



North Somerset Council

Statement of Case

Town and Country Planning Act 1990 Section 78

Appeal by Persimmon Homes Severn Valley against the non-determination of outline planning application for the development of up to 190no. homes (including 50% affordable homes) to include flats and semi-detached, detached and terraced houses with a maximum height of 3 storeys at an average density of no more than 20 dwellings per net acre, 0.13ha of land reserved for Class E uses, allotments, car parking, earthworks to facilitate sustainable drainage systems, orchards, open space comprising circa 70% of the gross area including children's play with a minimum of 1no. LEAP and 2no. LAPS, bio-diversity net gain of a minimum of 20% in habitat units and 40% in hedgerow units, and all other ancillary infrastructure and enabling works with means of access from Shiners Elms for consideration. All other matters (means of access from Chescombe Road, internal access, layout, appearance and landscaping) reserved for subsequent approval.

Land To North Of Rectory Farm, Chescombe Road, Yatton

Planning Inspectorate reference: APP/D0121/W/24/334314

North Somerset Council reference: 23/P/0664/OUT

1 Introduction

- 1.1 This appeal is against the non-determination of the application. Had North Somerset Council ('the Council') made a decision on the application, outline permission would have been refused for the following reasons:
1. The proposed development of up to 190 dwellings would deliver a scale of development that is contrary to the spatial strategy for the development plan, which permits sites of up to around 25 dwellings adjoining the settlement boundaries of service villages. The proposed development is therefore contrary to policies CS14 (Distribution of new housing) and CS32 (Service villages) of the North Somerset Core Strategy, and the Yatton Neighbourhood Plan.
 2. Housing development should only be permitted in a 'High Probability' (3a) flood zone 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 applicant's Flood Risk Sequential Test assessment fails to demonstrate this, and the proposed development is therefore inappropriate in a 'High Probability' flood zone, which is contrary to Policy CS3 (Environmental impacts and flood risk management) of the North Somerset Core Strategy, paragraphs 165, 167 and 168 of the National Planning Policy Framework.
 3. The proposal, on account of the lack of a safe access to the development and increased flooding to neighbouring properties during the 1 in 200 year plus climate change flood event, would fail to adequately mitigate against the risks of flooding, contrary to Policy CS3 (Environmental impacts and flood risk management) of the Core Strategy and paragraph 173 of the National Planning Policy Framework.
 4. The proposed development, on account of the loss of a site safeguarded for a new primary school, would result in the potential for there to be insufficient primary school capacity in Yatton, to the detriment of the longer-term educational opportunities and well-being of primary school aged children in the village. As such, the proposal is contrary to Policy CS25 (Children, young people and higher education) of the Core Strategy and Policies DM1 (Flooding and drainage) and DM68 (Protection of sporting, cultural and community facilities) of the Sites and Policies Plan Part 1: Development Management Policies.

2 Background Information

- 2.1 The description of the appeal site and local surrounding area and the appeal proposal will be set out in the Statement of Common Ground (SoCG). A list of the documents on which the planning application was determined will also be agreed through the SoCG.
- 2.2 A list of Core Documents will be agreed. These will include the officers' report under delegated powers and the decision notice.

3.0 Planning Policy

- 3.1 Section 38 (6) of the Planning and Compulsory Act 2004 and section 70 (2) of the Town and Country Planning Act 1990 requires planning applications to be determined in accordance with the development plan unless other material considerations indicate otherwise.
- 3.2 The development plan includes, of relevance to this appeal:
- North Somerset Core Strategy adopted January 2017
 - North Somerset Sites and Policies Plan Part 1 – Development Management Policies adopted July 2016
 - North Somerset Sites and Policies Plan Part 2 – Site Allocations Plan (the 'SAP') adopted April 2018
 - Yatton Neighbourhood Development Plan 2019
- 3.3 The main and most important policies against which this appeal falls to be determined will be explained. Other relevant policies are included as they relate to proposed planning conditions and/or obligations.
- 3.4 The following policies are relevant to the proposal in addition to those specified in the reason for refusal (the latter are repeated here for completeness and marked with an asterisk).

