



TOWN AND COUNTRY PLANNING ACT 1990

(As Amended)

Appeal by Persimmon Homes Severn Valley against the non-determination of the outline planning application for 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 at Rectory Farm (north), Chescombe Road, Yatton, North Somerset

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North Somerset Council, Planning Policy Team Lead – Delivery

PROOF of EVIDENCE

addressing the Flood Risk Sequential Test

Planning Inspectorate reference: APP/D0121/W/24/3343144

Local Planning Authority reference: 23/P/0664/OUT

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1 QUALIFICATIONS AND EXPERIENCE

- 1.1 My name is Marcus Hewlett. I hold a BA (Hons) in Architecture and Planning from the University of the West of England. I have approaching 18 years' experience in local government, joining the planning policy team at North Somerset Council in 2006. My qualification and practice experience includes formulation of strategic and local planning policy, planning and delivery of strategic development through all stages of the planning system including plan making and development management, and preparation of technical evidence. I have extensive experience of land availability evidence including preparation of various technical studies, and consideration of evidence on land promotion through the plan making process.
- 1.2 My experience in plan making covers every stage of plan preparation including identifying and analysing issues and options, devising and testing spatial scenarios, evaluation of constraints, and site identification, assessment, and allocation.
- 1.3 My experience has also focused on residential site planning and delivery, and related evidence, including the planning and delivery of large-scale strategic development sites such as the committed Weston Villages developments, including Parklands Village, and the emerging Wolvershill Strategic Location. The latter is a strategic site emerging through the new Local Plan. As part of the planning and delivery of these sites I have experience of a range of aspects of planning practice including masterplanning and design, infrastructure planning and delivery, including major capital projects, engagement with developers and promoters, development viability, and development management processes.
- 1.4 My expertise in relation to flooding matters is in the application, and preparation of, flood risk planning policy and I have been involved in a recent case where the interpretation and application of national policy and guidance on flood risk have been examined. This includes application of specific policy mechanisms such as the sequential and exceptions test, but also consideration of the significance of flood risk in the wider context of sustainable development.

- 1.5 In the preparation of this proof of evidence, I have referred to the Government's 'Procedural Guide: Planning appeals – England', notably Annexe G. The facts stated in this evidence are true to the best of my knowledge and belief, and the views I express represent my professional opinion.
- 1.6 I have been involved in the consideration of this proposal since its submission in 2023. This is in regard to the consideration of the flood risk sequential assessment.

2 SITE LOCATION AND PROPOSED DEVELOPMENT

- 2.1 The site location and description of the proposed development is set out in the Statement of Common Ground (SofCG). It is agreed that the site is in an area of high-probability risk of flooding, flood zone 3, and that the flood risk sequential test (FRST) is engaged as required by local and national planning policy (see Section 4).
- 2.2 The description of development was altered shortly prior to the appeal being lodged with a package of documents provided on Tuesday 26 March 2024. This change in description followed a High Court Judgment¹ following a decision on a proposal in North Somerset at Lynchmead Farm, Weston-super-Mare². This case addressed the sequential test and is pertinent to this appeal. Much of the appellants case regarding the sequential test crystallised following this Judgment, indeed the Planning Statement explains that the sequential assessment has been prepared in accordance with conclusions reached in the Judgment³. All references to the Judgment hereafter refer to this Judgment, and I consider the relevance of the Judgment further in section 4.

¹ *Mead Realisations and Redrow Homes Ltd v Secretary of State for Levelling Up, Housing and Communities* [2024] EWHC 279 – Core Document J1

² APP/D0121/W/22/3313624 – Core Document I2

³ Planning Statement (March 2024) Stantec on behalf of Persimmon Homes Severn Valley – Core Document B10

3 SCOPE OF EVIDENCE

- 3.1 This proof of evidence addresses the Flood Risk Sequential Test (FRST). This is relevant to the second putative reason for refusal, copied below.

“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.”

- 3.2 In section 4 I reference relevant planning policy, including the National Planning Policy Framework (NPPF) and associated Planning Practice Guidance (PPG). I refer to relevant parts of the Judgment that are pertinent to the consideration of this. I then set out the relevant Development Plan policy on the matter.
- 3.3 In section 5, I provide my analysis of the issues, and my assessment of alternative sites, with reference to the appellant’s assessment as provided in the report ‘Flood Risk Sequential Test Report (March 2024)’, Core Document B7. I set out where I disagree with the appellants conclusions and conclude this section by identifying and explaining those sites I consider to form reasonably available alternatives leading to my conclusion that the FRST is failed in this case.
- 3.4 In section 6 I provide my conclusions and address the consequences of the failure of the FRST in this case. I provide my opinion as to the weight to be attributed to this failure, taking into account the appellant’s view that failure of the FRST may not necessarily lead to refusal in the context of general development

needs⁴, and the extent to which needs can be met using land at a lower risk of flooding. The wider planning balance is provided within the evidence of Mr Smith for the Council as the case officer for the proposal.

3.5 Mr Bunn provides evidence on the wider flood risk issues that affect the site in respect of refusal reason 3.

⁴ See Appendix C to the Appellant's Planning Statement (15 March 2024), particularly paragraph 17 – Core Document B10

4 RELEVANT PLANNING POLICY

National Planning Policy Framework (NPPF)

- 4.1 The NPPF provides the Government's planning policies for England and forms a material consideration for decision making purposes.
- 4.2 Avoiding vulnerable development in areas at risk of flooding, where it is not required, is an important part of realising sustainable development. Flood risk is identified as an important constraint in footnote 7 to paragraph 11d(i), and remains as such in the Government's proposed revisions to the NPPF⁵ that are currently subject to consultation.
- 4.3 Chapter 14 of the Framework is headed 'meeting the challenge of climate change, flooding and coastal change', and paragraph 165 underpins the approach to development and flood risk, stating 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).”

- 4.4 This policy is intended to be implemented through application of the sequential test. Paragraph 168 reads:

“The aim of the sequential test is to steer new development to areas with the lowest risk of flooding from any source. Development [such as the appeal proposal] 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.”

- 4.5 The NPPF provides for instances where it is not possible to locate development on lower flood risk areas. Paragraph 169 reads:

⁵ Published on 30 July 2024.

“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.”

- 4.6 This policy sets a ‘high bar’ for development in flood risk areas. If it is possible to locate development on land at a lower flood risk taking into account land availability evidence, development should be avoided in higher risk areas. Where it is not possible to do this, national policy indicates that the sequential test should be passed, and for certain types of development, depending on its vulnerability, the Exceptions Test becomes engaged.

Planning Practice Guidance (PPG)

- 4.7 Planning Practice Guidance (PPG) provides additional detail under section ‘Flood Risk and Coastal Change’, elucidating policy set out in the NPPF.
- 4.8 PPG, paragraph: 023 adds some context to the importance of the sequential test explaining that:

“Avoiding flood risk through the sequential test is the most effective way of addressing flood risk because it places the least reliance on measures like flood defences, flood warnings and property level resilience features.”

- 4.9 Despite the appellant’s emphasis⁶ on the site being ‘defended’, this underlines why the presence of defences is irrelevant when dealing with the priority to steer development to areas of lowest risk of flooding “as the long-term funding, maintenance and renewal of this infrastructure is uncertain”.⁷

- 4.10 The PPG also reiterates⁸ the inherent link between avoiding higher flood risk areas and the achievement of sustainable development by stating:

“Application of the sequential approach in the plan-making and decision-making process will help to ensure that development is

⁶ Appellant’s Statement of Case, para. 6.9.1 – Core Document D1

⁷ PPG, *Flood Risk and Coastal Change*, para. 024.

⁸ PPG, *Flood Risk and Coastal Change*, para. 023.

steered to the lowest risk areas, where it is compatible with sustainable development objectives to do so, and developers do not waste resources promoting proposals which would fail to satisfy the test” (underlining added)

- 4.11 The PPG provides guidance⁹ on how to ascertain the initial search area for alternative sites in a way that is capable of being applied consistently with local plan policy on the sequential test. The catchment area for the type of development e.g. a school, should be considered in setting the search area. Para. 29 of the PPG is clear that the planning authority will need to determine the appropriate area of search, based upon the development proposed and relevant spatial policies.

Considering ‘reasonably available’ alternative sites

- 4.12 The PPG provides further guidance to NPPF paragraph 168 on what might represent a ‘reasonably available’ alternative site:

“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.

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’.

The absence of a 5-year land supply is not a relevant consideration for the sequential test for individual applications.”

