

Town and Country Planning Act 1990

Proof of Evidence

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On behalf of Mead Realisations Ltd

**Land at Lynchmead Farm, Ebdon Road,
Weston-super-Mare**

PINS Ref: APP/D0121/W/22/3313624

LPA Ref: 20/P/1579/OUT

Our Ref: PR.41

Date

25th April 2023

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1 INTRODUCTION

- 1.1 I am Ian Jewson, a Chartered Town Planner and Member of the Royal Town Planning Institute (RTPI). I hold an Honours Degree and Diploma in Town and Country Planning.
- 1.2 Having practiced as a Town Planner since 1997, I formed Ian Jewson Planning Ltd (IJP) in September 2009 which was subsequently acquired by Walsingham Planning in March 2016. I was a Director at Walsingham Planning, and ran the Bristol office, until December 2021. I am now a Director of Oneleven Property Ltd providing planning advice throughout the United Kingdom on planning matters, specialising in the field of residential and commercial development.
- 1.3 I have a wide range of experience as a private planning practitioner working both as a consultant to the development industry and as part of plc and private development companies. I am familiar with and have extensive knowledge of North Somerset having been involved with numerous applications in the area and participated in various local plan consultations and examinations. I have also taken part in agents meetings organised by North Somerset Council (the Council) including a peer review of North Somerset Council's planning service which was overseen by the Planning Advisory Service.
- 1.4 I have been involved in the appeal proposal since the outset and am familiar with the site and surrounding area.
- 1.5 The evidence which I have prepared and provide for this appeal reference APP/D0121/W/22/3313624 is true and has been prepared and is given in accordance with the guidance of my professional institute and I confirm that the opinions expressed are my true and professional opinions.

2 SCOPE OF EVIDENCE

- 2.1 I am instructed to provide evidence in relation to this appeal made under s.78 of the Town and Country Planning Act 1990 by Mead Realisations Ltd (The Appellant) against the refusal of planning permission by North Somerset Council (The Council) to determine planning application ref: 20/P/1579/OUT (The Appeal Proposal) for the reasons set out in the decision notice dated 8th July 2022.
- 2.2 My evidence should be read in conjunction with the evidence of my colleagues Mr Alban Henderson of Walsingham Planning (Flood Risk Sequential Test), Mr Nick Bosanko of SLR (Drainage and Flood Risk) and Dr Matthew Cowley of EAD (Ecology) as well as the Statement of Common Ground (SOCG) agreed with the Council in March 2023.
- 2.3 My evidence considers the planning context and background to the appeal, the planning merits of the Appeal Proposal, relevant planning policy and the overall planning balance. My evidence also deals with the application of the exception test following the sequential test evidence provided by Mr Henderson. Overall, I explain why the appeal should be allowed and outline permission granted.
- 2.4 The Appellant intends to enter into a s106 legal agreement to secure the delivery of planning obligations. A draft version of the agreement was sent to the Council on the 30th March 2023 and the Appellant will endeavour to agree a final version prior to the inquiry.
- 2.5 My evidence comprises this main Proof of Evidence, Appendices and a Summary Proof of Evidence. Where necessary I refer to the Core Documents. I refer to these in my evidence with the prefix 'CD' following by the corresponding document number (i.e **CD1.1**). Having regard to these matters my evidence is structured as follows:

Section 3: Site and Surrounding Area

- 2.6 I describe the appeal site and surrounding area at Section 3.

Section 4: Appeal Proposal

- 2.7 I describe the Appeal Proposal and events that led to the appeal In Section 4.

Section 5: Relevant Planning Policy and Guidance

2.8 In section 5 I refer to relevant national and local planning policies and other relevant matters.

Section 6: Housing Need

2.9 In this section I provide information to explain the current and historic housing need position in North Somerset.

Section 7: Sustainable Development

2.10 In this section I demonstrate how the Appeal Proposal addresses the three dimensions of sustainable development.

Section 8: The Approach to the Sequential Test and the Exception Test

2.11 In this section I consider planning policy and guidance relevant to the sequential test and also deal with the exception test.

Section 9: The Council's Reasons for Refusal and Matters Raised by Third Parties

2.12 In this section I consider each of the Council's reasons for refusal and the concerns raised by third parties.

Section 10: Overall Planning Balance

2.13 In section 10 I set out the overall planning balance which should be reached in relation to the appeal.

Section 11: Conclusion

2.14 I provide my overall conclusion at section 11 noting that planning permission should be granted as soon as possible.

3 SITE AND SURROUNDING AREA

The Site

- 3.1 The appeal site comprises approximately 4.9 hectares of undeveloped land to the North-East of Weston-super-Mare, in an area known as Ebdon. The site was most recently in agricultural use as part of the Mead family's wider land ownership. A site location plan and context plan are provided at **Appendix 1**.
- 3.2 The Appeal Site comprises two separate parcels separate by a number of existing residential properties. The site boundary is lined with hedgerow and trees to the North, East and West which leads to agricultural land. Ebdon Road is located on the Southern Boundary of the site. The site is predominantly flat with minor gradients falling from the south of the site to the north. A number of rhynes are present within the site which link to an extensive system of surface water drainage beyond.
- 3.3 Vehicular and pedestrian access points to the site are located off Ebdon Road via existing field gates.
- 3.4 Existing residential development, which was constructed in the 1990's, lies directly to the South beyond Ebdon Road. A small commercial estate lies to the South-East of the site. Weston-super-Mare Crematorium and Cemetery is located further to the west.

Surrounding Area

- 3.5 As I set out at Section 5 of my evidence Weston-super-Mare is the largest settlement and the main focus for growth, including residential development in North Somerset. The appeal site is also located less than 2.5km from Local Centres, including Ebdon, Norton, Worle and Milton. The site is also located approximately 5km from the town centre of Weston-Super-Mare.
- 3.6 As set out in the Transport Assessment (**CD1.11**) the site is within walking distance of local services and amenities, including shops, schools, community facilities, places of worship and sports and health facilities. The approximate distance to each is listed below:

- Castle Batch Community Primary School – 0.4 miles
- Priory Community School – 0.95 miles
- St Mark's VA Ecumenical Church of England/ Methodist Primary School – 0.5 miles

- Crematorium – 0.3 miles
- Playing Fields – 0.6 miles
- Community Centre – 0.6 miles
- Allotment Gardens – 0.7 miles
- Tesco Express – 0.5 miles
- Sainsbury – 1.1 miles
- Worle Baptist Church – 0.5 miles
- St Lawrence’s Church – 0.8 miles
- The Ebdon Arms – 0.3 miles
- Riverbank Medical Centre (GP Surgery) – 0.7 miles 2.2.4

3.7 The site is located close to bus stops on Besket Road, St Marks Road and Ebdon Road. Worle train station is approximately 2.1km away and accommodates all major Great Western Railway routes. The station is directly accessible by bus.

3.8 According to the Environment Agency flood map the site is located within Flood Zone 3, as is the case for large parts of Weston-super-Mare. There are no Sites of Special Scientific Interest (SSSI’s) or European Wildlife designations on or around the site. The site does not lie within an Area of Outstanding Natural Beauty or area of heritage value such as a Conservation Area.

3.9 The appeal site is c. 5.7km from the North Somerset and Mendip Bats Special Area of Conservation (SAC) but lies outside of the Consultation Zones around the SAC bat roosts. The Consultation Zones are identified in the adopted North Somerset and Mendip Bats SAC Guidance on Development (2017); they represent areas outside of the SAC considered to be important for the bats that roost within the SAC. Zone A is the most sensitive zone and Zone C the least, the proposed development site is c. 1.6km from the nearest section of Zone C. The evidence of Dr Cowley provides further background in relation to biodiversity interests at the appeal site.

3.10 In general, North Somerset is the subject of various environmental constraints and land use designations as is illustrated by the extract plan attached at **Appendix 2** of my evidence.

Planning History

- 3.11 According to the Council's website no planning applications had been submitted on the site in recent years prior to the appeal application.
- 3.12 The site is referred to in the Council's Strategic Housing Land Availability Appraisal (SHLAA) as part of a larger land area referred to as Land north of Wick St Lawrence (site reference HE20493). The Second Interim Report dated April 2021 (**CD8.26**) did not discount the site. Paragraph 1.3 of the document confirms that:

'The SHLAA was prepared to support the preparation of the North Somerset Local Plan 2038. An Interim Report was published in November 2020 alongside the North Somerset Local Plan 2038 'Choices for the Future' Consultation1. This Second Interim Report updates and supersedes that initial SHLAA document by including further sites, and additional analysis of sites against constraints'.

Screening Opinion

- 3.13 The proposed development does not fall within Schedule 1 or 2 of the Town and Country Planning (Environmental Impact Assessment) Regulations 2017 and is not within a 'sensitive area' as defined in the Regulations. A formal EIA screening opinion is not, therefore, required.

4 THE APPEAL PROPOSAL

Pre-application enquiry

- 4.1 A formal pre-application advice request was submitted to the Council on behalf of the Appellant on 2nd November 2017. The red line for the pre-application submission also included land further north. A formal advice letter was initially received from the LPA on 23rd January 2018 (LPA Ref: 17/P/5072/PRE). The advice letter recommended that planning permission would be refused as it was contrary to Policy CS28 of the Core Strategy. A meeting was subsequently held with planning officers from North Somerset Council's Planning Department on 21st February 2018. Following the meeting, an updated formal advice letter was received from the Council on 23rd March 2018 which corrected the advice to confirm that the proposal was compliant with Policy CS28. A copy of both responses are provided in the Core Documents **CD 3.3 and CD3.4**.
- 4.2 The Council's formal pre-application advice provided guidance on the suitability of the site for residential development including likely key issues to consider. Importantly no in principle objection was received to the development of the site for residential purposes. Although the Core Strategy for the area had only been fully adopted a year before, the Council conceded that it could not demonstrate a 5-year housing land supply (5YHLS). The Council's pre-application advice highlighted the need for a sequential test *"to demonstrate that there are no reasonably available alternative sites within the area of flood risk (in this case, Weston-super-Mare) which can accommodate the proposal."*¹

Public Consultation

- 4.3 Prior to submission of the planning application a consultation leaflet was delivered by post to approximately 630 households and businesses in the local area. The leaflet was also sent to relevant Town/Parish Councils and local ward members for comment prior to distributing to the local community. The outcome of this consultation was summarised in a Statement of Community Involvement which was submitted to the Council as part of the original appeal application (**CD1.6**).

¹ North Somerset Council pre-application advice report V2 23/1/18 (**CD3.4**)

The Appeal Proposal

- 4.4 The appeal proposal seeks outline planning permission for residential development comprising up to 75 dwellings and associated infrastructure. All matters are reserved for future consideration except for access, details of which form part of the appeal application.
- 4.5 The appeal proposal has been designed to accommodate the following elements:
- Up to 75 no. new homes (of which 30% will be affordable in accordance with Policy CS16 of the adopted North Somerset Core Strategy);
 - A range of dwelling sizes, types and tenures with suitably sized gardens and associated parking;
 - New community green space;
 - Managed areas of public open space (POS);
 - Strategic Landscaping, SuDs and other associated infrastructure.
- 4.6 The proposal includes two new accesses into the site directly off Ebdon Road, one of which is a new arm of an existing roundabout and the other is a new T junction.
- 4.7 While the internal road layout is reserved for future determination the Illustrative Masterplan demonstrates how internal access to individual plots could be achieved. Pedestrian/cycle access will also be provided from Ebdon Road.
- 4.8 The Illustrative Masterplan includes area of green space, proposed planting, enhanced boundaries, and potential areas for SuDs. The illustrative layout shows how it is possible to retain the majority of existing trees on the site and includes dark bat corridors.