North Somerset Core Strategy (NSCS) (adopted January 2017)

CS1	Addressing climate change and carbon reduction
CS2	Delivering sustainable design and construction
CS3*	Environmental impacts and flood risk management
CS4	Nature Conservation
CS5	Landscape and the historic environment
CS9	Green infrastructure
CS10	Transport and movement

CS11	Parking
CS12	Achieving high quality design and place making
CS13	Scale of new housing
CS14*	Distribution of new housing
CS15	Mixed and balanced communities
CS16	Affordable housing
CS20	Supporting a successful economy
CS25*	Children, young people and higher education
CS32*	Service Villages
CS34	Infrastructure delivery and Development Contributions

The Sites and Policies Plan Part 1: Development Management Policies
(adopted July 2016)

DM1*	Flooding and drainage
DM2	Renewable and low carbon energy
DM6	Archaeology
DM8	Nature Conservation
DM9	Trees
DM10	Landscape
DM11	Mendip Hills Area of Outstanding Natural Beauty
DM19	Green infrastructure
DM24	Safety, traffic and provision of infrastructure
DM25	Public rights of way, pedestrian and cycle access
DM26	Travel plans
DM27	Bus accessibility criteria
DM28	Parking standards
DM32	High quality design and place making
DM34	Housing type and mix
DM36	Residential densities
DM42	Accessible and adaptable housing and housing spaces standards
DM53	Employment Development on greenfield sites in the countryside
DM68*	Protection of Sporting, Cultural and Community Facilities
DM70	Development infrastructure
DM71	Development contributions, Community Infrastructure Levy and viability

Site and Policies Plan Part 2: The Site Allocations Plan (November 2018)

SA2: Community Use Allocations.

- 3.5 The Council will show the proposal is clearly contrary to the adopted Development Plan and that the adverse impacts of the proposed development would significantly and demonstrably and outweigh the benefits.

- 3.6 Consequently, the scheme does not constitute sustainable development, and when read in the context of the Secretary of State's policies in the National Planning Policy Framework, these impacts constitute compelling reasons for dismissing the appeal.
- 3.7 Reference will be made to Supplementary Planning Documents where relevant.

Supplementary Planning Documents (SPD)

- Residential Design Guide (RDG1) Section 1: Protecting living conditions of neighbours SPD (adopted January 2013)
- Parking Standards (2021)
- North Somerset Landscape Character Assessment SPD (adopted September 2018)
- Biodiversity and Trees SPD (adopted January 2024)
- Creating sustainable buildings and places SPD (adopted April 2021)
- Travel Plans SPD (adopted November 2010)
- Affordable Housing SPD (adopted November 2013)
- Development contributions SPD (adopted January 2016)
- North Somerset and Mendip Bats Special Area of Conservation (SAC) Guidance on Development: SPD (Adopted January 2018)
- Accessible Housing Needs Assessment SPD (Adopted April 2018)

3.8 **Emerging Local Plan**

Local Plan 2039 Pre-submission plan

The draft Local Plan is at regulation 19 Stage. The NPPF states that decision-makers may give weight to relevant policies in emerging plans according to their stage of preparation, the extent to which there are unresolved objections to relevant policies, and their degree of consistency with policies in the NPPF

4 Principle of Development

- 4.1 Policy CS32 of the Core Strategy defines Yatton as a "Service Village" and sets criteria which new development at the edge of service villages is expected to meet to protect the character of the area, prevent unsustainable development and deliver high quality development.
- 4.2. The development would be contrary to policy CS32 on account of its overall scale. Policy CS32 is clear that developments in excess of 25 units adjacent to the Yatton settlement boundary should be brought

forward in allocations through the Local Plan or a Neighbourhood Plan. The Council will demonstrate that, as part of the settlement hierarchy for the District, Yatton and the other service villages are not suitable for large scale urban expansion. Furthermore, it will be shown that the Neighbourhood Plan does not support further applications for housing beyond those supported by the Core Strategy and policy HP1 within it.

