Statement of Case

Land At Lynchmead Farm, Ebdon Road, Weston-super-Mare

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On behalf of: Mead Realisations Ltd

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1. INTRODUCTION

- 1.1 This Statement is submitted on behalf of Mead Realisations Ltd (the Appellant) in support of an appeal against the refusal of an outline planning application by North Somerset Council (NSC), for the proposed residential development of land at Lynchmead Farm, Westonsuper Mare (the 'Appeal Site').
- 1.2 The description of development for the planning application is as follows:

"Outline planning application for a residential development of up to 75no. dwellings and associated infrastructure, with access for approval and appearance, scale, layout and landscaping reserved for subsequent approval".

- 1.3 The application was submitted on the 12th June 2020 and validated on the 9th July 2020. It included a comprehensive suite of technical reports in accordance with NSC's planning application validation requirements.
- 1.4 Additional information was submitted to the Council to respond to comments received during the consultation period.
- 1.5 Despite this the planning application was refused under delegated powers on the 8th July 2022 for the following reasons:

1. Housing development should only be permitted in a 'High Probability' (3a) floodplain when it is necessary, and where it has been demonstrated through a flood risk sequential test that there are no 'reasonably available' sites in areas with a lower flood risk where the development can be provided. The Council consider that the applicant's Flood Risk Sequential Test fails to demonstrate this, and the proposed development is therefore unnecessary in a "High Probability" floodplain, which is contrary to Policy CS3 of the North Somerset Local Plan, paragraphs 159, 162 and 163 of the National Planning Policy Framework.

2. The proposal would not provide wider sustainability benefits to the community that outweigh the flood risk. The application therefore fails the Exception Test. This is contrary to Policy CS3 of the North Somerset Local Plan, paragraphs 164, and 165 of the National Planning Policy Framework. 3. The application has failed to demonstrate that the impacts of artificial lighting during construction and occupation of the proposed development, which has a clear potential to cause unacceptable harm to European Protected Species (Bats) which use the site, can be mitigated. This is contrary to policy CS4 of the North Somerset Core Strategy, policy DM8 of the North Somerset Sites and Policies Plan Part 1, and paragraphs 174,179 and 180 of the National Planning Policy Framework.

- 1.6 A copy of the decision notice is attached at Appendix 3 of the draft Statement of Common Ground (SoCG) prepared by the Appellant.
- 1.7 To support the appeal, the Appellant will provide expert evidence in relation to the following matters:
 - Drainage and Flood Risk
 - The Flood Risk Sequential Test and Exceptions Test
 - The impact of lighting on protected species;
 - The Council's housing land supply; and
 - Overall planning balance.
 - 1.8 The Appellant understands that in all other respects the Council considers that the proposed development is acceptable.

2. THE APPEAL SITE

2.1 The appeal site is described in the draft SoCG submitted by the Appellant in relation to this appeal. Where necessary the Appellant will refer to the detailed assessment of the site contained within the material submitted in support of the Appeal Application.

3. PLANNING HISTORY AND THE APPEAL PROPOSALS

- 3.1 The relevant planning history for the Appeal Site is outlined within the draft SoCG submitted by the Appellant.
- 3.2 The Appellant will refer to the Council's detailed pre-application advice dated 23rd January 2018 and will explain that public consultation was also undertaken prior to submission of the appeal application to NSC.
- 3.3 The appeal application was submitted in June 2020 and validated on the 9th July 2020 under LPA reference 20/P/1579/OUT. The description of development is:

"Outline planning application for a residential development of up to 75no. dwellings and associated infrastructure, with access for approval and appearance, scale, layout and landscaping reserved for subsequent approval"

- 3.4 The Appellant will explain that the appeal application was accompanied by a suite of plans and supporting documents as set out in the table at Appendix 1 of the draft SoCG. Reference will be made to the illustrative masterplan which was included in the application to illustrate how the site could be developed.
- 3.5 The Appellant will explain that in response to consultee responses and issues raised by the Council's planning case officer the Appellant provided further information to support the appeal proposal. This included further detailed work in relation to the sequential test and exceptions test. The Appellant agreed to extend the time period for determination until the 7th June 2022.
- 3.4 The appeal application was refused by the Council under delegated powers on the 8th July 2022 for the reasons set out in the decision notice which are replicated in Section 1 of this Statement.