Validation of the Appeal Application and Post submission discussions

- 4.9 The appeal application was validated by the Council on the 9th July 2020 under LPA reference 20/P/1579/OUT with the following description of development:

'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'

- 4.10 The appeal application was accompanied by a suite of plans and supporting documents which are included as Core Documents at Sections **CD1 and CD2**.
- 4.11 In response to consultee responses and issues raised by Mr Underhay, the Council's planning case officer, the Appellant provided further information to support the appeal proposal. As my colleague Mr Henderson explains in his evidence and as set out in the Appellant's Sequential Test Statement of Case this included further detailed work in relation to the sequential test and exception test. At an early stage of the process Mr Underhay, on behalf of the Council argued that the landscape impact of the appeal proposal represented an in-principle objection. However, the Council subsequently adjusted its position on this.
- 4.12 The Appellant agreed to extend the time period for determination on a number of occasions to allow the Council time to consider the proposals, the latest extension date being until the 7th June 2022.
- 4.13 Two years after the application was validated the Council refused permission under delegated powers for the reasons set out in the decision notice dated 8th July 2022. The planning case officer's delegated report, which sets out the Council's rationale for refusing permission, is provided as **CD3.1**.

Illustrative Layout Revisions

- 4.15 As part of the process of agreeing common ground with the LPA a further lighting assessment was submitted to the Council on the 22nd March 2023 (**CD8.2**). An amended illustrative layout and amended house types were provided at Appendices F and G of the lighting assessment. A coloured version of this revised layout is provided as **CD8.3**. During the process of preparing the s106 legal agreement a small area of land was identified to be outside the appellant's control. A further change to the illustrative layout was made to demonstrate that the proposed development could be delivered without the inclusion of the third-party land. An amended site location plan and coloured version of the further revised layout are provided as **CD8.27 and CD8.28**. In both cases the changes were of a minor nature and do not alter the description or character of the appeal proposal.

5 RELEVANT PLANNING POLICY AND GUIDANCE

National Planning Policy and Guidance

National Planning Policy Framework (NPPF July 2021)

- 5.1 The Appeal Proposal was submitted under the February 2019 version of the Framework. However, this has been replaced by the 2021 version which is now relevant to this appeal.
- 5.2 The Framework explains that *“The purpose of the planning system is to contribute to the achievement of sustainable development.”* Paragraph 8 of the Framework confirms that the planning system has three overarching objectives, economic, social and environmental which contribute to achieving sustainable development. I consider how the appeal proposal addresses these three objectives at Section 7.
- 5.3 Paragraph 11 identifies that a presumption in favour of sustainable development is at the heart of the Framework. Paragraph 11d of the Framework states that:

“where there are no relevant development plan policies, or the policies which are most important for determining the application are out-of-date⁸, granting permission unless:

- i. the application of policies in this Framework that protect areas or assets of particular importance provides a clear reason for refusing the development proposed⁷; or*
- ii. any adverse impacts of doing so would significantly and demonstrably outweigh the benefits, when assessed against the policies in this Framework taken as a whole.”*

- 5.5 As the appeal site lies within flood zone 3, footnote 7, which refers to areas at risk of flooding, is relevant. However, for the reasons set out in Mr Bosanko’s Flood Risk and Surface water Drainage evidence this does not provide a clear reason for refusal for the purpose of this appeal. If the appeal inspector agrees with this, the tilted balance is struck in favour of granting permission. I deal with the planning balance at Section 10 of my evidence.
- 5.6 Paragraph 33 of the Framework confirms the need to review policies in Local Plans at least once every 5 years. It also states that reviews should be completed no later than 5 years from the adoption date of the plan. As I explain later in this section the adopted local plan for

North Somerset was adopted in 2017 and a review has still not been completed. Paragraph 33 goes on to state that:

Relevant strategic policies will need updating at least once every five years if their applicable local housing need figure has changed significantly; and they are likely to require earlier review if local housing need is expected to change significantly in the near future.

- 5.7 Paragraph 48 confirms that local planning authorities may give weight to relevant policies in emerging plans depending on the stage of preparation, number of unresolved objections and consistency with the Framework.
- 5.8 Paragraph 60 of the Framework identifies the Government’s objective of “significantly boosting the supply of homes.” At Section 6 of my evidence, I explain that the Council has a very poor record of delivering housing.
- 5.9 Paragraph 74 requires Local Planning Authorities to “*identify and update annually a supply of specific deliverable sites sufficient to provide a minimum of five years’ worth of housing against their housing requirement....*”. The supply of specific deliverable sites should include a buffer which in the case of North Somerset is now 5%. As I set out at Section 6 the Council agree that for the purpose of this appeal a 3.5 year supply applies.
- 5.10 Paragraph 76 advises that where the Housing Delivery Test indicates that delivery has fallen below 95% of the local planning authority’s housing requirement over the previous three years, the authority should prepare an action plan to assess the causes of under-delivery and identify actions to increase delivery in future years. As I set out at Section 6 the Council has been required to prepare an action plan for every year since 2019.
- 5.11 Paragraph 81 identifies that the Government places significant weight on the need to support economic growth. I set out the economic benefits of the appeal proposal at Section 7 and consider how this should be assessed in the overall planning balance at Section 10 of my evidence.
- 5.12 Paragraphs 119 confirms that “*Planning Policies and decisions should promote an effective use*

of land in meeting the need for homes and other uses...”

- 5.13 Paragraph 153 confirms that *“Plans should take a proactive approach to mitigating and adapting to climate change, taking into account the long-term implications for flood risk...”* Mr Bosanko’s evidence deals specifically with the approach to flood risk.
- 5.14 Paragraph 159 onwards deals with the approach to the sequential test and exception test. I consider this in detail at Section 8 of my evidence.
- 5.15 Paragraph 174 confirms that *“Planning policies and decisions should contribute to and enhance the natural and local environment” by protecting and enhancing valued landscapes, sites of biodiversity or geological value and soils...”*. As Dr Cowley sets out in his evidence the appeal site is not located within any area subject to a formal ecological designation, such as a Special Area of Conservation (SAC). The evidence of Dr Cowley explains that the appeal proposal will not result in harm to sites of biodiversity value.
- 5.16 Paragraph 180 sets out the principles which local planning authorities should apply to biodiversity interests when determining planning applications. Mr Cowley deals specifically with these matters in his evidence.

National Planning Policy Framework: draft text for consultation

- 5.17 The Department for Levelling Up, Housing and Communities held a consultation on reforms to national planning policy between 22 December 2022 and 2 March 2023. The consultation sought views on proposals to develop new and revise current national planning policy. In the event that a final revised version is published prior to the inquiry I will address any relevant matters in a separate document.

National Planning Practice Guidance (NPPG)

- 5.18 The NPPG website went live on 6th March 2014 and is of significant weight and applies to the appeal application. I have had regard to the National Planning Practice Guidance (PPG) in the preparation of my evidence.
- 5.19 The PPG was updated on 25th August 2022 to provide, in part, clearer requirements for the sequential test and exception test. I consider this guidance in detail at Section 8.

Development Plan

5.20 Section 38(6) of the Town and Country Planning and Compulsory Purchase Act 2004 requires local planning authorities to determine planning applications in accordance with the Development Plan unless material planning considerations indicate otherwise. For the purposes of this appeal the Development Plan comprises:

- North Somerset Council Core Strategy (Re adopted January 2017)
- Site and Policies Plan Part 1: Development Management Policies (Adopted July 2016)
- Site and Policies Plan Part 2: Site Allocations Plan (Adopted April 2018)

North Somerset Council Core Strategy 2017 (CD4.1)

5.21 The North Somerset Council Core Strategy, which covers the period up to 2026, was adopted in April 2012 before the publication of the NPPF (2012). However, following a successful legal challenge, Policy CS13 (Scale of New Housing) was found to be unlawful on grounds that the Inspector, who examined the Core Strategy, had failed to give adequate and intelligible reasons for his conclusion that the housing requirement of 14,000 dwellings made sufficient allowance for latent demand (i.e; demand unrelated to the creation of new jobs).

5.22 The policy was therefore remitted back to the Planning Inspectorate for re-examination in March 2013 along with eight other policies. The nine remitted policies were:

- CS6: Green Belt
- CS13: Scale of New Housing
- CS14: Distribution of New Housing
- CS19: Strategic Gaps
- CS28: Weston-super-Mare
- CS30: Weston Villages
- CS31: Clevedon, Nailsea and Portishead
- CS32: Service Villages
- CS33: Smaller Settlements and Countryside

5.23 The re-examination of the remitted policies was undertaken in two stages, commencing with

an assessment of the overall housing requirement (Policy CS13), followed by a consideration of whether this would have any implications for the other remitted policies. Following the first stage of the Examination, the Inspector recommended that Policy CS13 in the publication version of the Core Strategy be deleted and replaced by an increased overall minimum housing requirement of 20,985 dwellings. He also recommended that Policy CS13 should be reviewed by 2018.

5.24 At paragraph 75 of his report (**CD8.64**) the inspector confirmed that:

“The development of Policy CS13 does not comply with national guidance in that it is not based on a full objective assessment of housing need in the whole of the recognised HMA. However, I am satisfied that, provided that the housing requirement set out in the MD6/6(a) version of the Policy is sufficient, this difficulty can be overcome by embedding a commitment to an early review of the requirement into the Plan. The MD6/6(a) version does this..”

5.25 Finally, the inspector concluded at Paragraph 77 that:

“Given that the Council has given a firm commitment to a review of Policy CS13 before the end of 2018, I am satisfied that, if after pragmatic and realistic consideration in the light of the forthcoming joint SHMA, the housing requirement had been set too low, there would be a ready opportunity for the Council to promptly address any real backlog in housing provision which had built up.”

5.26 Following, the second stage of the Examination in relation to the remaining remitted policies the Inspector found there to be a requirement for greater policy flexibility to allow for additional, unallocated sites to come forward through the development management process outside settlement boundaries. This flexibility was enshrined within Policies CS28, CS31 and CS32 following re-adoption of the Core Strategy in January 2017.

5.27 During the re-examination of the Core Strategy Policies CS28, CS31 and CS32 were amended to provide flexibility and help boost the supply of housing by allowing development outside but adjacent to the settlement boundaries of Weston-super-Mare, Clevedon, Nailsea,

Portishead and the Service Villages. However, I am aware of very few sites which have been approved by the Council under these circumstances.