- 4.3. The Council will argue that the recent appeal decision the neighbouring site at Rectory Farm for 100 dwellings (21/P/0236/OUT) beyond the Yatton settlement boundary confirmed that weight should be attached to a failure to comply with the Council's Spatial Strategy and a breach of policy CS32

Housing Land Supply

- 4.4. The NPPF requires local planning authorities to identify and update annually a supply of specific deliverable sites sufficient to provide four years' worth of housing against their housing requirement when the provisions of paragraph 226 apply, or against their local housing need where the strategic policies are more than 4 years old and have not been reviewed.
- 4.5. It is accepted that the Council is unable to demonstrate the requisite four-year housing land supply at present. The most recently tested position stood at 3.5 years. Work is ongoing to produce an updated housing land supply position statement with a base date of April 2024. The full report will be published in due course.
- 4.6. Whilst this would ordinarily engage the tilted balance exercise prescribed in the NPPF it will be demonstrated that in this case the application of policies in the framework that protect areas or assets of particular importance provide a clear reason for refusing the development proposed – namely areas at risk of flooding.
- 4.7. Notwithstanding the Council's position that the tilted balance is not engaged, in the event that the Inspector were to conclude otherwise, it will be demonstrated that the adverse impacts of granting permission would significantly and demonstrably outweigh the benefits of the appeal proposal.

5 Failure of sequential test

- 5.1. National planning policy provides a clear approach to development in areas at risk of flooding, that is to avoid areas at greatest risk of flooding, and to direct development to areas of least flood risk, taking into account all sources of flooding, as well as how this flood risk changes over time (NPPF; Paragraph 168).

- 5.2. North Somerset is affected by various sources of flood risk, especially tidal flooding, given the extensive coastline present and the unique characteristics of the landscape with large areas of low-lying land. Whilst there is no dispute between the parties on the flood status of the appeal site being high-probability Flood Zone 3a (tidal), the council will present evidence to demonstrate this.
- 5.3. In order to give effect to the underlying principle of avoiding areas at greater flood risk, and only using such land when it is necessary to do so, national and local policy provide two specific policy mechanisms to be applied at the planning application stage – the Sequential Test and the Exceptions Test.
- 5.4. The Sequential Test seeks to ensure that more vulnerable types of development, including residential development, are directed to areas of lower flood risk. Paragraph 168 of the NPPF reads, "*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.*"
- 5.5. Core Strategy Policy CS3 requires the sequential test to be applied across the whole of North Somerset when, as is the case with this appeal, the proposed site is outside of the settlement boundaries of a main town, and when there are not specific reasons as to why a more localised search area should be applied. Evidence will be provided to justify why a North Somerset wide search area is reasonable in this case. The Councils evidence will explain the relevance of, and conflict with Policy CS3 and parts of it that are inconsistent with national planning policy.
- 5.6. The onus is upon the applicant to have provided the requisite evidence to support their sequential assessment to enable the council to determine whether or not the test is passed. The appellant has provided a revised sequential test assessment, dated March 2024. This explains the methodology adopted, and the conclusions around the assessment of sites, including that the appeal site is one of the most sequentially preferable sites.
- 5.7. The Council have considered the appellant's sequential assessment and will present evidence indicating that the sequential test is failed in this instance. The appellants numbering system used to identify each site will be used in the Council's evidence to assist accurate identification of sites through the evidence and between the parties.
- 5.8. The appellant's assessment identifies seven, "sites which could be capable of accommodating the total residential capacity requirements of the application proposals, are not at a higher flood risk than the application site, where there are not strategic planning policy reasons affecting the buildability of the site or where extant permissions would

not prevent deliverability.” (Flood Risk Sequential Test, March 24, para. 5.6.1).

