reinforcement of the hedgerow along the highway boundaries, which hedgerow would be excluded from the curtilage of any of the dwellings proposed. It is in lieu of a condition and is intended to mitigate the impact of the development proposed. As such, it would meet the relevant tests.
67. Community Facilities: The arrangement secures the use of a sum of money related to the number of the open market units (the Specified Sum) to be put towards the construction of a village/community hall on the west site, if such was being constructed on a specified date. Otherwise, the Specified Sum would be paid to the Parish Council to be applied in the provision of unspecified community facilities for the benefit of residents of the village.

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<sup>19</sup> Application No 2013/2447

68. Before the Hearing, I raised concerns that the arrangement did not 'bite' until occupation of the last market dwelling on the site, noting that, in theory, there could be a situation where that trigger was never reached. That concern was not addressed in the revised version submitted part way through the Hearing. In any event, I recognise that whilst the provision of a new village/community hall might be welcomed by some, others at the Hearing questioned the need. The arrangement was not sought by the Council and is not intended to remedy, either in whole or in part, some external 'cost' that would be consequential upon the development the subject of this appeal, and is thus not *necessary* to make the development acceptable. For the same reason, it is not directly related to the proposal. There is no substantiated evidence either as to the basis for the actual amount secured, other than an indication at the Hearing of a rough costing for the facility divided by the maximum number of houses proposed. In the alternative of a village/community hall being provided, the arrangement for the money to be spent as the Parish Council might see fit does not mitigate a direct impact of the development proposed and is not justified. The arrangement clearly does not meet the tests.

*Appeal B*

69. Affordable Housing: The arrangement secures 40% affordable housing provision, 80% of which would be social rented and 20% shared ownership. There would be no conflict in this regard with the policy requirement. The Obligation also includes local connection criteria for occupancy of 50% of the units. Whilst I recognise that this would in part address the concerns of the Parish Council, such an arrangement is not supported by the Part 1 Plan. That said, it includes a cascade mechanism whereby the occupancy 'net' could be cast wider if necessary to fill the units.
70. MUGA: Addressed above.
71. Management of on-site surface water drainage systems: The arrangement secured is in lieu of a condition requiring the submission of a management scheme and is necessary in order to avoid pollution and to prevent increased risk from flooding. As such, it would meet the relevant tests.
72. Parking Spaces: The arrangement secures the provision of ten parking spaces within the site to be made available in perpetuity for use by existing residents of High Street. The provision is intended to help address some of the problems caused by parking on High Street. Whilst the facility might be welcomed it is not addressed at mitigating an adverse impact arising from the development proposed and does not meet the tests.
73. School: A payment to Norton St Philip First School is secured, related to the provision of open market housing, to be applied by the school at its discretion. That payment is not justified by the development proposed, there being sufficient space at the School to accommodate potential pupils from the scheme, and has not been sought by the Council. There is no indication either as to how the amounts provided for have been calculated. Again the arrangement does not meet the tests.
74. Landscaping: The arrangement secures the management, maintenance and, where necessary, reinforcement of the hedge between the appeal site and Church Mead and the existing copse adjoining the curtilage of the Old Vicarage.

It would be in lieu of a condition intended to mitigate the direct impact of the development proposed and would meet the relevant tests.

75. Open Space: A payment to the Parish Council is secured, related to the provision of open market units, for the provision and maintenance of open space and recreational facilities in the village. At the Hearing, I was advised that the contributions equated to the cost of providing a Local Equipped Area of Play. However, there is no demonstrated need for such as a consequence of the development proposed, nor is there any indication as to where such a space might be provided. I am mindful in this regard that the contribution is not sought by the Council and that, in any event, the Undertaking also secures the provision of the MUGA. Accordingly, this part of the obligation does not meet the tests.
76. Highways: A payment towards a scheme of traffic calming measures in the village is secured. Whilst many of the measures proposed are welcomed by the local community, they have not been requested by the highway authority to address any adverse impact directly arising from the development proposed. There is no detailed evidence as to how the contribution has been calculated or which of the various measures shown it is intended to implement. The contribution does not, therefore, meet the tests.
77. Community Facilities: A sum of money related to the number of the open market units (the Specified Sum) together with monies payable towards community purposes from the Triangle site (were that application to succeed) would be used for the construction of a village/community hall on the appeal site. Once completed, the facility would be transferred to the Parish Council. If there was no contribution from the Triangle site, then the land for the village/community hall would be transferred to the Parish Council together with the Specified Sum. This arrangement does not meet the tests for the reasons set out above.

#### Conclusion on the Undertakings

78. Certain of the arrangements and contributions secured by the Undertakings are aimed at addressing the direct impacts of the development proposed. However, they also secure further contributions and arrangements which amount to benefits. It is well established that the presence of what might be considered as extraneous inducements should not influence planning decisions. As those elements do not meet the relevant tests, it would be unlawful, having regard to current legislation and guidance, to take those particular obligations into account. Accordingly, they cannot carry any positive weight in favour of the development proposed.

#### **Overall Planning Balance and Conclusions**

79. The Framework establishes that sustainable development should be seen as the golden thread running through decision-taking. It identifies three dimensions to sustainable development - economic, social and environmental.
80. The appeal schemes would be deliverable and would increase the supply and choice of housing provision of new homes, including affordable housing, adjacent to a Primary village. As such, there would be some resonance with the social and economic dimensions of sustainable development. That said, the weight to be afforded to that consideration is reduced because of the existence

of a five year supply of housing currently, which means there would conflict with policies CP1 and CP2 of the Part 1 Plan which continue to merit weight. Moreover, additional housing provision has already been made locally in Norton St Philip that significantly exceeds the requirements anticipated as being met here by the Part 1 Plan, even recognising that the requirements are expressed as minima. That development represents a 35% increase in housing stock over and above the position in 2006 (the start of the Plan period) well above the 'proportionate' 15% growth anticipated by the Part 1 Plan for villages such as this. Additional dwellings of the order proposed would therefore undermine the Council's Spatial Strategy.