- 5.40 To meet housing needs and focus new development at Weston-super-Mare the Core Strategy confirms that over the plan period 12,800 net additional dwellings are to be delivered at Weston-super-Mare. This included a minimum of 6,500 net additional dwellings from new strategic development at the Weston Villages. The Weston Villages lie within flood zone 3.
- 5.28 The following policies contained within the adopted Core Strategy are of particular relevance to the appeal.

Policy CS3: Environmental Impacts and Flood Risk Assessment

- 5.29 The Council refer to Policy CS3 in the first and second reason for refusal. I deal with Policy CS3 in detail at Section 8 of my evidence.

Policy CS4: Nature Conservation

- 5.30 The Council refers to Policy CS4 in the third reason for refusal. Policies CS4 sets out the requirement to protect and enhance biodiversity although more detailed policy is provided within Policy DM8 of the Sites and Policies Development Management Document. Dr Cowley's evidence explains in detail how the requirements of this policy are met.

Policy CS13: Scale of New Housing

- 5.31 Policy CS13: Scale of New Housing confirms that the housing requirement is "*a minimum of 20,985 dwellings within North Somerset 2006–2026. The appropriate level of new homes will be reviewed by 2018.*" (**my emphasis**)

Policy CS14: Distribution of New Housing

- 5.32 Based on the minimum housing requirement set out in Policy CS13 of the Core Strategy Policy CS14 provides for a broad distribution of housing based on an identified settlement hierarchy. Policy CS14 confirms that "*Weston-super-Mare will be the focus for new residential development within North Somerset,...*". To meet objectives 1 and 5 of the Core Strategy CS14 state that:

"The broad distribution of new dwellings will be a minimum of:

Area	Net additional dwellings 2006–2026
Weston urban area (excluding Weston Villages)	6,300
Weston Villages	6,500
Clevedon, Nailsea and Portishead	5,100
Service villages	2,100
Other settlements and countryside	985
Total	20,985 “

5.33 According to the Council’s evidence and monitoring data (CD8.29 – CD8.36) net completions at Weston-super-Mare from the start of the plan period until the end of the 2021/22 monitoring period were 5,891 dwellings. Based on the minimum annual requirement of 640 dwellings this is 4,349 dwellings short of the minimum expected level of delivery at Weston-super-Mare. I provide a breakdown of this below at Table 1 below:

Table 1: North Somerset net housing completions at Weston (2006/07 to 2021/22)

Monitoring Period	Weston urban area completions	Weston Villages completions	Total completions	Core Strategy Annual requirement	Shortfall
2006/07 to 2014/15	2,758	372	3,130	5,760	-2,630
2015/16	137	195	332	640	-308
2016/17	201	268	469	640	-171
2017/18	194	247	441	640	-199
2018/19	91	235	326	640	-314
2019/20	116	95	211	640	-429
2020/21	168	209	377	640	-263
2021/22	263	342	605	640	-35
Total	3,928	1,963	5,891	10,240	-4349

Policy CS28: Weston-super-Mare

- 5.34 Policy CS28 confirms that as the primary focus for development “A minimum of 12,800 dwellings will be delivered over the plan period at Weston super Mare and the sustainable new communities,...” Policy CS28 also states that “Housing sites outside the settlement boundary in excess of about 75 dwellings must be brought forward as allocations through Local Plans or Neighbourhood Development Plans.” The consequence of this is that housing sites outside the settlement boundary of about 75 dwellings or less are acceptable in principle.
- 5.35 As I have set out above the delivery of housing at Weston-super-Mare has fallen far short of the minimum level anticipated by Policies CS14 and CS28.
- 5.36 Based on the proposed scale of development (up to 75 dwellings) and the appeal site’s location adjacent to the settlement boundary the appeal proposal wholly accords with policy CS28 of the adopted Core Strategy. The planning case officer’s delegated report (**CD3.1**) confirms at page 7 that the number of dwellings proposed at the appeal site complies with Policy CS28. No other objection to the appeal proposal in relation to the policy CS28 are raised by the Council. It is also important to note that the Council does not allege any other conflict with Policy CS28 in either the officer’s report, decision notice or Statement of Case.

Site and Policies Plan Part 1: Development Management Policies 2016 (CD4.2)

- 5.37 The Site and Policies Plan Part 1: Development Management Policies document was adopted in July 2016 and replaced a number of the development management policies in the North Somerset Replacement Local Plan (Adopted March 2007).
- 5.38 Policy DM1 relates to flooding and drainage. It is linked to Policy CS3 of the adopted Core Strategy and provides advice on more detailed development aspects.
- 5.39 Policy DM8 of the Sites and Policies Plan Part 1 is referred to in the Council’s third reason for refusal. It is a general development management policy which guides how development proposals should be assessed. Policy DM8 refers to ecological mitigation measures provided within development. The evidence of Mr Cowley explains how the requirements of this policy have been met.

Site and Policies Plan Part 2: Site Allocations Plan 2018 (CDXX)

5.40 The Site and Policies Plan Part 2: Site Allocations Plan (SAP) was adopted in April 2018 and replaced development management policies in the North Somerset Replacement Local Plan. The SAP allocates specific sites to meet the Core Strategy Housing Requirement.

5.41 Paragraph 4.13 of the plan states:

“The settlement boundaries have been reviewed as part of the Site Allocations plan and remain largely fit for purpose. Whilst no justification for a comprehensive review has been identified, amendments have been made at those locations where settlement boundaries have been extended to encompass recent development. Settlement boundaries have not been amended to take into account proposed new housing allocations; the proposed Core Strategy approach to development adjacent to settlement boundaries will relate to the boundaries as defined in this document and not taking account of proposed allocations”.

5.42 The Inspector’s Report for the examination of the SAP (**CD8.37**) stated at paragraph 20 that:

“In my examination of the SAP, I take into account the process of the review which is currently being undertaken. It is most likely that the CS and SAP will be largely superseded within the first two to three years after adoption of the plan. In the circumstances where the SAP would have a very short lifespan following adoption, I take into account the potential for proposals in the SAP to be the subject of an early review.”

5.43 The Inspector went on to state that:

“104. Although it is stated in the SAM, para 4.12, that the settlement boundaries have been reviewed as part of the SAP and remain fit for purpose, no evidence of the Council’s work has been submitted to the examination”.

5.44 Policy SA2 establishes the Settlement Boundaries for the various settlements within the District. The appeal site lies outside but adjacent to the settlement boundary of Weston-

super-Mare.

Supplementary Planning Guidance (SPGs) and Supplementary Planning Documents (SPDs)

North Somerset and Mendip Bats Special Areas of Conservation (SAC) Guidance on Development SPD 2018 (CD8.38)

- 5.45 This SPD contains guidance on development regarding impacts on the North Somerset and Mendip Bats Special Area of Conservation (SAC), and specifically the populations of greater and lesser horseshoe bats associated with the various components of this SAC. Dr Cowley addresses this guidance in his evidence.

Accessible Housing Needs Assessment Supplementary Planning Document (CD8.39)

- 5.46 The Accessible Housing Needs Assessment Supplementary Planning Document was adopted in April 2018. It advises that 17% of new dwellings should meet the Category Two housing standards contained in The Building Regulations 2010 Volume 1 M4(2) Category Two: Accessible and adaptable dwellings. Whilst the appeal proposal is submitted in outline with all matters reserved except for access it is proposed that the 17% requirement will be secured via a planning condition in the event that the appeal is allowed.

Affordable Housing Supplementary Planning Document (CD8.40)

- 5.47 The Affordable Housing Supplementary Planning Document was adopted in November 2013. It provides guidance on the affordable requirements for new development (e.g. thresholds, definitions etc.). The Appellant intends to secure delivery of the affordable housing via a s106 legal agreement.

Biodiversity and Trees Supplementary Planning Document (CD8.41)

- 5.48 The Biodiversity and Trees SPD was adopted in December 2005. It sets out how biodiversity issues should be considered in development proposals.

Development Contributions Supplementary Planning Document (CD8.42)

- 5.49 The Development Contributions Supplementary Planning Document was adopted in January 2016. It sets out NSC's approach to seeking planning obligations from new developments. It provides guidance on:

1. The type of planning obligations that may be sought.

2. The circumstances under which the various obligations will be sought (e.g. size of development).

5.50 The appellant intends to secure any necessary planning obligations via a s106 legal agreement.

Parking Standards Supplementary Planning Document (CD8.43)

5.51 The Parking Standards SPD was adopted in December 2021. Whilst the appeal proposal is submitted in outline with all matters reserved except for access the Appellant has agreed to the Council's request for a condition relating to parking provision which will ensure that the appeal proposal complies with this guidance.

Emerging Plans

5.52 In 2018 the Council commenced consultation on a new local plan (to 2036) in parallel with the West of England Joint Spatial Plan (JSP). The Local Plan Issues and Options document (September 2018) was based on the strategic context set out in the JSP. The four West of England Councils – Bath and North East Somerset, Bristol City, North Somerset, and South Gloucestershire committed to working together to produce the JSP which aimed to set out a prospectus for sustainable growth to help the Region meet its housing and transport needs for the next 20 years, to 2036.

5.53 However, on 11th September 2019 the Examining Inspectors issued a letter to the respective councils which detailed their concerns about the soundness of the JSP. On 7th January 2020 North Somerset Council formally withdrew from the JSP process and further consultation on the new local plan was halted.

North Somerset Local Plan 2038

5.54 The Council is now preparing a new Local Plan which will include strategic and non-strategic policies. A Pre-commencement consultation for the new Local Plan took place between 10th March 2020 until 22nd April 2020 and confirmed that adoption of the plan was anticipated by January 2023 (**CD8.44**). At that time the entire process up to adoption of the new plan was expected to take 2 years and 10 months (1 year and 5 months from the regulation 19 stage to adoption).

5.55 The Council then carried out a further consultation from 22nd July until the 2nd September 2020

to identify the “Challenges” facing the area in the future and identify what issues needed to be addressed in the Local Plan. The Council also carried out a “Choices for the Future” consultation between 2nd November 2020 and 14th December 2020 to identify a preferred strategy for the Local Plan.

5.56 The Choices consultation (**CD8.45**) identified a number of spatial strategies for future growth including:

- 1: Retain Green Belt
- 2: Urban Focus
- 3: Transport corridors
- 4: Greater Dispersal.

5.57 On 28 April 2021 the Council’s Executive Committee endorsed a preferred spatial strategy to provide the framework to progress the draft plan. According to the Council’s timetable the new local plan was expected to be adopted at the end of 2023. However, this timetable assumed a Regulation 18 consultation would be held in November 2021.

Preferred Options Local Plan (Regulation 18) Consultation (CD8.23)

5.58 As the consultation period for the draft Preferred Options Local Plan (March 2022) ended on 29 April 2022. The Council’s website states:

“The draft Preferred Options Local Plan is a full draft Plan. It is based on the previous response to consultation, evidence and latest government guidance, as well as the council’s commitment to climate change and environmental issues. It is our recommended way of best meeting the development needs for North Somerset up to 2038.”

5.59 The emerging Local Plan (2038) is only at the Preferred Options (Regulation 18) stage it therefore carries at best, no more than very limited weight.