- 5.9. The Council’s evidence will address issues regarding the overarching methodology the appellant has applied. For example, the selection of site size thresholds and rejection of sites below a certain site size. This appears to be driven by the assumption that any alternative site should be able to accommodate a comparable proportion of open space (70% of gross site area) that is not agreed by the Council and evidence will be presented to substantiate this.
- 5.10. In addition, the approach to the consideration of multiple sites that taken together, could accommodate the proposals is not agreed. Officers do not agree that multiple sites should necessarily be contiguous/ in proximity as per the appellants methodology. Evidence will be provided to substantiate this and other methodological points.
- 5.11. In order to focus on the issues in dispute, officers agree on rejection of sites including under the following circumstances:
- Sites within equivalent flood zone 3, unless development could be accommodated on part of the site at a lower flood risk (a sequential approach to development layout);
 - Sites where the development has commenced, unless the development is structured over multiple phases, where a later phase of development not yet started could accommodate the proposed development;
 - Sites of 10 or less dwellings;
 - Sites that are completed;
- 5.12. Regarding sites rejected on flood risk grounds, the appellants assessment rejects land at the emerging Wolverhill Strategic Allocation (with sites identified in Appendix D to the Flood Risk Sequential Test Report) on the basis of flood risk. However, this development is an emerging allocation in flood zone 1, and the Council will present evidence to explain this, and why this is a sequentially preferable site to the appeal site.
- 5.13. The Council’s evidence will show that the Sequential Test is failed in this case and will present evidence to support this and a specific schedule of sites that indicate that failure. This will include reference to national and local policy including the NPPF and the PPG section on Flood Risk and Coastal Change. Reference will also be made to other relevant appeal cases which substantiate this including a recent case in North Somerset – Land at Lynchmead Farm (appeal ref: APP/D0121/W/22/3313624), and the associated High Court Judgment relevant to the matters. This evidence will demonstrate that there are reasonably available sites at a lower risk of flooding appropriate for the proposed development. This assessment will take into consideration the nature of the proposed development and the appropriateness of alternative sites, including

multiple sites, to accommodate it. It will also present details indicating that the alternative, sequentially preferable sites would not have a materially longer availability timescale.

- 5.14. As part of the Council's presentation of alternative sites, the Council's evidence will specifically identify where the Council's site conclusion differs compared to the appellant's assessment in order to focus the debate at the Inquiry. In instances where decision makers conclude that the test is not passed, national policy advises that development should be refused, and this presents a clear reason for refusal with regard to the policies of the NPPF. This has the effect of disapplying the 'tilted balance'.
- 5.15. The Council will present its position on the failure of the sequential test as part of the wider planning balance exercise. This will include consideration of whether weight afforded to the failure of the sequential test should be given less weight in this case, in the context of the proposed housing delivery.
- 5.16. The Council's evidence will demonstrate how the emerging Local Plan proposes to meet housing needs, by minimising development in areas at risk of flooding. Land availability evidence prepared to support the Plan's preparation demonstrates the range of sites that are available for development in areas at lower risk of flooding.

6. **Flood Risk**

- 6.1 Policy CS2 of the Core Strategy requires the application of best practice in Sustainable Drainage Systems to reduce the impact of additional surface water run-off from new development. Policy DM9 of the Sites and Policies Plan Part 1: Development Management Policies requires development to consider the implications of surface water on the wider area. Paragraphs 170 and 173 of the NPPF require planning applications to demonstrate that flood risk is not increased elsewhere, and for sustainable drainage systems to meet appropriate standards.
- 6.2 It is noted that the appellant's Flood Consequence Assessment shows that the land raising required to prevent flooding to the development reduces the area available for flood storage and that this would increase flood risk to land and housing to the east of the site. The flood level in the 1 in 200 plus climate change flood event, flood levels to the east of the site, would increase by 1.7cm. This forms part of the basis for an objection by the Environment Agency. The Council will argue that the proposal would therefore be contrary to paragraph 173 of the NPPF, which requires that development not increase flood risk elsewhere. Were the Exceptions Test to be applicable, the Council will demonstrate that this would also be failed as a result, in accordance with paragraph 170 of the NPPF.

- 6.3 Furthermore, the Council will demonstrate that the appeal scheme would lack safe access and egress in the event of the 1 in 200 plus climate change event. The FCA shows that floodwater would restrict safe vehicular and pedestrian access to the site from the Shiners Elms entrance. Safe access would be possible from the south if the planning permission reference 21/P/0236/OUT were to be completed. However, this development has not commenced on site and there is no guarantee that it will. Therefore, the proposal would be contrary to paragraph 173 of the NPPF, which requires that safe access and escape route be provided in the event of an emergency. Again, the development would fail the Exceptions Test if this were applicable, as paragraph 170 of the NPPF requires that development will be safe for its lifetime taking account of the vulnerability of its users.