4. RELEVANT PLANNING POLICY

- 4.1 The Appellant's evidence will refer to national planning policy and guidance, and other relevant Government publications including the following:
 - National Planning Policy Framework (July 2021)
 - National Planning Practice Guidance (from 2014 onwards)
- 4.2 The latest version of the National Planning Policy Framework (NPPF) was published in July 2021 and is a key consideration in the assessment of planning applications. The key objective of the document is the presumption in favour of sustainable development. This should be considered in both plan making and decision taking.
- 4.3 The appeal proposal meets the key tenets of Government policy and guidance, having particular regard to:
 - Boosting the supply of housing
 - Focusing development in sustainable locations
 - Applying a sequential, risk-based approach to the location of development
 - Providing different types of housing
 - Conserving and enhancing the natural environment
- 4.4 The Appellant's evidence will refer to relevant policies contained within the Development Plan, which comprises at the time of writing:
 - North Somerset Core Strategy (2017)
 - Sites and Policies Part 1: Development Management Policies (2016)
 - Sites and Policies Plan part 2: Site Allocations Plan (2018)
- 4.5 The Appellant will explain that as the adopted Core Strategy does not include a Framework-compliant assessment of local housing need and therefore policies which are most important for determining the appeal are out-of-date. This was the conclusion of the inspectors who considered appeals at Moor Road, Yatton (APP/D0121/W/21/3285343) and Farleigh Farm, Backwell (APP/D0121/W/21/3285624).

- 4.6 The Appellant will also refer, where necessary, to the Council's various Supplementary Planning Documents including the North Somerset and Mendip Bats Special Area of Conservation (SAC) Guidance on Development: SPD (Adopted January 2018) amongst others.
- 4.7 NSC is in the process of reviewing the local plan following withdrawal from the West of England Joint Spatial Plan on the 7th January 2020. Where relevant the Appellant will refer to the emerging local plan and associated evidence base documents.
- 4.8 Where appropriate the Appellant will also refer to relevant appeals and case law.

5. HOUSING LAND SUPPLY

- 5.1 NSC acknowledges that it cannot demonstrate a 5YHLS as required by paragraph 74 of the framework. As a result, the tilted balance set out at paragraph 11d of the NPPF applies.
- 5.2 With reference to previous appeals and the Council's own housing land supply evidence the Appellant will demonstrate that NSC has a very poor record of housing delivery which is significant in relation this appeal. The National Planning Policy Framework (NPPF) introduced the concept of the Housing Delivery Test in 2018 to maintain the supply of housing. The Council has been required to prepare a Housing Delivery Test Action Plan since 2019 as delivery of houses fell below the prescribed level. The Appellant will refer to the Council's housing evidence and action plans in evidence.
- 5.3 The Council's latest published Five-Year Housing Land Supply Position Statement is dated April 2021.
 However, at the time of submitting the appeal the base date for assessing the 5YHLS is April 2022.
 The Appellant will therefore provide updated evidence to reflect this revised position.

6. THE COUNCIL'S REASONS FOR REFUSAL

- 6.1 The matters in dispute are set out within the Council's reasons for refusal listed on the Decision Notice dated 8th July 2022.
- 6.2 The Appellant will present evidence at the Inquiry which will demonstrate that these reasons for refusal are unjustified. The Appellant will also demonstrate that there are significant benefits arising from the proposal and that outline planning permission for the appeal scheme should be granted.