Place Policy and Scrutiny Panel meeting on 7 October

5.60 At a Council meeting on 7 September, the Executive considered a report on the North Somerset Local Plan 2038 Draft Preferred Options consultation. The Executive resolved to:

1. refer the report to the Place Policy and Scrutiny Panel to seek further input, if possible by 30 September 2022
2. request that officers proceed to develop a revised Local Plan that recognises the constrained nature of North Somerset. To identify an appropriate scale and location of development to offer greater protection to the Green Belt and other sensitive sites. To seek legal advice including advice on implications for the Local Plan timetable and anticipated national reforms, further evidence gathering, potentially including further consultation, in order to prepare the strongest possible pre-submission draft plan
3. request a further report to inform Executive on the Policy and Scrutiny input and officers' advice and progress

- 5.61 The Place Policy and Scrutiny Panel held an informal meeting of the Panel on Friday 7 October at 10am in the New Council Chamber to consider the matter and specifically the issues arising from point 2. The note from that meeting is attached at **CD8.46**.
- 5.62 Following the government's announcement on 6 December 2022 regarding changes to the planning system the Council has decided to await clarity on the changes before finalising a revised version of the local plan. Consultation on the next stage of the revised local plan is, according to the Council, now not expected to take place before Summer 2023 with submission for examination in Autumn 2023. The Council's website confirms that "*A revised Local Development Scheme will be published in due course with a revised timetable.*"
- 5.63 The SOCG (March 2022) for this appeal confirms that "The most recent Local Development Scheme (dated November 2022) anticipates adoption in March 2024." The November 2022 LDS (**CD8.47**) now appears on the Council's website and confirms that based on adoption in March 2024 the entire local plan process will have taken 4 years to complete (1 year 1 month from the regulation 19 stage to adoption). However, considering the Council's past record as well as the complex issues relevant to North Somerset and the level of responses received in relation to previous stages of the process, I consider it extremely unlikely that this adoption date will be achieved.

Development and Flood Risk Issues Advice Note 2019 (CD8.4)

- 5.64 North Somerset Council published a 'Development Management Advice Note' in November

2019 about development and flood risk issues. This articulates government guidance post-dating the 2017 Core Strategy. I deal with the Advice Note in detail at Section 8 of my evidence.

6 HOUSING NEED

- 6.1 As set out in the SOCG (March 2023) it is agreed that for the purpose of this appeal the Council is unable to demonstrate a five-year housing land supply (5YHLS) as required by paragraph 74 of the Framework. This is based on the tested position set out in the Farleigh Farm, Backwell appeal (**CD9.1**) of 22nd June 2022 (Appeal ref APP/D0121/W/21/3285624) standing at 3.5 years. As the inspector for that appeal confirms at paragraph 90 of his decision, the Council accept that this shortfall is very significant². It has not been possible to provide a more up to date figure as the Council has not updated the housing trajectory since April 2021.
- 6.2 The agreed 5YHLS has direct relevance to this appeal and is a significant material consideration. However, both the national context and the Council's record of delivering housing also provide important background to the appeal.

National Context

- 6.3 The Government White Paper Fixing our broken housing market (February 2017) states that:

“The housing market in this country is broken, and the cause is very simple: for too long, we haven't built enough homes. Since the 1970s, there have been on average 160,000 new homes each year in England. 1 The consensus is that we need from 225,000 to 275,000 or more homes per year to keep up with population growth and start to tackle years of under-supply”

- 6.4 The implications of this housing need should not be underestimated. It is widely acknowledged that the Country is facing a severe housing crisis. In short, the Government's objective of “boost significantly the supply of housing” is an unequivocal message which was underpinned by the Lyons Housing Review 2014 which confirmed at page 6 (see **Appendix 3**) that:

² Paragraph 5.5, Statement of Common Ground March 2023 (CD8.1)

'For decades we have failed to build enough homes to meet demand. We need to build at least 243,000 homes a year to keep up with the number of new households being formed, but last year we only built 109,000 homes. Indeed, we have only managed an average of 137,000 homes a year over the last ten years. Without a change of course, it is predicted that the country will be short of up to two million homes by 2020.

The consequences of this are widely felt. House prices and rents are going up faster than earnings because demand massively outstrips supply. The average home now costs 8 times the average wage. The 2011 Census shows that there were one million more children living in the private rented sector than ten years previously. Millions of working people are unable to afford the homes they want, and their children and grandchildren face the fear of never being able to afford the homes they need.

Our failure to build enough homes also causes volatility in the national economy and damages the prospects for growth by reducing labour mobility and undermining the ability of our towns and cities to attract new businesses.'

6.5 It has been clear for some time that housing supply is not keeping up with demand. Reasons for rising demand include improved life expectancy rates and a growing number of one-person households. The need to increase the supply of housing and tackle affordability issues is a key housing policy issue for central Government.

6.6 As long ago as the September 2012 Housing for Growth Ministerial Statement made it clear that the need for new homes is acute, and supply remains constrained.

The Situation in North Somerset

6.7 Set against the national background it is important to understand the housing situation in North Somerset.

Housing Strategy

6.8 According to North Somerset's previous Housing Strategy (**CD8.49**) the average price of a property in August 2015 was £197,528 or almost seven times average full time earnings. The situation has become even worse since then.

6.9 According to page 5 of the Council's Housing Strategy 2022-2027 (CD8.50):

“Meeting housing need within North Somerset is made more difficult by spiralling housing and rent costs. This means that ownership is out of reach for many, and private renting is also increasingly unaffordable, particularly for those on low incomes and those in receipt of housing benefit. Waiting times for social housing are long, excluding this tenure as an option for most residents. It is essential that there is an increased delivery of affordable and sustainable homes to tackle these issues, and that existing homes are of a high quality and put to the best use”.

6.10 At page 17 the strategy identifies the adoption of the local plan by December 2023 as a priority. As I have explained at Section 5 the development plan is over 5 years old and the preparation of a new local plan has continually been delayed.

6.11 Appendix 1 of the Council's Housing Strategy provides further evidence of the serious housing shortage in North Somerset:

“House prices in North Somerset rose by 10% between March 2020 and March 2021, leaving the average house price (£291,790) at roughly 10x average annual earnings for local full-time workers (£29,477). This gap between house prices and income is higher than the national average, where house prices are 8.6x earnings.

As of February 2022, there were 2,561 applicants on the council's HomeChoice social housing register (with 83% of these applying for 1 and 2-bed properties). Yet only around 500-600 social houses are let out on average each year. This means that for every 4 people applying for social housing, only 1 property is available.”

Authority Monitoring Report (AMR)

6.12 The Council's latest AMR (CD8.36) was published in December 2022. At page 36 the report provides an update on housing and notes that *“During the 2021/22 monitoring year 1,017 net dwelling completions were recorded. During the plan period so far (2006 – 2022) a total*

of 13,290 homes have been delivered.” This represents a shortfall in the annualised Core Strategy requirement of 3,494 dwellings. Table 2 below provides further details:

Table 2: Completions (2006/07 to 2020/21)

Year	Basic Annual Requirement (no buffer)	Completions	Shortfall
2006/07	1049	1132	83
2007/08	1049	1474	425
2008/09	1049	935	-114
2009/10	1049	772	-277
2010/11	1049	637	-412
2011/12	1049	515	-534
2012/13	1049	527	-522
2013/14	1049	760	-289
2014/15	1049	674	-375
2015/16	1049	569	-480
2016/17	1049	852	-197
2017/18	1049	863	-186
2018/19	1049	729	-320
2019/20	1049	868	-181
2020/21	1049	966	-83
2021/22	1049	1017	-32
TOTAL	16,784	13,290	-3,494

6.13 Affordable housing delivery over the plan period was 2,290 against a policy requirement of 2,400 dwellings.

Residential Land Survey Headline Findings April 2022 (CD8.51)

6.14 This document provides details of housing completions in North Somerset since 1981/82, windfall rates since 2006 and plan period capacity. It also confirms that a residual of 7,695 dwellings needs to be delivered over the remaining four years to fulfil the adopted housing requirement.

Five Year Housing Land Supply Initial Findings Statement April 2021 and Housing Trajectory (CD8.52 and CD8.53)

6.15 Although these documents are dated April 2021 the Council published its latest Five-Year Housing Land Supply position in November 2021, covering the 5-year period April 2021 to March 2026. The initial findings statement confirms that:

“This initial findings statement and the associated trajectory are an interim position, pending engagement with the landowners and developers of each site to confirm the assumptions made. A final five year land supply position statement will then be published.”

6.16 The Council has not provided an updated supply position statement since this information was published.

6.17 The under delivery of housing is not a recent phenomenon. There have been a series of appeal decisions all of which have confirmed the absence of a five-year supply of housing in North Somerset. I summarise these below.

- Land at Butts Batch, Wrington (APP/D0121/W/22/3294867) – **25th August 2022 (CD9.3)**
- Farleigh Farm, Backwell (APP/D0121/W/21/3285624) – **22nd June 2022 (CD9.1)**
- Rectory Farm, Yatton (Appeal Ref: APP/D0121/W/21/3286677) – **15th June 2022 (CD9.2)**
- Moor Lane,, Yatton (APP/D0121/W/22/3294867) – **27th April 2022**
- Summervale, Moor Lane, Backwell (APP/D0121/W/21/326659) – **15th April 2021**
- Land off Purn Way, Bleadon, Weston-super-Mare (APP/D0121/W/20/3259109) – **14th January 2021**
- Land North of Greenhill Road, Sandford (APP/D0121/W/18/3206217) – **10th June 2019**
- North End, Yatton (reference APP/D0121/W/18/3202917) - **24th September 2018**
- Weston Business Park, Laney's Drove, Locking (APP/D0121/W/17/3184845) - **18th June 2018**
- Farleigh Fields 28th March 2018 (APP/D0121/W/16/3153935) - **28th March 2018**

- Land off Stowey Road, Yatton (APP/D0121/W/17/3170103) - **02 January 2018**
- Land at Cox's Green, Wrington (APP/D0121/W/17/3166147) - **23rd November 2017**
- Wrington Lane, Congresbury, BS49 5BJ (APP/D0121/W/16/3151600) **14th June 2017**
- Land to the north of A368, Sandford, North Somerset BS25 5QB (Appeal Decision APP/D0121/W/15/3139633) - **12th October 2016**

Action Plan

- 6.18 North Somerset have been required to provide an action plan each year since 2019. The North Somerset Housing Delivery Test Action Plan July 2022 (**CD8.54**) includes a table of past performance (page 3). This demonstrates failure to achieve the required delivery in any of the years back to 2010/11.
- 6.19 Page 11 onwards of the Action Plan includes 6 actions for the year. A number of these are common to the original 2019 Action Plan (such as Progressing the new Local Plan, Delivery on council owned land and Engagement with developers). Notably, Since the action plan was first prepared in 2019 the preparation of a new local plan has been delayed. The Action Plan (2022) also suggests that the local plan will be adopted by December 2023 which clearly will not be achieved.
- 6.20 I am not aware of any evidence that the Action Plan has resulted in an increase in the supply of housing over and above what would have occurred anyway. Despite the need for an action plan being required since 2019 delivery is still below the requirement.