(Paragraph: 028 Reference ID: 7-028-20220825

Revision date: 25 08 2022)

- 4.13 This assists in the consideration of alternative sites. ‘Reasonable availability’ is not the same as the test of deliverability for housing land supply purposes, and

⁹ PPG, *Flood Risk and Coastal Change*, para 027.

requires evidence of 'availability', not delivery. With reference to paragraph 169 of the NPPF, the test is seeking to investigate whether there is a necessity to use land at risk of flooding. The Inspector at the Lynchmead Farm Inquiry concluded¹⁰:

“[...]’available to be developed’ means just that. It does not mean that development of an alternative site would have to follow the same timescale envisaged for the appeal scheme. It is sufficient that there is a positive indication that the land is available to be developed. The start date for development and the rate of build out may be affected by many site-specific factors, such as the need to relocate infrastructure or undertake hydraulic testing, but that does not alter the fact that the land would be available to be developed.”

4.14 This reasoning was criticised in a legal challenge to the decision¹¹. Mr Justice Holgate addressed the criticism of the Inspectors approach¹². He said:

“Allowing for flexibility, the Inspector was entitled to say that development of an alternative site did not have to follow the same timescale as was envisaged for the appeal proposal. He recognised that the start date and build-out rates can be affected by many site-specific factors, including the need to relocate infrastructure, but that does not mean that an alternative is not “available to be developed.” Comparison of availability between two sites involved matters of degree. It does not require precise alignment. This is a matter of judgment for the Inspector. On the material shown to the court it is impossible to say that his judgment was irrational.”

4.15 The Inspectors 'positive indication' set out in para.31 of the Lynchmead Decision reflects wider PPG advice with a direct link to the application of flood risk sequential test. PPG advice on the flood risk sequential test directs decision

¹⁰ APP/D0121/W/22/3313624 para. 31 – Core Document I2

¹¹ Within Ground 2 of the Judgment, page 25 – Core Document J1

¹² Judgment, para. 121 – Core Document J1

makers to land availability information including housing land availability assessments. PPG advice on the matter of land availability assists with ‘*what factors can be considered when assessing availability?*’¹³. Under this heading,

“A site can be considered available for development, when, on the best information available (confirmed by the call for sites and information from land owners and legal searches where appropriate), there is confidence that there are no legal or ownership impediments to development. For example, land controlled by a developer or landowner who has expressed an intention to develop may be considered available.” (My underlining)

- 4.16 Paragraph 028¹⁴ requires comparison of availability timescales between the appeal site and any alternative site. Advice to the appellant¹⁵ suggests an alternative site should not take ‘materially longer’. This requires a reasonable timeframe to be applied to the availability of any alternative sites that should be flexible and reasonable, reflecting that each site has its own unique circumstances. I consider it reasonable to proceed on the basis of a positive indication of availability now or within the short- term (5 year).
- 4.17 Notwithstanding my view, my evidence presented on sites shows sites that are not only available now, but also deliverable in the short-term. The need to provide any enabling works on a given site, including provision of infrastructure is more relevant to the specific timescale for delivery rather than whether the site is itself ‘reasonably available’.
- 4.18 Within the Council’s Statement of Case¹⁶, it was set out that sites would be rejected if development had commenced. Some sites originally cited by the Council following the Case Management Conference (CMC), were subsequently rejected upon review of housing supply information and site surveys, and the

¹³ PPG *housing and economic land availability assessment* para 019.

¹⁴ PPG, *Flood Risk and Coastal Change*, para 028.

¹⁵ Appendix C to the Planning Statement dated 15 March 2024 – Core Document B10

¹⁶ Para. 5.11 – Core Document D2

appellant was informed. Some sites are awaiting pre-commencement conditions to be discharged and in these circumstances, the sites are considered ‘reasonably available’ for the purposes of this appeal¹⁷.

Considering suitability of location

- 4.19 PPG, para. 028 can be applied quite broadly with respect to suitability of alternative locations – they should be suitable for the type of development. I consider it relevant to have regard to the spatial strategy of the development plan, particularly the locational distribution of residential development¹⁸ when considering suitability. This represents sustainable development in the North Somerset context. The Lynchmead Farm Inspector was also guided by the spatial strategy¹⁹.
- 4.20 However, since the appeal site significantly exceeds the scale of development permitted for speculative housing proposals, this exercise should not necessarily be restricted to the size thresholds for sites set out in the Core Strategy²⁰.

Deciding whether the sequential test is passed

- 4.21 Evidence on land availability is important in helping to determine whether the sequential test has been passed²¹, and for proposals involving residential development, information from the Strategic Housing Land Availability Assessment (SHLAA)²². The SHLAA is highlighted in the PPG as a key source of reasonably available sites, and may form part of a ‘register’ of such sites²³. The majority of sites in the SHLAA are being promoted for development indicating their availability²⁴.

¹⁷ Part of site no. **17** (part with consent), and site **112**.

¹⁸ See North Somerset Core Strategy, Policy CS14: *Distribution of new housing* – Core Document F1

¹⁹ E.g. paragraph 32 – Core Document I2

²⁰ See Core Strategy policies CS28: *Weston-super-Mare*; CS31: *Clevedon, Nailsea, and Portishead*; and CS32: *Service Villages* - Core Document F1

²¹ PPG *Flood Risk and coastal Change*, para. 29

²² Core Document H2: North Somerset Strategic Housing Land Availability Assessment (Autumn 2023)

²³ PPG, *Flood Risk and Coastal Change*, para. 029.

²⁴ PPG, *Housing and Economic Land Availability Assessment*, para. 019.

- 4.22 Sites within the SHLAA are typically not currently identified for development in a development plan and are emerging through, or being promoted through the plan making process, currently the emerging Local Plan 2040.
- 4.23 There are a range of sites within the Council’s SHLAA²⁵ that have been identified as being suitable candidates for residential and other development, some of which are draft allocations within the emerging local plan²⁶ as identified within Appendix MH2 and MH3. The PPG guidance²⁷ anticipates that sites beyond the current allocations can be considered:

“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”

Mead Realisations and Redrow Homes Ltd v Secretary of State

- 4.24 The Lynchmead Farm case established some key principles that are relevant to this appeal. Where relevant I reference these throughout my evidence.
- 4.25 The Judgment addressed the sequential test set out in the NPPF and the PPG. The case addressed the status of these, their relationship, and the way the Inspector in the Lynchmead Farm case considered relevant development plan policy against the national policy context. The Judgment emphasises the extent to which planning judgment is required in the application of the sequential test²⁸.
- 4.26 One of the Grounds of Challenge was that the Inspector had treated the PPG guidance as if it were a ‘binding code’, and indeed if it had been treated in this way, this would have been an error in law. However, the Inspector was found to have not treated it in this way. This is important in terms of the way the Inspector

²⁵Core Document H2: Strategic Housing Land Availability Assessment (August 2023)

²⁶ Core Document G9: Regulation 19 Local Plan (July 2024).

²⁷ PPG, *Flood Risk and Coastal Change*, para 029

²⁸ E.g. paragraphs 97, 102, 103, 106, 107, 108, 109, 110, 121, and 123 – Core Document J1

had treated the second part of Core Strategy Policy CS3²⁹, and paragraph 28 of the PPG.

The proposed development

- 4.27 Consideration of the nature of the development proposed is required as that may influence the search area for alternative sites and the appropriateness of any alternative site, or collection of sites, in accommodating the proposed development.
- 4.28 Paragraph 45 of the Judgment sets out the claim regarding this issue:

“the claimants submit that on a true interpretation of para. 162 [now 168] of the NPPF the Inspector was required to consider whether there were alternative sites which could accommodate the development in fact proposed in its various particulars, including form, quantum and intended timescales for delivery, and not some other hypothetical development.”

- 4.29 In addressing this issue, Mr Justice Holgate said:

“This [para. 162, now 168] is a broad open-textured policy. There is no additional language indicating how the issue of ‘appropriateness’ should be approached or assessed. There is nothing to suggest that the object is restricted to meeting the requirements of the developer or applicant for planning permission, or of his particular proposal on the application site he has selected. On the face of it, the question of appropriateness is left open as a matter of judgment for the decision maker.” (para. 97)

- 4.30 In paragraph 99 of the Judgment, Mr Justice Holgate reflects on the broad scope of the sequential test potentially applying to a wide range of development types, but draws a distinction between residential development and more specialised types:

“Some development may be of a specialised or highly specific nature with particular or intrinsic requirements as to the site, form and scale of development, access, and catchment. Examples could include a power station, transport infrastructure, a school or waste disposal

²⁹ Explained in paragraph 4.43 of this proof of evidence

facilities. Other forms of development such as residential, may have no, or fewer, specific requirements for the purposes of a sequential assessment.”