Reason for Refusal 1: Sequential Test

- 6.3 The Appellant will give evidence to demonstrate that the appeal proposals have been designed to address potential flood risk and drainage concerns. The Appellant will also provide evidence to demonstrate that the Sequential Test has been undertaken in accordance with relevant policy and guidance.
- 6.4 Separate Flood Risk and Surface Water Drainage and Flood Risk Sequential Test (FRST) Statements of Case have been prepared by Vectos and Walsingham Plan respectively, in relation to this appeal. Since NSC refused planning permission national guidance has been updated in relation to how to take account of and address the risks associated with flooding and coastal change in the planning process. As a result, the FRST Statement of Case includes a refreshed FRST.

Reason for Refusal 2: Exceptions Test

6.4 The Appellant will explain that the proposed development would provide wider sustainability benefits to the community that outweigh the flood risk. With reference to the flood risk assessment and other evidence the Appellant will demonstrate that the proposed development will be safe for its lifetime, without increasing flood risk elsewhere.

Reason for Refusal 3: Lighting and Protected Species

6.5 The Appellant will give evidence to explain how the potential impacts of artificial lighting from the proposed development have been considered and will demonstrate that with suitable controls there will be no unacceptable harm to European Protected Species (Bats) which use the site.

- 6.6 The Appellant will explain that the application included an 'Ecological Impact Assessment' which provided an ecological baseline of the site. This was based on Phase 1 habitat and protected species surveys which confirm that:
 - The site does not lie within or adjacent to any designated sites of nature conservation importance.
 - Five European designated sites occur within 10km of the site. This includes the
 - North Somerset & Mendip Bats SAC, although the application is outside its consultation zones.
 - The site comprises four semi-improved and improved grassland pasture fields, species-poor hedgerows, and wet ditches.
 - The survey area provides suitable breeding and terrestrial habitat for common and widespread amphibians, including common toad (a Priority species).
 - A great crested newt eDNA survey was undertaken and the results were negative, indicating that the species is absent from the site.
 - A 'Low' population of grass snake was recorded within the survey area. Suitable reptile habitat was restricted to the field margins, with most of the short-grazed grassland within the site unsuitable for reptiles.
 - The survey area provided nesting habitat for widespread bird species
 - No dormice, or evidence of dormouse activity, were recorded within the survey area during the survey.
 - A two-entrance outlier badger sett was recorded within application site and an additional subsidiary badger sett was recorded to the north within the wider survey area. The site provides suitable foraging habitat for badgers, and evidence of foraging badgers were recorded throughout the site.
 - A minimum of 10 bat species were recorded foraging and/or commuting within the survey area during the bat survey. Common pipistrelle was the most abundant species; several light-sensitive species were recorded including greater and lesser horseshoe, Myotis species, long-eared species, and barbastelle bat. Greater horseshoe bat activity within the site was moderate. The highest levels of bat activity were recorded along the hedgerow that runs through the centre of the site from north to south. No bat roosts were identified.
 - No signs of otter were recorded during the survey of the ditches within the site.
 - No signs of water vole were recorded during the survey of the ditches within the site.

- The site provided suitable habitat for hedgehog and water shrew, which may occasionally occur within the site.
- 6.7 Site clearance would result in the loss of amenity, improved and poor semi-improved grassland and approximately 520m of species-poor/defunct hedgerow. However, new landscape proposals would mitigate habitat loss as new habitats established. Site clearance would also result in loss available habitat for protected and notable species during construction. However, the Appellant proposes measures to avoid, mitigate and compensate negative effects and provide ecological enhancement. The Appellant agrees with the Council that construction impacts can be mitigated by a construction environmental management plan, and that replacement planting can deliver biodiversity net gain.
- 6.8 The potential impacts of the appeal proposals have been assessed against the existing available surveys submitted with the appeal application which remain valid. However, further update surveys are being undertaken and will be provided in evidence.
- 6.9 Based on comments received from Natural England during the appeal application process the Council suggest that artificial lighting from the development during construction and the operation of the development adjacent, has a clear potential to unacceptably harm bat feeding and foraging routes. Whilst a Lighting Impact Assessment was submitted to the Council it is suggested that this does not show the full extent of the light spill.
- 6.10 The Appellant considers that as the layout is submitted in outline and layout is reserved for future consideration a suitably worded condition could address the concerns relating to lighting. However, to assist the inspector a further lighting assessment will be provided in evidence to demonstrate that the proposals would not result in adverse impact on the bat species that use the site and there would be no likely significant adverse effect on the integrity of the North Somerset and Mendip Bats SAC. If as a result of this assessment the illustrative layout requires amendment this will also be provided in evidence.