Affordable Housing (update figures)

- 6.21 There is an acute need for affordable housing in North Somerset. The SHMA 2009 (**CD8.55**) identified a need for 904 net affordable homes per annum between 2009/10 and 2021/22. Against this figure, a shortfall of 9,462 dwellings has arisen. Against the much lower policy target of 150 dwellings per annum set out at policy CS16, the Council has underdelivered by 110 dwellings between 2006/07 and 2021/22.
- 6.22 According to page 13 of the Council's Housing Strategy (**CD8.50**) The council's HomeChoice social housing register had 2,561 applicants as of February 2022. These are households in priority need who are facing hardship as a result of their housing situation.

- 6.23 The appeal proposals offer 30% affordable housing which meets the requirements of adopted Core Strategy policy CS16. This will make a substantial contribution to meeting the identified needs in North Somerset. In light of the extent of the unmet need in North Somerset I expect that every one of the affordable dwellings proposed through the appeal scheme will be occupied by a household in need.
- 6.24 Given the Council's past poor performance towards meeting its identified housing needs across the authority area, I consider that very significant weight should be afforded to the delivery of affordable housing through the appeal scheme in the planning balance.

7 SUSTAINABLE DEVELOPMENT

7.1 The Appeal Site lies in a highly sustainable location adjacent to the settlement boundary of Weston- super-Mare which has good access to a wide range of local facilities, employment opportunities, retail uses and public transport routes.

7.2 I explain how the appeal proposal positively addresses each of the three dimensions of sustainable development set out at paragraph 8 of the Framework below.

Economic

7.3 As I have set out at Section 5 of my evidence the Framework places significant weight on the need to support economic growth and productivity. There are numerous economic benefits that would arise from the appeal proposal.

7.4 The scale of development would be attractive to small and medium developers based in the area and volume housebuilders and would assist the end developer in maintaining a supply of housing sites and hence the long-term prosperity of the business.

7.5 The proposed development has the potential to draw upon a pool of local labour. The construction industry has a good background in providing employment opportunities, particularly for young people. This will help reduce unemployment in the industry during the construction phase and further retain and increase expenditure within the local economy.

7.6 The impacts of development will extend beyond construction employment to include indirect benefits for the local and national economy. Those sectors benefiting from increased construction output include manufacturing (especially of building products and equipment), real estate, business services (including architecture, planning and surveying), mining and quarrying and transportation.

7.7 Furthermore, there would be a positive impact as a result of increased construction spending. This would lead to a temporary increase in overall household income (earned as a result of increased employment in construction and other sectors) being spent on further goods and

- services, both locally and nationally, leading to a general boost in output in the overall economy.
- 7.8 The provision of additional construction jobs in the area would have a positive effect on industries within the construction supply chain, referred to as the 'indirect effect'. While these jobs would be located across a wide area, the opportunity exists to ensure that local businesses benefit from trade linkages established during construction by means of local employment or procurement stipulations in construction contracts. Temporary increases from expenditure would, to some extent, result from employment such as the additional wage spend of construction workers in local shops and other facilities.
- 7.9 Once constructed the development of up to 75 residential dwellings will bring increased spending power to Weston-super-Mare. Not all of the new dwellings will be occupied by newly arrived residents; some will originate from people already living in Weston-super-Mare, such as those displaced from existing homes within the settlement and newly forming households.
- 7.10 New housing makes an important contribution to the competitiveness of towns such as Weston-super-Mare by providing accommodation that will appeal to and help to attract skilled people, as well as providing a choice of homes for people already living within the area.
- 7.11 The provision of new homes at the appeal site would make an important contribution to support the local labour force and ensure the long-term economic competitiveness of Weston-super-Mare and other settlements nearby, while ensuring the wider area is sustained. It could reasonably be expected that the majority of homes will be occupied by households whose adult occupants are of working age and economically active.
- 7.12 The proposed development will reinforce shops and services across North Somerset through the addition of residents bringing with them increased retail spend and general household expenditure to support the local economy. Given the range of services in the local area, much of the household expenditure will leak out to business elsewhere in the district.
- 7.13 The development will also generate additional Council Tax returns providing an important source of revenue funding for the local authority in delivering services as well as investing in

the locality. Anticipated S106 and CIL contributions will also be accrued by the local authority for the benefit of the residents and community.

Social

- 7.14 The Appeal Proposal will assist in meeting the Council's housing requirement during the plan period through the delivery of market and affordable housing to meet the needs of present and future generations. This is particularly important in the context of the Council's poor record of delivering housing so far. The development will provide a key social role in supporting and building a strong, vibrant and healthy community and will make an important contribution to affordable housing provision in the area.
- 7.15 The Appeal Proposal will also provide a high-quality built environment in a sustainable location with access to local services which will support the health, social and cultural well-being of the local community.
- 7.16 The provision of residential development in the area and the introduction of its occupants to Weston-super-Mare will enhance its vitality by playing a role in its social functions and will spend money on local services and facilities, thereby sustaining local businesses and activities in the longer term. Overall, the Appeal Proposal will give rise to clear social benefits in terms of additional patronage supporting local facilities and services.
- 7.17 The proposed development will help to meet local housing needs through the delivery of up to 75 new homes, including 30% affordable dwellings.
- 7.18 The site is in a sustainable location for the scale of the development and provides the opportunity for future residents to walk and cycle to local services and amenities.
- 7.19 Finally, the Appeal Proposal will generate a substantial CIL payment which will be used to fund specific identified infrastructure projects in the District.

Environmental

7.20 The appeal application was supported by a range of supporting documents which demonstrated that there are no environmental impacts which prevent planning permission from being granted.

7.21 In addition, the Appeal Proposal includes biodiversity enhancements which will make a positive, permanent contribution to local biodiversity. These include the provision of significant areas of green infrastructure and open space which incorporate specific bat mitigation areas.

Conclusion

7.22 Overall, I concluded that the proposed development contributes positively towards the three roles of sustainable development.

8 THE APPROACH TO THE SEQUENTIAL TEST AND THE EXCEPTION TEST

8.1 The approach to the sequential test and exceptions test is set out in national planning policy and guidance and the adopted Core Strategy. The Council also prepared an advice note in 2019. I deal with each of these below.

National Planning Policy and Guidance

National Planning Policy Framework (NPPF July 2021)

8.2 Paragraph 153 confirms that *“Plans should take a proactive approach to mitigating and adapting to climate change, taking into account the long-term implications for flood risk...”*

8.3 Paragraph 159 confirms that *“Inappropriate development in areas at risk of flooding should be avoided by directing development away from areas at highest risk (whether existing or future). Where development is necessary in such areas, the development should be made safe for its lifetime without increasing flood risk elsewhere. Paragraph 160 goes on to state that “Strategic policies should be informed by a strategic flood risk assessment, and should manage flood risk from all sources.*

8.4 Policies contained within the Core Strategy, including Policy CS28 were supported by a Strategic Flood Risk Assessment and are based on a sequential, risk-based approach to the location of development.

8.5 Paragraph 162 of the Framework states that *“the aim of the Sequential Test is to steer new development to areas with the lowest risk of flooding from any source. Development should not be permitted if there are reasonably available sites appropriate for the proposed development in areas with a lower risk of flooding.”*

8.6 Paragraph 163 goes on to state that *“If it is not possible for development to be located in areas with a lower risk of flooding (taking into account wider sustainable development objectives), the Exception Test may have to be applied. The need for the exception test will depend on the potential vulnerability of the site and development proposed, in line with the Flood Risk Vulnerability Classification set out in Annex 3”*. Residential development, such as proposed in the case of this appeal, is classified as ‘more vulnerable’ development.

8.7 Paragraph 164 states that the application of the Exception Test should be informed by a Flood Risk Assessment. Mr Bosanko's evidence sets out the flood risk assessment work undertaken to support the appeal.

8.8 Paragraph 164 goes on to state that to pass the Exception Test, it must be demonstrated that:

- a) the development would provide wider sustainability benefits to the community that outweigh the flood risk; and
- b) the development will be safe for its lifetime taking account of the vulnerability of its users, without increasing flood risk elsewhere, and, where possible, will reduce flood risk overall

8.9 According to paragraph 165 both elements of the exception test should be satisfied for development to be permitted.

8.10 Paragraph 167 states that:

“When determining any planning applications, local planning authorities should ensure that flood risk is not increased elsewhere. Where appropriate, applications should be supported by a site-specific flood-risk assessment⁵⁵. Development should only be allowed in areas at risk of flooding where, in the light of this assessment (and the sequential and exception tests, as applicable) it can be demonstrated that:

- a) within the site, the most vulnerable development is located in areas of lowest flood risk, unless there are overriding reasons to prefer a different location;*
- b) the development is appropriately flood resistant and resilient such that, in the event of a flood, it could be quickly brought back into use without significant refurbishment;*
- c) it incorporates sustainable drainage systems, unless there is clear evidence that this would be inappropriate;*
- d) any residual risk can be safely managed; and*
- e) safe access and escape routes are included where appropriate, as part of an agreed emergency plan.”*

8.11 Paragraph 169 goes on to state that major developments should incorporate sustainable drainage systems unless there is clear evidence that this would be inappropriate. The appeal application was accompanied by a flood risk assessment and drainage strategy which proposed a sustainable drainage system. The Council does not raise concerns about proposed approach to drainage in the reasons for refusal and no objections are raised by relevant statutory consultees such as the Environmental Agency, LLFA/Council's drainage officer. The Appellant and Council have agreed draft conditions in relation drainage (CD8.15).

National Planning Practice Guidance (PPG)

8.12 The NPPG website went live on 6th March 2014 and is of significant weight and applies to the appeal application. I have also had regard to the National Planning Practice Guidance (PPG) in the preparation of my evidence.

8.13 The PPG was updated on 25th August 2022. In part those changes updated the requirements for the sequential test and exception test.

8.14 In accordance with the Framework, PPG indicates that where necessary, planning authorities should apply the sequential test and, if needed, the exception test, to ensure that flood risk is minimised and appropriately addressed³.