“There is nothing in the language of the NPPF which could justify the court adopting the highly specific interpretation contended for by the claimants, namely alternative sites which could accommodate the development in fact proposed in its various particulars, including form, quantum (both as to site area and amount of development) and intended timescales for delivery.” (para. 100, my underlining)

“A developer may put forward a case that the specific type of development he proposes is necessary in planning terms and/or meets a market demand. It then becomes a matter of judgment for the decision-maker to assess the merits of that case and to decide whether it justifies carrying out the sequential assessment for that specific type or for some other, perhaps broader, description of development paragraph 162 [now 168] does not exclude either approach, but leaves to the decision maker the selection of the approach to be taken.” (para. 102)

- 4.31 Para 103 of the Judgment allows for a need or market demand case that could be based on the mix of land uses proposes and any interrelationships between them, and the size of the site required. However, counterbalanced with this is the need to assess whether flexibility has been appropriately considered.³⁰ What is important is that a rational approach is taken to categorising the proposed development for the purposes of the sequential test³¹.

³⁰ Judgment, para. 103 – Core Document J1

³¹ Judgment, para. 123 – Core Document J1

4.32 The PPG at paragraph 028 provides for multiple smaller sites. There is no requirement for these to be adjoining. There is no stipulation on how far apart any collection of sites might be. Paragraph 109 of the Judgment reads:

“Whether such an arrangement is so capable depends on the judgments to be made by the decision-maker on such matters as the type and size of development, location, ownership issues, timing and flexibility”

4.33 Mr Justice Holgate addresses the PPG reference to a ‘series’ of smaller sites. He said:

“The word “series” connotes a relationship between sites appropriate for accommodating the type of development which the decision-maker judges should form the basis for the sequential assessment. This addresses the concern that a proposal should not automatically fail the sequential test because of the availability of multiple, disconnected sites across a local authority’s area. The issue is whether they have a relationship which makes them suitable in combination to accommodate any need or demand to which the decision-maker decides to attach weight.”

4.34 Mr Justice Holgate was critical of the approach to the consideration of smaller, disaggregated sites in the Redrow case³². The Inspector in that case, whilst concluding that a number of smaller disaggregated sites formed reasonably available alternatives, did not attempt to justify or explain the extent to which these would collectively be appropriate for the proposed development. Mr Justice Holgate was critical of this ‘automatic’ assumption of failure of the sequential test in these instances and said the Inspector should have addressed this as part of her decision-making.

³² Judgment, para. 165 – Core Document J1

4.35 On that basis, it is important to provide this justification as part of any planning judgement around the suitability of smaller sites in this appeal. In section 5 of my evidence³³ I set out why I consider the contribution of smaller sites to be appropriate.

Availability of sequentially preferable supply and ability to meet general development needs

4.36 In the Redrow case, the Inspector was criticised for failing in the application of NPPF para 162 [now paragraph 168] to have regard to housing need and the implications of failing to meet that need³⁴. It was suggested that on the Council's own evidence, there were insufficient sequentially preferable sites to meet housing requirements, with the implication that, land at risk of flooding would in fact be required to meet housing need.

4.37 In paragraph 174 of the Judgment Mr Justice Holgate sets out that:

“If the total size of sequentially preferable locations is less than the unmet housing need, so that satisfying that need would require the release of land which is not sequentially preferable, that too may be taken into account in the overall planning balance.”

4.38 Paragraph 174 of the Judgment continues, explaining that these are not matters for the application of the sequential test. Instead, they may reduce the weight given to failure of the sequential test, or increase weight attributed to factors weighing against such failure. This in my view would logically apply in instances where it is not possible for an authority to meet its development requirements in areas at a lower risk of flooding³⁵. Section 6 of my evidence explains why this does not apply to the North Somerset context.

³³ Paras. 5.46 – 5.57.

³⁴ Judgment, para. 172 – Core Document J1

³⁵ Having regard to para. 169 of the NPPF.

DEVELOPMENT PLAN POLICY

- 4.39 S38(6) of the Planning and Compulsory Purchase Act 2004 provides that applications for planning permission must be determined in accordance with the development plan, unless material considerations indicate otherwise. The starting point for consideration of this appeal must therefore be the development plan.

Core Strategy (2017)

Policy CS3: Environmental Impacts and Flood Risk Management

- 4.40 CS Policy CS3: *Environmental impacts and flood risk management* requires compliance with the sequential approach to development in flood risk areas provided in national planning policy. CS3 is structured in two parts. In the first part, Policy CS3 reads:

“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 [...]”

- 4.41 The NPPF should be read together with the PPG. Reference to the Technical Guidance is that available at the time when the NPPF was first introduced.
- 4.42 Policy CS3 specifies the search area for the purposes of the sequential test and for proposals outside of the towns³⁶ such as the appeal site, the area will be the whole of North Somerset unless it can be demonstrated that there is a specific need within a specific area. In this case, a district-wide search is an appropriate basis, and the appellant has provided this.
- 4.43 Within the second part of Policy CS3, criteria are provided by which decision makers should assess whether any alternative site should be considered to represent a ‘reasonably available’ site. These criteria are out of date because

³⁶ The towns being Weston super Mare, Clevedon, Nailsea and Portishead.

they are inconsistent with the NPPF read together with the PPG, and that is what the Inspector at the Lynchmead Farm Inquiry concluded³⁷. Addressing the way the Inspector dealt with CS3, Mr Justice Holgate said:

“I see no possible legal error in the Inspector’s conclusion that the proposal conflicted with the first part of policy CS3 because it conflicted with the sequential test in the NPPF read together with the PPG.” (para 141)

4.44 Regarding the criteria set out in the second part of the policy, the Judgment reads:

“[...] the Inspector [at the Lynchmead Farm Inquiry] did not commit any error of law when he concluded that the criteria in the second section of policy CS3 are out of date because they are inconsistent with the NPPF read together with the PPG[...].” (para. 142)

4.45 Notwithstanding the position in relation to the second part of CS3, I have considered whether sites conform to the criteria. In particular, I have identified a series of sites³⁸ that I understand to be owned/ promoted by the appellant, one of which (located at site no. **91**) is being promoted to unlock a much larger scale of development of circa. 600 homes in a lower flood risk area.

Site Allocations Plan (2018)

4.46 The appeal site contains an extant allocation for a primary school under Policy SA8: *Community Use Allocations*, and the corresponding Schedule 4. As the site is affected by flood risk, a sequential assessment would be required with any planning application for the school, and the Exceptions Test would also be required. For the school use the appropriate area of search would reflect the extent of the catchment of the school within the Yatton area.

³⁷ APP/D0121/W/22/3313624, para. 41 – Core Document I2

³⁸ Land at site no. **91**; two sites comprising site no. **17**; and site no. **112**.

Emerging planning policy - North Somerset Local Plan 2040

- 4.47 The emerging North Somerset Local Plan 2040 Reg 19 version was approved by the North Somerset Council Executive on 17 July 2024 for publication and public consultation prior to submission for examination. On the 30 July 2024, consultation on a revised NPPF including a new Standard Method was published. In response the Council produced a press release³⁹ outlining the need to consider the proposed changes and that the intended consultation in the autumn of 2024 would not now take place. The Council is currently considering the implications of the changes, in particular the proposed increased housing requirement for North Somerset, (potentially 23,805 over a 15-year period if the draft standard method revisions are taken forward following the consultation) the greater scope for Green Belt in accommodating housing need and the government's re-emphasis on avoiding development on land at risk of flooding⁴⁰.
- 4.48 A new policy in the Reg 19 draft DP9: *Flood Risk* proposes to remove the criteria found in the second part of Policy CS3 bringing the policy framework into line with national planning policy on the matter.
- 4.49 Significant weight should be attached to the importance the emerging plan places on avoiding the risk of flooding in meeting future housing requirements⁴¹ as this is consistent with both the existing and proposed national policy (now identified as a 'hard' constraint by the new government). In addition, weight can also be given to emerging allocations for development within the draft, noting the advanced stage of the plan. I note the Deputy Prime Minister identifies Regulation 19 as an 'advanced stage'⁴². Paragraph 48 of the NPPF addresses the issue of weight to emerging plans, and criteria (a) advises that greater weight may be attributed to more advanced plans.

³⁹ Provided in Appendix **MH1**.

⁴⁰ See Appendix **MH5** - Letter from the Deputy Prime Minister to local authorities: *Playing your part in building the homes we need* (30 July 2024), especially my ref. **MH5B** on page 50 of the appendices document.

⁴¹ E.g. Strategic Priority to "safeguard areas at risk of flooding" and a sustainable development objective to "minimise vulnerability to tidal and fluvial flooding, without increasing flood risk elsewhere[...]". Policy SP1 and DP9 – Core Document G9

⁴² See appendix **MH6** and **MH6a** reference text within on page 51.