81. The provision of the MUGA would be a social benefit of the developments proposed in that it would also be accessible to existing residents. In addition, the schemes would create direct and indirect jobs and would increase local spend amounting to an economic benefit. In particular, future occupiers would increase the number of potential customers for the village shop, which would help in terms of its prospects for the future and its contribution to the general sustainability of the village.
82. The strengthening and maintenance of hedgerows along the boundaries of both sites, as secured by the Unilateral Undertakings, which hedges would be retained outside of private gardens and would be maintained by the existing Management Company, has the potential to increase biodiversity which would accord with the environmental dimension to sustainable development. Without the development schemes, there is no obligation on the appellant to carry out such works and would be a benefit of the developments proposed.
83. However, to be weighed against those benefits is the identified environmental harm, which includes significant harm to the landscape character and appearance of the area, and the harm to the setting and heritage significance of the Conservation Area. In the case of Appeal A, the harm would be less than substantial, which harm is to be weighed against the public benefits of the proposal. In relation to Appeal B, the harm would be substantial. In such cases, the Framework advises that permission should be refused unless it can be demonstrated that the harm is necessary to achieve substantial public benefits that outweigh that harm. The benefits outlined above are not, in either case, sufficient to outweigh the harm that I have identified. Even had I found, in relation to Appeal B, that the harm was less than substantial, the outcome in terms of the eventual decision would have been the same. That harm significantly limits the sustainability credentials of the developments proposed.
84. I have taken all other matters raised into account but, in this case, the harm I have identified significantly and demonstrably outweighs any benefits that can be weighed in the planning balance and the schemes proposed cannot be considered as sustainable development. I therefore conclude, for the reasons set out above, that neither of the appeals should succeed.

*Jennifer A Vyse*

INSPECTOR

## **APPEARANCES**

### FOR THE APPELLANT:

Mr N Pryor	
Mr H Haig	Appellant
Mr R Boulton	
Mr S Kale	
Mr J Clemons	
Mr R Hewitt	

### FOR THE LOCAL PLANNING AUTHORITY:

Mr M Williams	Planning Team Manager with the Council
Mr R Palmer	Conservation Officer with the Council
Mr A Sestini	Planning Policy Officer with the Council

### INTERESTED PERSONS:

Councillor Mrs L Oliver	Chair of Norton St Philip Parish Council
Councillor D Smallcombe	Vice Chair Norton St Philip Parish Council and Chair of the Traffic Action Group
Mrs A Tollworthy	Local resident
Miss S Hitchins	On behalf of her parents who are local residents
Mr I Hasell	Local resident
Mr A Linegar	Local resident

## **DOCUMENTS SUBMITTED DURING THE HEARING**

- Doc 1A Notification letters in relation to Appeal A
- Doc 1B Notification letters in relation to Appeal B
- Doc 2 Mendip District Local Plan 2006-2029 Part 1: Strategy and Policies
- Doc 3 Statutory list descriptions of nearby listed buildings
- Doc 4 Faccenda TPO
- Doc 5 Officer's report, plan and decision notice - Faccenda site (Application No 2010/0493)
- Doc 6 Appeal Decision High Street/Town End, Norton St Philip (APP/Q3305/A/01/1060390 and 1060970)
- Doc 7 Unilateral Undertaking relating to the east site (superseded by Doc 23)
- Doc 8 Unilateral Undertaking relating to the west site (superseded by Doc 24)
- Doc 9 Written submissions of the Parish Council
- Doc 10 Written submissions of Miss Hitchins
- Doc 11A Written submissions of Mrs Tollworthy (including village survey and results)
- Doc 11B Parish Plan for Norton St Philip (February 2005)
- Doc 12A Mendip District: Statement on five year housing land supply Summary as at 1 October 2014
- Doc 12B Mendip District: Five year housing land supply Deliverability Evidence October 2014
- Doc 12C Mendip housing trajectory and five year supply – website version (1 October 2014) (corrected 22 December 2014)
- Doc 13 Briefing Note (Mr Bolton) on the recently published 2012-based sub-national household projections
- Doc 14A Appeal Decision Parsonage Lane, Chilcompton (APP/Q3305/A/14/2222455)
- Doc 14B Appeal Decision Green Pits Lane, Nunney (APP/Q3305/A/14/2224843)
- Doc 15 Letter from Curo (Housing Association) dated 27 February 2015
- Doc 16 List of full citations referenced by Mr Bolton for the appellant
- Doc 17 Satnam Millenium Limited v Warrington Borough Council [2015] EWHC 370 (Admin)
- Doc 18 Photographs submitted by Mr Hasell in relation to ground levels on the east site
- Doc 19 Appellant's Statement of Community Involvement (west site)
- Doc 20 Local bus timetables
- Doc 21 Ordnance Survey Extract of Norton St Philip
- Doc 22 Extracts from the Local Plan Inspector's Report
- Doc 23 Unilateral Undertaking relating to the east site (supersedes Doc 7)
- Doc 24 Unilateral Undertaking relating to the west site (supersedes Doc 8)
- Doc 25 Written copy of Council's application for costs