8.15 Paragraph 024 states that *"The Sequential Test ensures that a sequential, risk-based approach is followed to steer new development to areas with the lowest risk of flooding, taking all sources of flood risk and climate change into account. Where it is not possible to locate development in low-risk areas, the Sequential Test should go on to compare reasonably available sites:*

- *Within medium risk areas; and*
- *Then, only where there are no reasonably available sites in low and medium risk areas, within high-risk areas⁴."*

³ PPG Paragraph: 004 Reference ID: 7-004-20220825

⁴ PPG Paragraph: 024 Reference ID: 7-024-20220825

- 8.16 Paragraph 024 states that *“Initially, the presence of existing flood risk management infrastructure should be ignored, as the long-term funding, maintenance and renewal of this infrastructure is uncertain.”*
- 8.17 Paragraph 027 states that, with respect to planning applications, the sequential test should be applied to major development proposed in areas at risk of flooding, and that *“For individual planning applications subject to the Sequential Test, the area to apply the test will be defined by local circumstances relating to the catchment area for the type of development proposed. For some developments this may be clear, for example, the catchment area for a school. In other cases, it may be identified from other Plan policies. For example, where there are large areas in Flood Zones 2 and 3 (medium to high probability of flooding) and development is needed in those areas to sustain the existing community, sites outside them are unlikely to provide reasonable alternatives. Equally, a pragmatic approach needs to be taken where proposals involve comparatively small extensions to existing premises (relative to their existing size), where it may be impractical to accommodate the additional space in an alternative location⁵.”*
- 8.18 Paragraph 028 gives a definition of ‘reasonably available sites’ as *“those in a suitable location for the type of development with a reasonable prospect that the site is available to be developed at the point in time envisaged for the development. These could include a series of smaller sites and/or part of a larger site if these would be capable of accommodating the proposed development. Such lower-risk sites do not need to be owned by the applicant to be considered ‘reasonably available’.*
- 8.19 Paragraph 028 further states that *“the absence of a 5-year land supply is not a relevant consideration for the sequential test for individual applications⁶.”* However, PPG does not say that housing need is not a relevant material consideration. This effectively informs what the sequential test is looking for. The question is not *“Within the timescale envisaged for the development, can 75 dwellings be delivered on a more sequentially preferable site?”*. The question is: *“Within the timescale envisaged for the development, can the Council meet its identified housing needs on more sequentially preferable sites?”*. I appreciate this is

⁵ PPG Paragraph: 027 Reference ID: 7-027-20220825

⁶ PPG Paragraph: 028 Reference ID: 7-028-20220825

ultimately a question of interpretation of planning policy and guidance which will be the subject of legal submissions.

- 8.20 Paragraph 029 states that *“Relevant decision makers need to consider whether the test is passed, with reference to the information it holds on land availability. The planning authority will need to determine an appropriate area of search, based on the development type proposed and relevant spatial policies. The applicant will need to identify whether there are any other ‘reasonably available’ sites within the area of search, that have not already been identified by the planning authority in site allocations or relevant housing and/or economic land availability assessments, such as sites currently available on the open market. The applicant may also need to check on the current status of relevant sites to determine if they can be considered ‘reasonably available’.*
- 8.21 In accordance with paragraph 164 of the Framework Paragraph 031 of PPG explains that it *“is not a tool to justify development in flood risk areas when the Sequential Test has already shown that there are reasonably available, lower risk sites, appropriate for the proposed development. It would only be appropriate to move onto the Exception Test in these cases where, accounting for wider sustainable development objectives, application of relevant local and national policies would provide a clear reason for refusing development in any alternative locations identified”.*
- 8.22 PPG sets out the circumstances where the Exception Test will be required. As the Site lies within Flood Zone 3a and residential development is classified as ‘More Vulnerable’ development, an Exception Test would be required to support the proposed application, and only *“if the Sequential Test has shown that there are no reasonably available, lower-risk sites, suitable for the proposed development, to which the development could be steered”.*

North Somerset Adopted Core Strategy

Policy CS3: Environmental Impacts and Flood Risk Assessment

- 8.23 The Council refer to Policy CS3 in the first and second reason for refusal. Policy CS3 states that *“Development that, on its own or cumulatively, would result in air, water or other environmental pollution or harm to amenity, health or safety will only be permitted if the potential adverse effects would be mitigated to an acceptable level by other control regimes, or by measures included in the proposals, by the imposition of planning conditions or through*

a planning obligation.” The Policy goes on to state that “Development in zones 2 and 3 of the Environment Agency Flood Map will only be permitted where it is demonstrated that it complies with the sequential test set out in the National Planning Policy Framework and associated technical guidance and, where applicable, the Exception Test...”

8.24 For the purposes of the Sequential Test policy CS3 confirms, in part, that:

“1. The area of search for alternative sites will be North Somerset-wide unless:

- It can be demonstrated with evidence that there is a specific need within a specific area; or*
- The site is located within the settlement boundaries of Weston (including the new development areas), Clevedon, Nailsea and Portishead, where the area of search will be limited to the town within which the site is located.*

Other Local Development Documents may define more specific requirements.

2. A site is considered to be ‘reasonably available’ if all of the following criteria are met:

- The site is within the agreed area of search.*
- The site can accommodate the requirements of the proposed development.*
- The site is either:*
 - a) owned by the applicant;*
 - b) for sale at a fair market value; or*
 - c) is publicly-owned land that has been formally declared to be surplus and available for purchase by private treaty.*

Sites are excluded where they have a valid planning permission for development of a similar character and scale and which is likely to be implemented.”

Development and Flood Risk Issues Advice Note (2019)

8.25 North Somerset Council published a ‘Development Management Advice Note’ in November 2019 (**CD8.4**) about development and flood risk issues. The Advice Note confirms that it is based upon national policy and guidance, the council’s adopted planning policies, and detailed discussions with the Environment Agency. However, as far as I am aware it was not

subject to formal public consultation, nor has it been adopted as a supplementary planning document.

8.26 The Advice Note states that the area of search for alternative sites will be North Somerset-wide unless:

- It can be demonstrated with evidence that there is a specific need within a specific area. To avoid delay it is recommended that applicants contact the council early in the process to discuss the area of search and evidence of need. A development that includes a mix of uses may need to apply the Sequential Test using different areas of search for the different uses. For the test to be passed, each use within the proposal must pass.
- The site is located within the settlement boundaries of Weston-super-Mare (including the new development areas), Clevedon, Nailsea and Portishead, where the area of search will be limited to the town within which the site is located.

8.27 At page 5 the Advice Note states that:

“The applicant needs to submit the following evidence to allow us to consider the Sequential Test:

- *The name and location of the site proposed for development and an explanation of why that specific site was chosen.*
- *A written statement explaining the area of search.*
- *A map identifying all other sites considered within lower areas of flood risk and their planning status.*
- *A written statement explaining why the alternative sites listed within lower areas of flood risk are not reasonably available. It is advisable to provide as much evidence as possible regarding statements made on other sites to avoid delays in the planning process.”*

8.28 The Note confirms that alternative sites can include:

- Sites allocated in a Local Plan or Neighbourhood Plan
- Sites that have planning permission for the desired use.

- Sites found from the evidence base/background documents produced by the council to inform the emerging Local Plan

8.29 The Advice Note further states that if alternative sites cannot be identified from such documents, then other sites within the area of search should be considered. Applicants are recommended to contact the Council to discuss the availability of sites to be considered in the Sequential Test.

8.30 The Advice Note explains what is meant by 'reasonably available', with reference to Core Strategy Policy CS3. As I have set out above Policy CS3 limits 'reasonably available' sites to those that the applicant owns, sites that are for sale at a fair market rate and surplus public land. It excludes sites that have a planning permission of a similar character and scale that is likely to be implemented. The Advice Note states that since Policy CS3 was adopted, the Environment Agency published guidance that considers sites with permission to be 'reasonably available' and that this approach has been supported at appeal. The Advice Note confirms that the council will therefore give greater weight to the Environment Agency's national guidance than to Policy CS3 of the adopted Core Strategy.

8.31 In summary the Advice Note confirms that a site is considered to be 'reasonably available' if **all** of the following criteria are met:

- The site is within the agreed area of search.
- The site can accommodate the requirements of the proposed development. Applicants should consider the potential for splitting the development over more than one site. This will be particularly relevant to sites for housing.
- The site is either:
 - the subject of a valid planning permission for development of a similar character and scale; or
 - identified as having development potential within the required timescale, either in the SHLAA or in a Local Plan policy or supporting evidence; or
 - in the case of small sites, for sale and not subject to known planning constraints.

As I have explained above there a range of national and local policy and guidance documents which set out the required approach to the sequential test. The approach set out in the

adopted Core Strategy Policy CS3 is consistent with the Framework and PPG. The Council's Advice Note, which as far as I am aware has not been subject to formal consultation and has not been adopted as a supplementary planning document is in places inconsistent with these. It is not a material consideration of sufficient weight to outweigh the development plan, ie. Policy CS3, in this respect.

North Somerset Local Plan 2038 Preferred Options April 2022 (CD8.23)

8.32 Policy DP9 relates to flood risk although as I have set out earlier in my evidence this document is at an early stage of the consultation process and should therefore be given no more than very limited weight.

8.33 I have summarised the situation and highlighted the lack of consistency in Table 3 on the following page:

Table 3: Summary of Sequential Test Policy Approach

	Search Area	Timescale for Delivery	Reasonably Available	Site Disaggregation
NPPF	159: Inappropriate development in areas of flood risk should be avoided by directing development away from areas at highest risk.		162: Development should not be allocated or permitted if there are reasonably available sites appropriate for the proposed development in areas with a lower risk of flooding.	
PPG	027: For individual planning applications subject to the Sequential Test, the area to apply the test will be defined by local circumstances relating to the catchment area for the type of development proposed. 029: The planning authority will need to determine an appropriate area of search, based on the development type proposed and relevant spatial policies.	028: 'Reasonably available sites' are those in a suitable location for the type of development with a reasonable prospect that the site is available to be developed at the point in time envisaged for the development.	024: Where it is not possible to locate development in low-risk areas, the Sequential Test should go on to compare reasonably available sites: <ul style="list-style-type: none"> • Within medium risk areas; and • Then, only where there are no reasonably available sites in low and medium risk areas, within high-risk areas 028: 'Reasonably available sites' are those in a suitable location for the type of	028: These could include a series of smaller sites and/or part of a larger site if these would be capable of accommodating the proposed development. Such lower-risk sites do not need to be owned by the applicant to be considered 'reasonably available'.

			development with a reasonable prospect that the site is available to be developed at the point in time envisaged for the development.	
Core Strategy (Policy CS3)	<p>1. The area of search for alternative sites will be North Somerset-wide unless:</p> <ul style="list-style-type: none"> • It can be demonstrated with evidence that there is a specific need within a specific area; or • The site is located within the settlement boundaries of Weston (including the new development areas), Clevedon, Nailsea and Portishead, where the area of search will be limited to the town within which the site is located. <p>2. A Site is considered to be 'reasonably available' if all of the following criteria are met:</p> <ul style="list-style-type: none"> • The site is within the agreed area of search. 		<p>2. A Site is considered to be 'reasonably available' if all of the following criteria are met:</p> <ul style="list-style-type: none"> • The site is within the agreed area of search. • The site can accommodate the requirements of the proposed development. • The site is either: <ul style="list-style-type: none"> a) owned by the applicant; b) for sale at a fair market value; or c) is publicly-owned land that has been formally declared to be surplus and available for purchase by private treaty. • Sites are excluded where they have a valid planning permission for development 	

			of a similar character and scale and which is likely to be implemented.”	
North Somerset Preferred Options emerging Local Plan (Policy DP9)				<ul style="list-style-type: none"> • The search for alternative sites should not necessarily be restricted to sites only capable of accommodating the proposed scale of development, and opportunities to provide development on more than one, sequentially preferable site should be explored.
Development and Flood Risk Issues Advice Note	<p>The area of search for alternative sites will be North Somerset wide unless:</p> <ul style="list-style-type: none"> • It can be demonstrated with evidence that there is a specific need in a specific area. • The site is located within the settlement boundaries of Weston-super-Mare, Clevedon, Nailsea or Portishead. 		<p>If all of the following criteria are met:</p> <ul style="list-style-type: none"> • The site is within the agreed area of search. • The site can accommodate the requirements of the proposed development. Applicants should consider the potential for splitting the development over more than one site. This will be particularly relevant to sites for housing. • The site is either: <ul style="list-style-type: none"> o the subject of a valid planning permission for 	<p>Applicants should consider the potential for splitting the development over more than one site. This will be particularly relevant to sites for housing.</p>