5 PLANNING ANALYSIS OF THE SEQUENTIAL TEST

The proposed development

- 5.1 The proposed description of development is relevant to the application of the sequential test, since any alternative site(s) is required to accommodate the proposed development, subject to appropriate flexibility. The type of development for the purposes of the application of the sequential test, e.g. general residential or a more specific type, is a matter for the decision maker, taking into account any need or demand case provided by the appellant. This is then relevant in terms of the suitability of any alternative site or sites to accommodate this.
- 5.2 My view in this appeal is that the appellant has sought to make the description so specific in order to narrow the scope for any alternative site to be identified as a suitable alternative. I consider that this applies an inflexible approach to the sequential test given the underlying importance of its objective.
- 5.3 The description of development is:
- “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.”***

5.4 Below I consider each element of the proposal, and any specific justification for the scheme as a whole to inform the consideration of any alternative site, or combination of sites. I also consider any need case for the proposed development, including whether there is a confirmed necessity to accommodate the proposed uses on a single site, or whether disaggregation of the proposal is justified. The latter includes disaggregation of the different elements of the proposal e.g. the residential and the E class, as well as disaggregation of the elements themselves, e.g. disaggregation of the total number of residential units proposed across a series of smaller sites.

Residential use

Housing provision in the Yatton area

5.5 The appellant's Planning Statement (Core Document B10) states at para 9.4.2 that the proposal would deliver a considerable number of homes, in an area where there is a shortfall in housing land supply. Whilst it is common ground that the Council cannot demonstrate a 4YHLS, completed development and commitments in Yatton are significant when considered against the indicative broad distribution of growth across the Service Villages⁴³ set out in the development plan.

5.6 The Core Strategy does not have specific requirement for new homes in the Yatton area. However, Policy CS14 set the indicative broad distribution of housing and anticipated that 10% of the overall housing requirement would be delivered at the Service Village tier of the settlement hierarchy over the plan period – 2,100 dwellings in total. If divided equally, that would equate to around 233 dwellings for each of the nine Service Villages. Yatton is one of the largest villages and has by far exceeded this notional share. On large sites alone (there have also been small windfall sites around the settlement) there have been 458 completions, broken down by site in Table 1.

⁴³ Core Strategy Policy CS32: *Service Villages* – Core Document F1

Site	Completions
Arnolds Way phase 1	150
Arnolds Way phase 2a	72
Arnolds Way phase 2b	39
Egret Drive	28
Titan Ladders	37
North End	132
Total	458
Table 1: Completions at Yatton within the plan period	

5.7 Further to completions, the evidence on land availability indicates three site opportunities within the Yatton Parish that are in lower flood risk areas and are available to accommodate residential development⁴⁴. These could accommodate 278 dwellings, with 158 of them already benefitting from planning consent. Completions and commitments in the Yatton area have therefore been significant in relation to the form and function of the settlement and the spatial strategy set out in the adopted development plan.

Residential need

5.8 The appellant makes the case for a specific need for residential development in the Yatton parish area, as well as needs for specific types of residential accommodation. This indicates a requirement to focus upon “larger market family housing”⁴⁵ as well as a requirement to increase the proportion of entry-level, 2 bedroom market homes to reflect greater affordability challenges.

5.9 However, I raise a series of points regarding this assessment of need.

5.10 Firstly, housing needs apply to the North Somerset area as a whole and housing provided anywhere in North Somerset meets the needs of the area. Paragraph

⁴⁴ Land at Moor Lane (part of site no. **112**); Land at Rectory Farm, Chescombe Road, (part of site no. **113**); and land north of Claverham (**52**).

⁴⁵ Pioneer (March 2024) Local Housing Need Report, in respect of Yatton Parish, para. 4.1.10 – Core Document B8

61 of the NPPF requires authorities to identify housing needs using the Standard Method, at the local authority geography. The ability to meet this need, and the appropriate distribution is a plan making function, seeking to distribute supply based upon a wider range of factors, including avoiding constraints such as flooding, with the objective of achieving sustainable development. There is no policy basis for assuming a 'need' figure specifically for Yatton.

- 5.11 The appellant's approach fails to take constraints into account in the task of meeting development needs. The importance of this is reinforced through the government's recent announcements⁴⁶ on planning reform. Para 001 of the *Housing and Economic needs assessment section of the PPG* identifies assessing housing need as a first step in the process of identifying how many homes needs to be planned for. Constraints, including flood risk, are then a key consideration as part of a wider exercise in the pursuit of sustainable development.
- 5.12 Secondly, the data on need is drawn from the North Somerset Housing Needs Assessment (HNA) and is not an assessment of future needs in the Yatton area. It is just a suggestion provided in 4.1.10⁴⁷ "that a similar proportion of larger market family housing will be needed in Yatton Parish" given the broad similarity of the Yatton Parish to the wider North Somerset. It is not a specific analysis of needs for the Yatton area. At most this could be taken as an indication of what mix of dwelling types may be suitable, based upon the current structure.
- 5.13 Thirdly, there is no suggestion that the types of residential accommodation that will be required can only be accommodated on green field sites such as the appeal site. Residential accommodation required can be delivered across a range of sites including urban sites, greenfield sites, larger settlements, and smaller plots. In fact this is likely to deliver the mix necessary to contribute to sustainable development, noting the Governments continued priority to brownfield development.

⁴⁶ See **MH5** – in particular see ref **MH5B** highlighted within this appendix that makes specific reference to flood risk as a constraint.

⁴⁷ Pioneer (March 2024) Local Housing Need Report, in respect of Yatton Parish – Core Document B8

5.14 Fourthly, the need report itself reads:

“the emphasis should be on the flexible application of the market housing mix set out within the LHNA23 both across North Somerset and within Yatton Parish,” (para 4.1.15), and, ***“It is not in the interest of developer’s to deliver housing that it cannot sell and it is, therefore, essential that an element of flexibility is retained within policy and development control decisions, particularly in terms of market housing mix, allowing developers to react quickly to the ebb and flow in demand for different open market housing types and sizes.”*** (4.1.16)

5.15 This consideration implies merit in assuming a broad definition of residential for the purposes of the sequential test, rather than only considering sites that would deliver a specific type.

Affordable component

5.16 The description of development includes up to 190 dwellings with 50% being affordable. The Appellant’s Planning Statement explains that this affordable provision assists in meeting housing need in Yatton and across the North Somerset area⁴⁸.

5.17 There is a policy requirement to deliver affordable units onsite on large housing proposals such as the appeal site⁴⁹, although the proposal offers in excess of the policy requirement. Whilst clearly a benefit of the proposal (as dealt with in the evidence of Mr Smith), 50% is unusual when considering development proposals in North Somerset and strict adherence to this as a basis for rejecting sequentially preferable sites is unduly restrictive, e.g. in rejecting consented sites simply because they have an agreed, lower affordable provision e.g. site no. **143**

⁴⁸ Paragraph 9.5.1 – Core Document B10

⁴⁹ Core Strategy Policy CS16 requires a benchmark of 30% affordable provision as a starting point

- land at Parklands Village. Evidence on viability⁵⁰ to support the emerging local plan said:

“the positions of 20% AH on PDL and 38.5% on [green field] are in our assessment generally probably an upper end view of the achievable range of likely outcomes, these and especially the former represent a blend of seeking to meet needs and an acknowledgement of the variety of scenarios that may be seen.”

5.18 Therefore, the ability to secure 50% is likely to be a fairly unique circumstance of the appeal site and the ability of the appellant to accommodate this scale. Whilst a greater proportion of affordable would be a benefit of the proposal to consider as part of the wider planning balance, I would not consider it a necessity that any alternative site, or combination of sites, would have to similarly provide 50%. I would consider it relevant to consider whether the affordable provision, by way of consideration of the sequential test, could be accommodated in line with the spatial strategy, in areas of greatest need. In North Somerset, the area of greatest preference is Weston-super-Mare, with the greatest demand across all locations for single bed properties and meeting these needs closest to where the need arises is favoured.

5.19 Given the need for affordable housing for the North Somerset area, I consider it reasonable to assume a requirement for at least 57 affordable units from alternative site(s) in line with policy (i.e. 30% of 190 dwellings). I see no reason why the affordable housing could not be accommodated across multiple sites in principle, that could deliver more dispersed benefit, especially given the applicants position that it meets needs of the North Somerset area⁵¹. As my evidence indicates, cumulatively, across a range of settlements, affordable housing from the sites is likely to exceed the (up to) 57 units assuming a

⁵⁰ Dixon Searle Partnership (Nov 2023) *Viability Assessment for North Somerset Local Plan 2039 – Core Document G8*

⁵¹ Planning Statement 9.5.1 – Core Document B1

minimum 30% (and even 95 units proposed), and some individual sites⁵² are planned to exceed the provision.