Third Parties

6.11 The Appellants' evidence will address objections raised by third party representatives where they differ from the issues identified by the Council.

The Overall Planning Balance

- 6.12 The Council is unable to demonstrate a 5YHLS. For the purpose of this appeal the tilted balance set out at paragraph 11d applies. The Appellant will demonstrate that there are no adverse impacts which significantly and demonstrably outweigh the benefits. Nor do the protective policies in the NPPF provide a "clear reason" for refusing planning permission within the meaning of paragraph 11d(i). As such planning permission should be granted.
- 6.13 Even if paragraph 11d did not apply, which it does, the principle of development should still be accepted as the appeal proposal represents sustainable development and would provide much needed housing in North Somerset.

7. PLANNING CONTROLS

- 7.1 The Appellant accepts that if the Inspector is minded to grant planning permission, planning controls in the form of planning conditions may be required.
- 7.2 The Appellant will seek to agree these in advance in a Statement of Common Ground with the Council.
- 7.3 Whilst not included as a reason for refusal, the Appellant does not object or dispute the need to secure planning obligations where it is demonstrated that they meet the statutory tests.
- 7.4 The Appellant anticipates that the following obligations will be provided:
 - 30% of the dwellings to be as 'affordable housing'
 - Financial contribution of £122,500 towards employment support for those in the local labour market
 - Construction Phase 'Local Labour Agreement and Action Plan' bound by the principles of the 'Construction Training Industry Board Client Based Approach'.
 - £120 per dwelling towards sustainable Travel
 - The cost of installing and maintain ten fire hydrants
 - On site Green Infrastructure including Neighbourhood Open Space; Woodland; a Conservation Site; green buffer zones; an equipped children's/toddler play area, and maintenance sums, unless these are paid for by a private management company
- 7.5 The Appellant will seek to enter into such an agreement with the Council, or in the alternative will provide a Unilateral Undertaking under S106 of the Act. The Section 106 Agreement will be prepared by the Appellant who will attempt to agree the content and wording prior to the inquiry.

8. CONCLUSION

- 8.1 Section 38(6) of the 2004 Planning & Compulsory Purchase Act requires that the determination of any planning application must be in accordance with the development plan unless material considerations indicate otherwise.
- 8.2 The proposed development complies with the key tenets of Government policy and guidance as set out by the NPPF. The development is by definition sustainable – meeting the economic, social, and environmental criteria defined within the NPPF. The appeal proposal also accords with relevant development plan policy and other relevant guidance. The proposed development will create much needed market and affordable houses, and the important socio-economic benefits of the proposal.
- 8.3 The Council is unable to demonstrate a 5YHLS and as a result paragraph 11d of the Framework currently applies. In refusing the application the Council has failed to have due regard to key aspects and objectives of Government policy. The benefits individually achieve significant weight, and cumulatively they achieve compelling weight. The planning balance is strongly in favour of granting consent as there are no adverse impacts which would significantly and demonstrably outweigh the benefits. Even if the tilted balance were not to apply, a straightforward flat balance applying s.38(6) of the 2004 Act would lead to the same overall conclusion.
- 8.4 The Appellant will contend there are no other issues that have been raised by third parties that would override this conclusion and accordingly, subject to any necessary planning conditions and planning obligations secured via a Section 106 agreement, the Appellant will conclude that the appeal should be allowed.