			<p>development of a similar character and scale; or</p> <ul style="list-style-type: none">o identified as having development potential within the required timescale, either in the SHLAA or in a Local Plan policy or supporting evidence; oro in the case of small sites, for sale and not subject to known planning constraints.	
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Summary

- 8.34 In refusing planning permission for the reasons set out in the first reason for refusal I consider that the Council has overly relied on the 2019 Advice Note. When undertaking the sequential test, I consider that the approach set out by the Framework, PPG and adopted Core Strategy Policy CS3 is the correct method as opposed to the more onerous approach set out by the Advice Note. Had the Council approached the sequential test assessment in a balanced and logical way I consider that they would have concluded that the sequential test was passed.
- 8.35 With regard to ‘timescales for delivery’ PPG provides clear advice. Mr Henderson’s evidence explains that ‘reasonably available’ sites “...are those in a suitable location for the type of development with a reasonable prospect that the site is available to be developed **at the point in time envisaged for the development.**” (my emphasis). PPG is also clear that ‘reasonably available sites’ “...could include a series of smaller sites and/or part of a larger site if these would be capable of accommodating the proposed development.” and that they “...do not need to be owned by the applicant to be considered ‘reasonably available.’
- 8.36 Policy CS3 is clear that where sites have “ a valid planning permission for development of a similar character and to be developed at the point in time envisaged for the development.”
- 8.37 The Council’s inconsistent approach to the sequential test is highlighted by the Council’s pre-application advice which confirmed that the area of search for the appeal proposal was Weston-super-Mare. As Mr Henderson highlights in his evidence the planning case officer also confirmed in an email dated 12th January 2022 that:
- “Officers are satisfied with the further information which clarifies the reasons for not pursuing certain sites. I am satisfied from this and the other previous information that it appears that there are no other ‘reasonably available’ sites in a lower flood zone that could currently accommodate the proposed development.”*
- 8.38 I consider that the Council has approached the assessment of the sequential test in an inconsistent and overly prescriptive way in an attempt to resist development at the appeal site. In doing so the Council has failed to apply the appropriate weight to national planning

policy and guidance and development plan policy. Mr Henderson's comprehensive evidence, which has considered an extensive number of sites across the whole of North Somerset, concludes that none are sequentially preferable. Overall, I consider it reasonable to conclude that the sequential test is passed. On this basis it is appropriate to consider the exception test.

The Exception Test

8.39 Planning Policy Guidance sets out that, notwithstanding the outcome of the Sequential Test, 'more vulnerable' developments proposed within Flood Zone 3a should be the subject of the Exception Test. For a development proposal to pass the Exception Test, it must be demonstrated that:

- a) the development would provide wider sustainability benefits to the community that outweigh the flood risk; and
- b) the development will be safe for its lifetime taking account of the vulnerability of its users, without increasing flood risk elsewhere, and, where possible, will reduce flood risk overall.

8.40 I assess Criteria a) and b) below.

a) the development would provide wider sustainability benefits to the community that outweigh the flood risk

8.41 The proposed development will deliver a considerable amount of wider sustainability benefits to the community. These benefits were assessed in detail within the evidence submitted to the Council during the planning application process as follows:

i) Provision of up to 75 new homes.

8.42 As I have set out in detailed at Section 6 of my evidence there is a pressing need for housing in North Somerset.

ii) Provision of up to 23 affordable homes (30%)

8.43 In addition to market housing, there is an acute need for affordable housing in North Somerset.

iii) Economic Growth

8.44 As I explain at Section 7 the development of up to 75 new homes in Weston-super-Mare will provide local employment in the construction industry and a wider indirect boost to the local economy through job creation and economic spend.

iv) Ecological enhancements

8.45 Mr Cowley's evidence explains that the proposal will deliver ecological enhancements to the application site. Furthermore, the Biodiversity Net Gain assessment of the outline development proposals was completed in 2021 (**CD2.26**). This demonstrated that the development could deliver 'Biodiversity Net Gain' with the opportunity to deliver greater than 10% gains in respect of both area-based habitats (33.32% gain) and hedgerows (51.87% gain).

v) Provision of public open space and green infrastructure

8.46 The appeal proposal will provide over 2 hectares of public open space (including areas of play) and green infrastructure which will be available for use by the local community as well as new residents.

vi) Public Transport.

8.47 The appeal proposal will support public transport through financial contributions to sustainable transport modes in the area which will help to sustain existing local services.

vii) Focusing development at Weston-super-Mare

8.48 As I have set out at Section 5 of my evidence the Core Strategy seeks to focus development at Weston-super-Mare. This objective will assist in maintaining local economic competitiveness, by providing a working population where the most job opportunities in North Somerset are and reducing the need to travel by private motor car. These are important factors in tackling the effects of climate change.

viii) Hockey Pitch Contribution

8.49 During the application process the Appellant offered a financial contribution of £50,000 towards the upkeep of an artificial hockey pitch at Priory Community School which is less than a mile from the appeal site. The proposed contribution is relevant to the appeal proposal as the school facilities are likely to be used by the new residents (children and adults). The school and Hockey Club, who also use the facility, have both confirmed further details of how this contribution would be used in a letter and statement which are attached at **Appendix 4**. The Appellant proposes that this contribution is secured via the s106 legal agreement.

8.50 Overall, the appeal proposal will deliver substantial wider sustainability benefits to the existing community of Weston-super-Mare and future residents of the Appeal Site. As such, Criterion a) of the Exception Test is satisfied. I have considered the approach taken by the planning case officer in his delegated report and consider that the benefits have been significantly played down, as is the case in relation to the overall planning balance.

b) the development will be safe for its lifetime taking account of the vulnerability of its users, without increasing flood risk elsewhere, and, where possible, will reduce flood risk overall

8.51 The evidence of Mr Bosanko explains how the development satisfies part b) of the exception test. This includes measures to mitigate any 'residual' flood risks, so that the proposed development will be safe for its lifetime, taking account of the vulnerability of its users, without increasing flood risk elsewhere.

9 THE COUNCIL'S REASONS FOR REFUSAL AND MATTERS RAISED BY THIRD PARTIES

The Council's reasons for refusal

- 9.1 The appeal proposal was refused planning permission for 3 separate reasons although the Council and Natural England now accept⁷ that the third reason relating to the impact of lighting on protected species is no longer in dispute. I deal with each of the reasons for refusal below.

Reason for Refusal 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.

- 9.2 As I have already explained the Council's approach to the sequential test was inconsistent and overly prescriptive. Mr Henderson's evidence explains that the Sequential Test analysis has been prepared in line with national and local policy and guidance. The analysis, which consider an extensive number of sites across the whole of North Somerset, demonstrates that there are no sequentially preferable sites for the proposed development.
- 9.3 The appellant engaged with the Council in relation to the sequential test assessment over a period of 2 years during the appeal application determination process and responded positively to address the planning case officer's changing requirements during that time. Following the Case Management Conference for this appeal the Council has identified 39 sites which it considers are still in dispute. Mr Henderson's evidence explains why each of these should be discounted.

⁷ Joint Note (Lighting) 24.4.23 (CD8.57)

- 9.4 Mr Henderson's evidence must be considered in the context of the very significant need for housing, which the Council accepts is currently 2,127 dwellings. It also is worth remembering that when assessed against the adopted Core Strategy, the need is 3,494 dwellings. Even in the very unlikely event that the Council's April 2021 forecast rates are achieved the overall housing need at the 'point in time' will be far in excess of 75 dwellings.
- 9.5 The Council's first reason for refusal alleges that the proposed development is unnecessary in its proposed location. However, the appeal proposal is entirely consistent with policy CS28 of the adopted Core Strategy which seeks to focus development at Weston-super-Mare, the most sustainable settlement in North Somerset.
- 9.6 To meet the housing needs of the area the Core Strategy allocates significant areas of land for development at Weston-super-Mare, such as the Weston Villages, which also lies within flood zone 3. As set out in the Council's Housing Trajectory (**CD8.53**) the Council is relying on these sites to continue delivering housing over the coming years. The inspector appointed to examine the Core Strategy would also have been aware that development brought forward in accordance with the flexible approach supported by Policy CS28 (i.e adjacent to the settlement boundary) would most likely be within flood zone 3.
- 9.7 Whilst the Council is preparing a new local plan which appears to take a stricter approach to development within areas of higher flood risk preparation of this document is only at an early stage where, in accordance with paragraph 48 of the Framework, only very limited weight can be afforded to the policies within in at this stage.
- 9.8 As I have set out in my evidence, North Somerset is constrained by areas at flood risk, green belt and other environmental designations such as the AONB and Special Areas of Conservation. In order to meet the housing needs of the area the adopted Core Strategy applies an appropriate, evidence-based balance between these constraints and achieving wider sustainability objectives such as meeting housing need and achieving economic growth. The consequence of avoiding flood zone 3 altogether will inevitably mean that new housing development occurs in less sustainable locations where it has not been planned for. Alternatively, development will not occur at all which will simply exacerbate the very serious

and significant housing need in North Somerset. This will inevitably have an effect on house price affordability and the supply of affordable housing for those in need.

Reason for Refusal 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.

- 9.9 As I have set out at Section 8 of my evidence the development would provide substantial wider sustainability benefits to the community. Mr Bosanko's evidence in relation to flood risk explains that the development will be safe for its lifetime taking account of the vulnerability of its users, without increasing flood risk elsewhere, and, where possible, will reduce flood risk overall. As a result, I consider it reasonable to conclude that the exception test is passed.

Reason for Refusal 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.

- 9.10 Since the appeal was submitted, the Council has now agreed that the issues raised in the third reason for refusal can be addressed through the use of a condition. As set out in the Joint Note (Lighting) dated 24th April 2023 (CD8.57) the Council and Natural England now agree that the third reason for refusal is no longer a ground for refusal.

Third Party Comments

- 9.11 It is worth noting that the appeal proposal received support at the planning application stage and during the appeal due to the need for new market and affordable houses in the area. This is not surprising considering the significant need for housing within North Somerset.

9.12 Objectors have raised a number of concerns in relation to the Appeal Proposal. I note that a large proportion of the objectors live close to the Appeal Site within the Ebdon Grounds development. I address each of the issues raised by the third parties below:

i) *Lack of community involvement leading up to the application*

9.13 As I have set out at Section 4 the appellant undertook extensive consultation prior to submitting the appeal proposals and the feedback from the consultation was set out in a Statement of Community Involvement.

ii) *Planning policies do not support housing in the Countryside.*

9.14 As I have explained at Section 5 Policy CS28 supports development at the appeal site. The Council also accept that the appeal proposal complies with Policy CS28.