Residential Mix

5.20 The evidence of need indicates demand for a range of residential types, across North Somerset. The residential mix is proposed 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 hectare. No further proportions are provided within this mix so this allows for a broad range of typologies that are fairly typical of a residential proposal. A broad range of sites are likely to be appropriate in accommodating the proposed mix.

Summary

5.21 Based upon an analysis of the residential component, I conclude the following in terms of the application of the sequential test:

- 1 Assuming a **broad residential type** is appropriate in this appeal given the broad range of dwelling types proposed and the need to retain flexibility,
- 2 A **mix of site typologies** are likely to be suitable, e.g. urban sites available for flatted accommodation and suburban greenfield,
- 3 The **residential component could be disaggregated** across smaller sites in principle and this is likely to have wider benefits in meeting the established needs of the wider North Somerset area, across those settlements in accordance with the spatial strategy,
- 4 The scale of dwellings that that alternative site(s) are being sought are to accommodate **between 143 and 190 dwellings and between 57 and 95** affordable homes.

5.22 In drawing the above conclusions I have considered the merits of the need case and whether it justifies carrying out the sequential assessment on the basis of a more specific type of residential accommodation, or any particular site requirements. There is nothing in the proposed broad mix that would preclude consideration of alternative sites within urban areas, including urban sites that

⁵² E.g. site nos. **143, 136, and 16**.

would accommodate flatted residential accommodation, or greenfield sites, especially given the benefit of retaining flexibility. For the purposes of applying the sequential test, there are unlikely to be any specific requirements associated with the residential use that are required to be applied to alternative sites.

5.23 Assuming general residential use reflects the benefit of retaining flexibility in the type and mix of dwellings required as set out in the appellants HNA⁵³. However, even if the appellants' housing mix was used, there are still sites that would accommodate this⁵⁴. Further, disaggregation across multiple site typologies may lead to a greater range of residential types. For example, site no. **134** is indicated to be available for flatted accommodation compared to site no. **147** that is available for a mix of suburban type residential units, both of which contribute to the mix across the town.

5.24 Regarding scale, although the Judgment confirmed⁵⁵ no requirement to accommodate the exact scale of development i.e. 190 units (albeit the application is for 'up to'), given the district-wide need for residential units, I consider alternative sites should be capable singularly, or in combination, of accommodating at least 143 dwellings⁵⁶ and up to 190 dwellings.

E Class development

5.25 The proposal is to reserve 0.13ha of land for E uses and there is no further specificity regarding the eventual use, nor any potential end user identified. The Planning Statement states at paragraph 9.4.4:

“This will deliver economic growth/ social cohesion and has the ability to further supplement the sustainability of Yatton.”

5.26 As the proposal is only for land provision it cannot be said that the proposal will deliver economic growth itself, and no evidence is provided substantiating how

⁵³ Pioneer (19 March 2024) 'Local Housing Need Report, in respect of Yatton Parish', Para. 4.1.16 – Core Document B8

⁵⁴ Site nos. **136, 143**, and all other 'greenfield' sites potentially where mix is not yet defined. Only the sites known to be proposing a certain type could be potentially rejected e.g. site no. 134, and 167 that are proposed to accommodate flatted accommodation.

⁵⁵ Judgment, para. 100 – Core Document J1.

⁵⁶ The minimum threshold capacity suggested by the appellant – FRST para. 4.4.8 – Core Document B7

this will achieve social cohesion were it to be delivered and whether there would be commercial viability for any such use as part of the site.

- 5.27 There is potentially a wide range of uses that could ultimately fall within this consent and there is therefore no basis to determine any functional connection between this component and the wider proposal. The appellant has also not advanced any need case for any specific E use class, in fact the Statement of Case suggests⁵⁷ that this element of the proposal could come forward subject to demand/ need. It is not therefore proposed to be meeting any defined need. There is no evidence to indicate the necessity to accommodate any specified E class on this site, or with this proposal, or as part of a residential scheme.
- 5.28 Accordingly, I do not consider that the E class element of the proposal is central to the functioning of the wider residential proposal and see no reason why it could not be disaggregated from the wider proposal i.e. any alternative residential site would not have to include E class use on-site. As set out later in this evidence, there are in fact multiple alternative sites that are ‘reasonably available’ and actively promoted for such uses⁵⁸. Provision of the E class element on some of the alternative sites is likely to be more appropriate given potential for greater synergy with other nearby uses, and a larger residential catchment⁵⁹.

Open space, including allotments, and orchards

- 5.29 The open space is proposed to make up circa 70% of the gross site area, and this scale of provision is used to establish site size thresholds for any alternative site⁶⁰. 70% of the gross site equates to around 9.65ha of open space and the Appellant’s Planning Statement notes how this level of provision is not common to all sites⁶¹. This in turn equates to around 500sqm of open space per dwelling.

⁵⁷ Para. 6.4.4 – Core Document D1

⁵⁸ E.g. site nos. **134, 136, 140, and 143**

⁵⁹ E.g. site nos. **134, 136, 143.**

⁶⁰ See FRST paras. 4.4.5 to 4.4.8 – Core Document B7

⁶¹ Para. 9.8.1 – Core Document D1

- 5.30 This scale of provision doesn't appear to be based upon any need/demand case advanced by the appellant. However, the Council seeks provision of green infrastructure uses and outdoor play space based upon the adopted Development Contributions Supplementary Planning Document (SPD)⁶². This provision may be on-site where practical, or alternatively off-site contributions would be required if any particular typology is not practical for any particular site/proposal. Requirements upon the development also take into account existing provision within a defined area with a need to consider any identified deficiency at the point of the proposal. Requirements may also be for new provision or to enhance existing provision as appropriate.
- 5.31 Considering the extent of open space the appeal proposal includes, the Design and Access Statement (DAS) suggests that the extent of built development, and intervening open space is partly driven by landscape and visual considerations, including careful design to align new homes closely with the existing settlement edge and filter views from the adjacent Strawberry Line with additional woodland planting within⁶³. Both the Statement of Common Ground and Appellant's Statement of Case confirm⁶⁴ that ecological and landscape conditions have influenced the swathe of open space and planting in order to protect the sensitive Strawberry Line corridor. These are site-specific design responses and drive specific quanta of open space and features, rather than a need directly related to the proposed housing.
- 5.32 Taking the above into account, both the site-specific nature of requirements relating to any particular site, coupled with the unique design/landscape consideration, I do not agree that it is justified to conclude that any alternative site or sites would similarly have to accommodate 70% open space to the gross site area or the specific quantum of green infrastructure and the proposed constituent parts. Alternative housing sites will have unique requirements and opportunities for green infrastructure/ landscaping and ecological mitigations,

⁶² Development Contributions SPD (January 2016) – Core Document F8

⁶³ DAS page 37, and Appellants Statement of Case, para. 6.8.3 – Core Document D1

⁶⁴ Para 4.4.1 – Core Document D1

depending on their specific context and sensitivity, and provision in the area at the point the proposals come forward.

- 5.33 By comparison, an application for up to 125 dwellings from the appellant in Backwell⁶⁵ and one of the 'reasonably available' alternatives (site no. **17**) has a gross site area of 6.26ha and proposes 125 dwellings over 3.28ha of the site. This leaves 2.98ha of land to comprise the open space and any other element of the proposal, equating to 43% of the gross site area in that case, or 238.4sqm per dwelling, less than half proposed on the appeal site. On another site immediately to the south of the appeal site, and referred to in the Statement of Common Ground as 'Land at Rectory Farm, Chescombe Rd – Yatton', the proportion of undeveloped, open space to the gross site (4.26ha) is 36.6%, or 159sqm per dwelling.⁶⁶ Amongst my review of reasonable alternative sites I have found similar amounts – site **90**, 42% open space; and site **140**, 60% open space.
- 5.34 In the appellant's method the assumption that alternative sites need to achieve a similar scale of open space drives a high site size that I consider places an inflexible restriction on the consideration of alternative sites. There are instances in the appellant's assessment of sites where the alternative site would deliver all of the residential units, but because it would not deliver the same over inflated scale and proportion of open space, it is rejected⁶⁷.
- 5.35 Further, there is the opportunity for many alternative residential site proposals to accommodate play spaces, allotments, woodland planting, sustainable drainage features (as required) tree planting and hedgerow enhancement as part of any future proposal. The required scale of such provision will be dependent on the location and scale of the housing requirement and, similar to the appeal site, will be based upon a specific contextual analysis and appropriate design response to the site in question. I consider open space requirements to flow from any

⁶⁵ NSC ref: 24/P/1185/OUT *Land off Dark Lane Backwell*.