7. Safeguarded school land

- 7.1. A section of the southern part of the site is safeguarded for a primary school under Policy SA8 of the Site Allocations Plan. Policy DM68 of the Sites and Policies Plan states that land and buildings in existing use, last used for, or proposed for use for a sporting, cultural or community facility, are protected for that purpose unless the land is allocated for another purpose in another planning document.
- 7.2. The Council will set out the projected demand for primary school places in Yatton, particularly given new developments consented or under construction in the village and why the retention of the site allocation is a necessary safeguard. It will be argued that Yatton Infant and Junior Schools, which currently serve the southern part of Yatton, are on a constrained site and do not have the capacity for expansion. The schools also rely on temporary buildings that are coming to the end of their life.
- 7.3. The appellant has argued that a replacement primary school has already been constructed in Yatton, which has capacity to expand to 2 forms of entry. Therefore, there is no longer any need to safeguard additional land in Yatton for this purpose. The Council will demonstrate that the Chestnut Park Primary School, which is located at the northern extremity of Yatton, is intended to absorb demand from new development at the end of the village and is insufficient to cater for prospective future demand throughout Yatton.
- 7.4. The primary school site allocation has been carried forward into the emerging Local Plan. The Council will argue that the Local Plan examination process is the appropriate forum for determining whether sufficient land has been allocated for primary schools in the plan period and whether the allocation itself is suitable.

- 7.5. The Council will further argue that none of the exceptions set out in policy DM68 apply. The development would therefore have the potential to obstruct the provision of sufficient primary school capacity in Yatton and is therefore contrary to Policy CS25 of the Core Strategy and Policy DM68 of the Development Management Policies.

8. Planning Obligations and conditions

- 8.1 A Section 106 Legal Agreement is required to secure the proposed 50% affordable housing contribution in accordance with policy CS16, the provision and on-going maintenance of on-site Green Infrastructure, (including 70% of the gross site area as open space, play areas, woodland, allotments, play areas), home to school travel, public transport, traffic calming measures and sustainable travel contributions. It is anticipated that the appellant will submit this in advance of the inquiry however in the absence of a S106 Legal Agreement the LPA will demonstrate that the proposal fails to make policy compliant contributions towards the identified needs.
- 8.2 A list of suggested conditions will be agreed with the appellant through updates to the SoCG.

9 Conclusion

- 9.1 The appeal scheme would be substantially in excess of the 25-unit threshold set for small scale, unplanned development adjoining the existing settlement boundary of the village of Yatton and as such cuts across the strategic intentions of the Core Strategy, which is an expression of the sustainable approach to development in North Somerset. Yatton is not considered an appropriate location for further large-scale urban growth.
- 9.2. In flooding terms, the development would fail the sequential test, with alternative sites available for housing at lower risk of flooding. Compounding this, the site would lack safe access and egress during the 1 in 200 year (plus climate change) flood event. The lack of safe access would reduce the weight to be attached to the benefits of the proposed housing given the risks that future occupants would be subject to over the lifetime of the development. This is particularly the case for the affordable housing, the occupants of which would typically have fewer housing choices. The additional flooding to neighbouring properties, whilst seemingly minor in terms of the additional flood water depth, is a clear breach of national policy as set out in the NPPF. Were the exceptions test to be applicable it would fail on these grounds under Part B as the development would both increase flood risk elsewhere and fail to be safe over its lifetime.

- 9.3. The loss of the school site allocation, given projected demand for school places and the condition of existing schools, would potentially jeopardise the future provision of sufficient primary school places in Yatton.
- 9.4. As set out above, the Council consider that the development would be contrary to the Development Plan and that the tilted balance is not engaged. In any event, the harms of the development are overall considered to very significantly outweigh the benefits and refusal would have been recommended were the Council able to make a decision on this application.