Ebdon Road is a natural barrier to housing development and housing on its rural side will detract from the character and appearance of the landscape.

9.15 As I have explained above the principle of development adjacent to Weston-super-Mare is supported by Policy CS28. The appeal proposal was supported by a landscape assessment which confirmed that any adverse impacts could be minimised. The Council does not raise any objection to the appeal proposal on landscape grounds.

9.16 iii) *Highway concerns as follows:*

- *The local approach roads including Ebdon Road already incur excessive daily traffic flows including 'rat-runs' through the narrow rural lanes of Wick St Lawrence and Bourton, which creates environmental and safety problems. This will be made worse by the proposal with increased traffic, increased speeding, increased antisocial driving noise and actions, all of which are detrimental to resident's health and welfare, something that the council has a duty of care to deliver to all residents.*
- *This is a car borne location with no public transport close to the proposed development so most outward trips will be vehicle related, making it an unsustainable location for more housing. The development will also give rise to causing congestion, noise, and other environmental pollution.*
- *The proposed vehicle access points to the site are dangerous.*

- *There are no footpaths on this side of Ebdon Road and crossing the road to access routes to schools and open space would be dangerous for pedestrians.*

9.17 The appeal proposal was supported by a transport assessment which confirmed that the site is highly suitable for the proposed development and there is no reason on transport grounds to refuse this application. The Council does not raise any objection to the appeal proposal on highway design or transport grounds.

iv) The Grade II listed Ebdon Bow Bridge over the River Banwell will fail to cope with the increased traffic causing irreparable damage.

9.18 Ebdon Bow Bridge is part of the adopted highway and is regularly maintained by the local highway authority. Neither the Council as the planning and highway authority or other statutory consultees such as Historic England object in relation to Ebdon Bow Bridge.

v) The site was supposed to be developed for sports pitches, which never came to fruition. This would be a more suitable use.

9.19 The appeal site is currently in agricultural use with no public access. There are no policies or other designations, adopted or emerging, which suggest that the site should be used for sports pitches. The appeal proposal will however provide new public open space which will be available for new and existing residents to enjoy.

vi) There is a lack of local amenities to serve the development including parks, play space, shops, and other outlets. Local schools and health centres / hospitals (A&E) are already over-subscribed so it's difficult to see how this will be a good location for families. The development will have a detrimental impact to the environment on biodiversity.

9.20 The appeal site is located in close proximity to a wide range of local services and is well connected to the urban area of Weston-super-Mare where a significant level of services and facilities exist. The appeal proposal also includes new green infrastructure including open space.

vii) The ecological report has identified priority species in the area and the mitigating actions put forward by the developer (a hand search and relocate some species) does not justify destroying part of their natural habitat.

9.21 The evidence of Dr Cowley explains that the appeal proposal was based on a detailed assessment of the potential impact on ecology and includes measures to avoid, mitigate or compensate significant adverse impacts to habitats and to legally protected or Priority Species.

viii) The site is in a flood plain and there is recent evidence that the site has flooded multiple times in recent years. Its development for housing would cause increased flood risk to nearby agricultural land and residential property. The proposal fails to pass the 'exceptions test' in that it will not deliver significant benefits to the community that outweigh the flood risk.

9.22 I have addressed part a) of the exception test at Section 8 of my evidence. The evidence of Mr Bosanko deals with flood risk issues and part b) of the exception test.

ix) The sum of the above amounts to an unsustainable development

9.23 I have explained why the appeal proposal represents sustainable development at Section 7 of my evidence. I consider that the consequences of the Council attempting to meet housing need in a way which is consistent with its suggested approach to the sequential test will be a much less sustainable distribution of development across North Somerset.

Summary

9.24 The evidence I have provided as well as the evidence of Mr Bosanko, Dr Cowley and Mr Henderson explains that there are no reasonable grounds to refuse planning permission. As I have explained above the matters raised by third parties do not prevent planning permission from being granted.

10 THE OVERALL PLANNING BALANCE

10.1 Having considered the matters raised by the Council and third parties it is appropriate to assess the proposals in relation to the overall planning balance in the context of achieving sustainable development and supporting the Government's objective of significantly boosting the supply of housing.

10.2 The Appeal Proposal constitutes sustainable development and whilst they should not be treated as a check list the three roles set out at paragraph 8 of the Framework are addressed. The appeal proposal will deliver significant social, economic and environmental benefits and will boost the supply of housing.

Positive Effects

10.3 The appeal proposals will deliver much needed market and affordable housing on a site located directly adjacent to the settlement boundary of Weston-super-Mare, the most sustainable settlement in North Somerset and the focus for development.

10.4 Up to 75 new homes in a range of sizes can be accommodated at the site whilst providing affordable homes for those that cannot afford to access the housing market, and open market homes for new families, first time buyers and those wishing to downsize.

10.5 As I have explained earlier in my evidence the Council has a very poor record of housing delivery and has consistently failed to demonstrate a 5YHLS. The Council has been required to prepare an Action Plan to address this since 2019. The housing need is very substantial and significant, and I am not aware that the Council is taking any urgent or effective action to address this. A review of the housing requirement and local plan as a whole is now overdue and is unlikely to be completed for the foreseeable future.

10.6 Looking to the future the emerging local plan and evidence base confirms that providing sufficient houses to meet North Somerset's need will be challenging and sites such as the appeal site will need to be considered. The construction of new housing and the delivery of affordable housing will help to address the housing need and have a positive effect on the

local economic and social conditions by increasing local spending and supporting local clubs, groups and services.

10.7 In the context of the appeal the delivery of new market housing should be given **very significant weight**.

10.8 The delivery of new affordable housing should also be given **very significant weight**.

10.9 The economic benefits of the Appeal Proposal during construction should be given **significant weight**.

10.10 The economic benefits of the Appeal Proposal as a result of increased spending from new residents should be given **significant weight**.

10.11 As explained by my colleagues and set out earlier in my evidence the appeal application was supported by a range of supporting documents which demonstrated that there are no environmental impacts which prevent planning permission from being granted.

10.12 The illustrative masterplan has been prepared to demonstrate that known constraints have been taken into account and to guide the reserved matters process ensuring that good design can be achieved. In addition, the Appeal Proposal includes biodiversity enhancements which will make a positive, permanent contribution to local biodiversity. These include the provision of significant areas of green infrastructure and open space which incorporate specific bat mitigation areas. I consider these factors should also be given **significant weight**.

Negative Effects

10.13 In relation to the principle of development the Council allege conflict with policies CS3 and CS4 of the adopted Core Strategy and policy DM8 of the Site and Policies Plan Part 1.

10.14 The evidence provided by Dr Cowley confirms that there would be no likely significant effect on the North Somerset and Mendip Bats SAC, as a result of the proposed development. Furthermore, the appeal proposal will result in a substantial net gain in biodiversity. As such there is no conflict with Policy CS4 or DM8.

- 10.15 Mr Henderson's evidence explains that there are no sequentially preferable sites to the appeal site. Mr Bosanko's evidence confirms that whilst the site is located within flood zone 3 the appeal proposal is designed to be safe from flooding, without impacting third parties and considers the impacts of climate change and will be safe from flooding now and in the future. Overall, Mr Bosanko's evidence concludes that there are no reasons to refuse planning permission due to flood risk and surface water drainage matters. Mr Bosanko highlights that neither the EA, LLFA or IDB objection in this regard.
- 10.16 In light of the Council's poor record of housing delivery as well as the economic, social and environmental benefits of the proposed development plus the overall sustainability benefits of focusing development at Weston-super-Mare I conclude that the Appeal Proposals would result in very little if any harm. As I have explained at Section 5 of my evidence the appeal proposal accords with Policy CS28 of the Core Strategy which allows for new residential developments of the scale proposed on land adjacent to the settlement boundary of Weston-super-Mare.

The Presumption In Favour Of Sustainable Development

- 10.17 Paragraph 11 of the Framework is clear that plans and decisions should apply a presumption in favour of sustainable development. As the Core Strategy is more than 5 years old, I consider it appropriate to assess the appeal proposal against paragraph 11d.
- 10.18 With reference to Paragraph 11d and footnote 8 of the Framework, policies for determining the Appeal Proposal are out-of-date.
- 10.19 There are no clear reason for refusing the development proposals based on the application of policies in the Framework that protect areas or assets of particular importance. Specifically, Dr Cowley's evidence explains that the relevant statutory tests in relation to the habitat regulations are met. Mr Bosanko's evidence confirms that there are no clear reasons to refuse permission on flood risk grounds. For the purpose of this appeal the tilted balance is therefore engaged.
- 10.20 There are no adverse impacts of granting planning permission which significantly and demonstrably outweigh the benefits, when assessed against the policies in the Framework

taken as a whole. In fact, the benefits significantly outweigh any harm. As such planning permission should be granted.

- 10.21 Even if the tilted balance was not engaged, which it is, I consider that the economic, social and environmental benefits of the appeal proposal, represent very significant material considerations which justifies planning permission being granted.

11 CONCLUSION

- 11.1 The appeal site is located in a highly sustainable location adjacent to the settlement boundary of Weston-super-Mare which is the focus of development in North Somerset.
- 11.2 The appeal proposal accords with Policy CS28 of the adopted Core Strategy which allows developments of 75 dwellings in locations such as the appeal site to provide flexibility and assist in meeting the need for new housing over the plan period. The Appeal Proposal positively addresses the three roles of sustainable development and should be considered in accordance with the general presumption.
- 11.3 Two years after the appeal application was validated the Council refused planning permission for three separate reasons. The Council and Natural England now agrees that the issues raised in the third reason for refusal are no longer in dispute. The remaining two reasons for refusal relate to the sequential test and exceptions test.
- 11.4 The evidence provided by Mr Henderson in relation to the sequential test confirms that there are no sequentially preferable sites. In the alternative, even if all of the dwellings which would result from the Council's disputed sites were delivered this would still not address the very significant need for housing.
- 11.5 The evidence provided by Mr Bosanko and Dr Cowley explain that there are no grounds to refuse planning permission on flood risk, drainage or ecological grounds.
- 11.6 Paragraph 11d)ii of the Framework applies for the purpose of this appeal. Planning permission should therefore be granted unless any adverse impacts of doing so would 'significantly and demonstrably' outweigh the benefits. There is no evidence which indicates that any harm would arise from the Appeal Proposal. In contrast the Appeal Proposal would result in very significant and long-term benefits.
- 11.7 Even if the tilted balance did not apply the economic, social and environmental benefits are significant material considerations which should weigh heavily in favour of granting planning permission as soon as possible.

- 11.8 The evidence I have provided as well as that provided by Mr Henderson, Mr Bosanko and Dr Cowley responds to the matters raised by the Council. None of the issues raised by third parties indicated that planning permission should be refused.
- 11.9 The Inspector is respectfully requested to allow this appeal and grant planning permission for the proposed development, subject to necessary conditions and the completion of the accompanying s106 legal agreement.