⁶⁶ According to the DAS, section 6.4, 4 residential parcels make up 2.7ha.

⁶⁷ E.g. site no. **26** – land at Langford; and site no. **133** – Rugby Club, Weston-super-Mare

specific site, and do not consider it appropriate to impose a bespoke solution identified for one site, on another.

- 5.36 Notwithstanding my position as set out above, the range of sites I consider to be 'reasonably available', can accommodate open space, exceeding the proposed scale either in isolation⁶⁸ or combination.

Summary of my consideration of the proposal and its influence on the consideration of alternative sites

- 5.37 The appellants planning statement and Statement of Case⁶⁹ sets out a need case specifically for the residential component of the development. Other uses proposed are suggested as 'other benefits' of the proposal, although some, such as the affordable and open space features have associated planning policy drivers. There is no evidence that there is a need to accommodate the proposed uses all within a single site or that they could not be disaggregated. I consider that it is appropriate to disaggregate the E class element from the wider proposal, and it is also appropriate to disaggregate the residential element itself. This in turn would facilitate the availability of a wide range of open space features as required depending on the requirements in the area. This approach would also facilitate a number of affordable homes across the North Somerset area addressing need in a range of different communities.
- 5.38 My view is that the appellant has been unreasonably inflexible in assuming that any alternative site or cluster of sites, would have to deliver all of the components of the appeal proposal, including through the application of specific site size thresholds, and by ruling out sites with permission that do not include the full range of proposed uses.

⁶⁸ E.g. site no. **136** – Wolverhill Strategic Location.

⁶⁹ Para. 6.4 – Core Document D1

Area of search

5.39 The appellant has assumed an area of search across the entire North Somerset area in accordance with Policy CS3. However in paragraph 9.7.5 of the revised Planning Statement (Core Document B10), it states:

“On the basis on housing need in Yatton, the primary case is that the sequential test is considered for Yatton Parish only.”

5.40 In paragraphs 5.8 – 5.15 of my proof I set out my position on housing need and that it is required to be assessed and identified for the whole North Somerset area. I do not agree there is a basis to assume a scale of need for Yatton that would in turn dictate a parish-only search. Accordingly, I do not agree there is a necessity to accommodate the proposal in Yatton.

5.41 Applying the appellant’s logic, any residential proposal in any location, should have a search area as being just that settlement/parish. This is unjustified and unsustainable for many settlements, particularly those such as Yatton that are so significantly constrained by flood risk, that is worsening in future⁷⁰. It ignores the necessity to take other planning/ sustainability considerations into account e.g. the spatial strategy and locating development in the most sustainable parts of North Somerset where there are suitable services, facilities and infrastructure.

5.42 It is reasonable to have reference to the spatial strategy when considering the search area, taking into account the proposed scale of development. Having regard to the plan’s spatial strategy, I consider that a development of this scale requires a district-wide search to consider locations more suitable to accommodate this proposal in a sustainable way.

⁷⁰ The Council’s Strategic Flood Risk Assessment indicates a worsening of flood risk in future – see evidence of Mr Bunn for the Council.

Assessment of sites

- 5.43 The appellant's FRST considered 205 sites or series of sites⁷¹. I have identified **36** sites I consider to be 'reasonably available', but which are disputed by the appellant.
- 5.44 In the remainder of this section I address each stage of the appellant's assessment, noting where I disagree, and then address the 36 sites I consider form 'reasonably available' sites. These are detailed more fully in appendices **MH2** and **MH3**.
- 5.45 The appellant's methodology included rejection of sites from the 205 sites as set out in Table 2.

Discount category	Number of sites rejected and relevant FRST appendix	Residual number of sites following each discount stage
Site dwelling yield - 140 sites found in Appendix C .	140 sites had a capacity of 142 dwellings or less, falling below the threshold applied by the appellant once a 25% buffer had been applied to the proposed number of dwellings ⁷² .	65
Site size - 27 sites found in Appendix C .	27 sites are less than 10.3ha in size.	38 – following site size/yield discounting, 38 sites in scope.
Flood risk - 12 sites found in Appendix D .	12 of the 38 sites contain a presence of flood zone 3b or undefended flood zone 3a.	26 sites remaining in scope.

⁷¹ Para 5.2.2 – Core Document B7

⁷² Para 4.4.10 sets out the thresholds assumed – Core Document B7

Planning policy constraints or inability for consented sites to accommodate proposal -19 sites found in Appendix E.	19 of the 26 sites would not be able to accommodate the proposals. 5 of the 26 are within the Green Belt.	7 sites remaining listed in Appendix F.
Table 2: Appellants FRST site rejection		

Appendix C sites – sites considered too small

- 5.46 I disagree with the rejection of 22 sites rejected in Appendix C, because I consider that collectively they can accommodate the proposed scale of residential development and are all available across the larger more sustainable settlements. This takes into account my finding that there is not a necessity to accommodate all of the proposal on a single site.
- 5.47 In my opinion, the appellant should not have automatically ruled sites out on size grounds alone and there should be more investigation as to whether they could contribute to accommodating the proposed development.
- 5.48 Having regard to the Judgment⁷³, I do not suggest the sequential test would be automatically failed simply because of the presence of a range of separate smaller sites. However, my rationale for the inclusion of multiple smaller sites is that a series of sites across a given settlement or cluster of settlements is justified as forming part of a wider sustainable strategy for development.
- 5.49 It is already established that multiple smaller sites are permissible, do not need to be adjoining, and there is no stipulation on how close they might be. The appellant’s assessment doesn’t preclude clusters of smaller sites potentially forming alternatives, that are not adjoining, e.g. site **112** at Yatton, and site no. **74** and **87** at Congresbury. There is no parameter provided as to how far apart by distance might be reasonable within the methodology.

⁷³ Judgment, para 165 – Core Document J1

- 5.50 If smaller sites are ruled out automatically, there is what I consider to be the unintended consequence of incentivising and prioritising larger sites. The Lynchmead Inspector highlighted this⁷⁴, but considered the Council's spatial strategy would form a safeguard against larger schemes outside settlement boundaries, such as the appeal site.
- 5.51 Extending the above point, the appeal site is a large proposal, does not conform to the Council's spatial strategy for the distribution of housing, and is in a high probability flood risk area. Applying the sequential test in an inflexible way, notably that all of the development would have to be delivered on a single site, prejudices the sustainable distribution of development and should not be used to prioritise development in flood risk areas. This approach fails to take other planning considerations into account. I consider this to be particularly a problem in relation to residential development where there is a clear strategy for its delivery, and why I consider disaggregation to be justified.
- 5.52 The approach I have taken, and set out below, factors in other planning considerations that I consider have a bearing on appropriateness in line with Mr Justice Holgate's Judgment⁷⁵.

Considering supply across settlements – a geographic relationship

- 5.53 In line with the spatial strategy, I have considered the relationship between smaller sites in terms of the settlement, or cluster of settlements to which they relate, including at Yatton, Langford, Weston-super-Mare (WsM), Backwell, Congresbury, Sandford and Winscombe, and Nailsea. Collectively, I consider the sites contribute to an available supply of sites across these settlements.
- 5.54 Given their geographic proximity I have considered site potential across Yatton and Congresbury, and Sandford and Winscombe. These are all based on Service Villages⁷⁶ in the Core Strategy. Appendix **MH6** and Appendix **MH7** provides a plan illustrating the geographic relationship across these settlements.

⁷⁴ APP/D0121/W/22/3313624, para. 33 – Core Document I2

⁷⁵ Para 100 – Core Document J1

⁷⁶ See relevant policy CS32 *Service Villages* – Core Document F1

5.55 Delivering combinations of smaller sites is consistent with the spatial strategy, and by definition sustainable development in North Somerset, and in terms of them contributing to the overall functioning and fabric of the settlement. I consider this approach reflects paragraph 70 of the NPPF and the promotion of a good mix of sites for housing within an area.

5.56 Table 3 shows the overall dwelling capacity from the sites at each settlement or grouping of settlements.

Settlement	Dwelling capacity from all sites
Yatton/ Congresbury	358
Langford	812
WsM	2125
Backwell	793
Sandford/ Winscombe	349
Nailsea	1922
Table 3: 'Reasonably available' collective capacity by settlement	

5.57 Table 3 indicates the significant capacity at a lower risk of flooding across the settlements where I have considered the contribution of smaller sites. Across each location, the scale of available supply significantly exceeds the 143-190 dwellings proposed in the appeal and would contribute a significant number of affordable homes. The smaller sites therefore collectively contribute to accommodating the proposed development, in areas at a lower risk of flooding across the range of settlements investigated.

Preserving any benefits of the appeal proposal through smaller sites

5.58 Paragraphs 9.8 to 9.12 of the Appellant's Planning Statement set out the benefits of the proposal covering the open space and allotments, land provision for E use classes; design; biodiversity net gain; and economic benefits. These would be in addition to the benefits of providing housing.

- 5.59 I note that the appellants approach taken in their FRST has focussed on the alternative sites potential to accommodate residential rather than the wider range of uses and benefits. Within the appendices setting out the various site summaries, no mention is made of the non-residential components of the proposal and whether these could be accommodated within the site – the focus is only on the residential capacity of alternative sites. The method simply uses the overall site size and dwelling yield as a proxy for suitability.
- 5.60 Recognising that there is no requirement in the NPPF, paragraph 168 for alternative sites to match exactly the development proposed uses including its various particulars, including form, quantum (both as to site area and amount of development) and intended timescales for delivery⁷⁷, I have considered the extent to which the range of smaller sites can deliver the same benefits, and the extent to which there is a necessity to do so. I have done this at the settlement scale and overall in terms of the range of sites I identify.
- 5.61 Across the range of sites, the above benefits of the proposal can be accommodated. There are sites I advance that are available for E class use and this is sufficient to address this element of the proposal, in light of my conclusion that it can be disaggregated from the wider proposal. Whilst not all sites could necessarily accommodate the benefits to the same scale, and indeed there is no requirement to do so, e.g. 9.65ha of open space, some sites would exceed the scale of provision⁷⁸.

Appendix D sites

- 5.62 I disagree with the rejection of sites **198** and **136** from appendix D, that I consider to be unjustifiably rejected on the basis of being at the same or worse flood risk to the appeal site.

⁷⁷ Judgment especially paras 97, 98, and 100 – Core Document J1

⁷⁸ E.g. site no. **136**.

5.63 Both are proposed for allocation in the emerging Local Plan 2040 to accommodate 215 and up to 2800 homes and other uses respectively, there is a positive indication that they are available for development, and they would accommodate the proposed development within flood zone 1, unlike the appeal proposal.

Appendix E sites

5.64 I disagree with the rejection of 7 sites rejected through Appendix E.

Appendix F sites

5.65 I agree with the appellant that the 7 sites in Appendix F are sequentially preferable, set out in Table 4. These are:

“[...] 7 sites which could be capable of accommodating the total residential capacity requirements of the application proposals, are not at a higher 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.” (FRST; para. 5.6.1)

5.66 Appendix F of the appellant’s FRST (Core Document B7) then provides commentary on each of the sites as part of what is referred to as a ‘planning balance’ exercise. I support the rejection of ‘27-land north of Sandford’, and ‘72-land south east of Congresbury’ as not being ‘reasonably available’. For all other sites I summarise why the sites indicate failure of the sequential test in Table 4.

Site name	Reference	My summary
Land to north of WsM	125	Land is available and actively promoted including for residential development and includes land with consent, land with an application in progress, and all identified as suitable and available in the SHLAA. Land is at a lower risk of flooding.

Large site adjacent to Elborough	140	Land is available and actively promoted including for residential development and identified as suitable and available in the SHLAA. Land is at a lower risk of flooding.
West of Backwell, including Grove Farm	16	Land is available and actively promoted including for residential development and identified as suitable and available in the SHLAA, and proposed for allocation. Land is at a lower risk of flooding.
Land south of Langford	25	Land is available and actively promoted including for residential development and identified as suitable and available in the SHLAA. Land is at a lower risk of flooding.
Land north of Sandford	27	Support rejection – site is not considered to be available for development.
Land south east of Congresbury	72	Support rejection – part of site subject to an appeal that included landscape reasons for refusal. The sites were discounted through the SHLAA as not being suitable on this basis.
Land south west Nailsea	92	Land is available and actively promoted including for residential development and identified as suitable and available in the SHLAA. Land is at a lower risk of flooding.
Table 4: Summary of Appendix F sites		

5.67 The conclusion of the Flood Risk Sequential test report reads:

“The methodology in this report demonstrates that the Site is one of the most sequentially preferable sites for residential development.”
(para. 7.1.3, my underlining)

5.68 I suggest that this fails to reflect the objective of the sequential test, and, along with the commentary provided in Appendix F to the FRST report, does not provide a sound basis to conclude that the sequential test is passed.

5.69 The evidence I have presented clearly demonstrates that this conclusion is flawed and that there are a range of appropriate and available sequentially preferable sites which do not require development on land at risk of flooding.

Appendix G sites

5.70 I disagree with the rejection of three sites from Appendix G⁷⁹. The Statement of Case explains how 15 sites were considered in the Yatton parish area but 9 rejected on the basis that they wouldn't deliver the required dwelling yield, leaving six sites. Three of these were then rejected because they would not be of an appropriate scale i.e. they would accommodate the scale of open space, leaving three sites – nos. **112**, **113**, and **114**. I agree to the rejection of 114 since it is flood zone 3. I also consider the appeal site component of 113 should be rejected since it doesn't make sense to include the appeal site when seeking alternatives to the appeal site. I would also reject parts of 112. Together this leaves two sites that I consider to form reasonably available options. To these, I would add an additional site in the Yatton parish that the appellant considers too small⁸⁰. I have considered the collective contribution all of these sites make in the parish area and nearby Congresbury; I do not consider the appellant's analysis has similarly considered this potential.

⁷⁹ Site nos. **112**, **113**, and **52**

⁸⁰ Site no. **52**.

Summary of my site assessment

- 5.71 At the conclusion of my assessment, and using the appellants grouping of sites, I consider there to be **36** 'reasonably available' site opportunities, summarised by settlement in Table 5. Appendix **MH2** sets these out by settlement and **MH3** provides a template for each site.

Settlement	Number of sites
Congresbury and Yatton	4
Sandford and Winscombe	6
Langford	4
Banwell	1
Backwell	3
South west Bristol	1
Wolvershill Strategic Location	1
WsM	10
Nailsea	6
Table 5: Number of sites by settlement	

Larger sites considered sequentially preferable

- 5.72 The following larger sites are 'reasonably available' and can accommodate well in excess of the new homes proposed.

Land at Parklands Village, Weston Villages, Weston-super-Mare (site ref. 143)

- 5.73 The appellant addresses this site within the Statement of Case (Core Document D1) in paragraph 6.10.35 and 6.10.36. The reason for discounting the site provided is that the outline permissions require development to deliver 30% affordable provision. Because this does not match the 50% proposed on the appeal site, the site is rejected. I do not agree with this position for the reasons I set out in paragraphs 5.16 to 5.19 of my evidence. I consider the appellants approach to be inflexible, not recognising the scope for different site circumstances and varying levels of affordable housing possible.

5.74 The site forms part of Parklands Village, an allocated, large-scale development in the current development plan. St Modwen are the developer in control of this site and have outline consent. The site has already seen earlier phases of development, including a new secondary school, residential development, a primary school, business uses, and open space. 555 dwellings are deliverable from this site within the 5 year land supply as shown in the evidence of Mrs Richards.

Wolvershill Strategic Location (site ref. 136)

5.75 The Wolvershill Strategic Location is emerging through the new local plan⁸¹ and is proposed to accommodate around 2800 homes, E classes, open space, green infrastructure and other supporting infrastructure. The site has featured in the emerging local plan from an early stage and now forms part of the plan at an advanced stage of preparation. There is no requirement for 'reasonably available' sites to currently have planning permission⁸² or be allocated at present.

5.76 The appellant's Statement of Case does not address this strategic site in any detail. I understand this is because the appellant has erroneously considered it to be at the same or worse flood risk to the appeal site – it features in Appendix D to the FRST under site ref. **136**. Whilst land assembled by developers/promoters for this development includes some land at a higher flood risk (e.g. land assembled to the east of the proposed allocation boundary – see **MH3**, page 9), the emerging allocation for up to 2800 homes and other uses is proposed in flood zone 1 and is sequentially preferable to the appeal site. The land assembled in flood risk parts may be beneficial for other aspects and emerging policy LP1 requires provision for various uses including ecological and environmental mitigation. The appellant's case offers no further specific evidence that will be submitted against this site.

⁸¹ See Policy LP1: *Wolvershill Strategic Location* of the Reg. 19 Local Plan – Core Document G9.

⁸² See PPG Flood Risk and coastal Change para 28.

5.77 A developer/promoter consortium is active on the site including Bloor Homes (developer)⁸³, Wain Estates, and Ainscough Strategic Land (ASL) (both land promoters). An extract from the Reg.19 consultation representation from ASL⁸⁴ reads:

“ASL, alongside Bloor Homes and Wain Estates, control some 185ha of land in North Somerset, located to the north of Banwell and south-east of Weston-super-Mare. The land sits within the strategic location identified by North Somerset Council (NSC) in the Regulation 19 Local Plan, referred to as ‘Strategic location: Wolverhill (north of Banwell)’ under draft Policy LP1, which the three landowners have been promoting for major housing-led development for a number of years. [...] ASL, Bloor Homes and Wain Estates, hereby referred to as ‘the Consortium’, are working closely together to deliver a single cohesive masterplan for the SGL. [...] All baseline assessment work has shown that any issues can be suitably addressed and the site is deliverable.”

5.78 In addition to the consortium, Vistry Homes, Terra Strategic, St Phillips and other interests have made land available as part of the strategic site. Reflecting the Lynchmead Farm Inspectors decision (Core Document I2), that it is sufficient that there is a positive indication that the land is available to be developed, this can be said of land at Wolverhill.

5.79 Parts of the site are available on the basis of land promotion, where planning consent will be secured via a land promotion agreement with the onward sale to a developer managed by the promoter. The involvement of promoters helps to share development risks and provide expertise to secure allocation and consent. Having developers engaged can expedite delivery following consent.

⁸³ Bloor Homes has delivered new housing on numerous sites within North Somerset previously and has interests in a number of ongoing and potential development sites across the Council’s area. (Response to Reg 19 Local Plan consultation, Jan 2024)

⁸⁴ [Full representation can be viewed here.](#)

5.80 Whilst there is no requirement to demonstrate that this development would necessarily follow the same timescale as the appeal site, it is reasonable to conclude that the land is available⁸⁵. If delivery is considered, it is noteworthy that the highest recorded annual dwelling completions in North Somerset⁸⁶ were driven by the building-out of two strategic sites at Portishead and Locking Castle indicating availability of strategic sites leading to increased delivery.

5.81 Another benefit of strategic sites, that comprise multiple land interests and developers, is that growth can be take place at multiple points, where there are multiple parcels available and building out concurrently. This has been the case at nearby Parklands Village (wider site to site no. **143**), and the same potential is anticipated for Wolverhill.

5.82 This Wolverhill site was advanced by the Council as a sequentially preferable site at the Lynchmead Farm Inquiry. However, because the Inspector felt that the Local Plan was still at an early stage⁸⁷ he did not conclude that the site should be deemed a reasonably available alternative. The plan has progressed to Regulation 19 - an 'advanced stage', and further progress has been made on development management related aspects⁸⁸. Accordingly greater weight can now be attributed to the proposals at Wolverhill.

Elborough (site ref. 140), Grove Farm (site ref. 16), and land south of Nailsea (site ref. 91)

5.83 These three sites are considered to be 'reasonably available' alternatives and are all larger development proposals.

- Elborough is located south of Weston-super-Mare and is being promoted by Mactaggart and Mickel for 315 dwellings, 22.5ha of green space, including orchards and allotments, community mixed use hub and

⁸⁵ See PPG *Housing and Economic Land availability assessment*, para. 19, and Lynchmead Farm decision, para. 31 – Core Document I2.

⁸⁶ 1474 dwellings across monitoring year 2007/08 – Core Document H20

⁸⁷ The plan was still in Regulation 18 Stage when the Inquiry was held between the 23 and 25 May 2023.

⁸⁸ E.g. EIA Scoping applications, and pre-application processes.

accommodation for elderly living. Site no. **140** also includes further homes from an adjoining site to the south.

- Grove Farm is an emerging allocation for 515 dwellings with an outline application in progress submitted by developer Taylor Wimpey for 515 dwellings, community hub, education, and open space.
- Land south of Nailsea (600 homes and open space) is located adjacent to Nailsea and is a large site with an application in progress on the majority of the site, submitted by Gleeson (400 of the 600 homes). Persimmon Homes Severn Valley are also promoting a relatively small parcel of land adjacent to this (SHLAA ref: HE203020). In their representations to the Regulation 19 consultation the appellant supports the wider allocation of land to the south of Nailsea and submit that their site should form the access to facilitate the larger proposal:

“Inclusion of this land to provide vehicular and pedestrian access along it will ensure that the site can be properly planned and phased.”

Conversely, within Appendix E to their FRST barriers are set out to the wider allocation included that, at 9.09ha, the site is too small to occupy the proposed development. I consider this to be an example of an inflexible approach taken by the appellant in the consideration of other sites.

5.84 There are a range of other ‘reasonably available’ larger sites that could accommodate in excess of the dwellings in the appeal proposal⁸⁹.

Findings of the Lynchmead Farm Inquiry

5.85 I have reviewed the findings of the Inspector at the Lynchmead case to identify those sites previously considered to be reasonably available alternatives. I have

⁸⁹ Site nos. **100; 90; 91; 92; 93; 198; and 138.**

considered their appropriateness in the context of this proposal, and whether anything has changed on the sites leading to my rejection of some of the sites.

5.86 Having carried out this assessment I consider that 15 of the sites I consider to be 'reasonably available' were also considered as such by the Inspector at the Lynchmead Inquiry. This observation is recorded on the schedules in Appendix MH2.

6 CONCLUSION AND CONSEQUENCE OF FAILURE OF THE SEQUENTIAL TEST

- 6.1 My analysis supports the conclusion of failure of the sequential test, with 36 sites considered to be ‘reasonably available’ and at a lower flood risk. **The proposal therefore conflicts with Policy CS3 because it conflicts with the sequential test in the NPPF read together with the PPG.** I consider this should be accorded substantial weight in the planning balance, given the importance of flood risk as a constraint⁹⁰, the adverse impacts of flooding on people and property⁹¹ and the conflict with Policy CS3.
- 6.2 The appellant incorrectly assumes that the development needs applicable to North Somerset should automatically be met in the Yatton area. Assuming a parish only search area for the purposes of the sequential test is illogical and contrary to the objective of delivering sustainable development as it ignores the constraints and policies that should bear upon the appropriate distribution of development – not least avoiding land at risk of flooding if possible to do so.
- 6.3 The appellant makes the case that housing need pressures are so significant that this should weigh in favour of the proposal, against any failure of the sequential test⁹². The needs assessment provided argues that, unless supply is increased housing pressures are going to increase in the Yatton area. This is set against a wider argument that the emerging Local Plan generally is undersupplying housing. This is not the case in respect to the assessment of housing needs prepared to support the emerging local plan, although this may change in the future.
- 6.4 The Council has stated its intention to review the emerging Reg 19 plan in light of the government announcements⁹³. If the Standard Method figure is confirmed, then the current spatial strategy will continue to provide a framework for the

⁹⁰ NPPF, para. 11d(i) footnote 7.

⁹¹ Addressed by the evidence of Mr Bunn for the Council.

⁹² See Appellant’s Planning Statement paras. 9.7.22 to 9.7.23 – Core Document D1.

⁹³ See Appendix MH1.

identification of additional housing sites. In line with the sequential approach to the provision of housing as set out in para 168 of the NPPF, coupled with the Local Plan objective of avoiding land at risk of flooding, this search for additional capacity would be directed to areas at least risk. The land availability information I have referred to in my evidence⁹⁴ indicates a variety of housing site options, including Green Belt, that do not require land at risk of flooding that numerically could assist in meeting the new Standard Method figure and this will be addressed through the plan making process.

- 6.5 I see no basis in the evidence to conclude a necessity for future housing needs to be met on land such as the appeal site on land at a greater risk of flooding. Based upon the current Core Strategy settlement strategy, and the indicative amount of dwellings identified for the Service Villages, Yatton has already accommodated a significant scale of development – see Table 1. I have also highlighted the supply across various sustainable settlements under the spatial strategy where there is a significant sequentially preferable capacity
- 6.6 Because there is clearly no requirement for general housing needs within North Somerset to be met utilising land at a greater risk of flooding, I do not consider that less weight should be attributed to failure of the sequential test on the appeal site, or that greater weight should be attributed to the provision of housing in an area of increased flood risk.
- 6.7 As such, **very substantial weight** should be afforded to the failure of the sequential test in this case. This is addressed as part of the wider *planning balance* in the evidence of Mr Smith for the Council.

⁹⁴ Appendix MH4: Strategic Housing Land Availability Assessment: site identified as 'potential'

7 APPENDICES (UNDER SEPARATE COVER)

MH1: North Somerset Council Press Release addressing Governments proposed changes to NPPF and the new Standard Method housing figure

MH2: Schedules of 'reasonably available' sites arranged by settlement

MH3: 'Reasonably available' site templates

MH4: Strategic Housing Land Availability Assessment – sites identified as 'potential'

MH5: Letter from Deputy Prime Minister to local authorities: *Playing your part in building the homes we need* (30 July 2020)

MH6: Plan showing geographic relationship between Yatton and Congresbury

MH7: Plan showing geographic relationship between Sandford and Winscombe