

APPEAL BY

PERSIMMON HOMES SEVERN VALLEY ("THE APPELLANT")

AGAINST THE NON-DETERMINATION BY NORTH SOMERSET  
COUNCIL  
("THE COUNCIL")

OF AN APPLICATION FOR PLANNING PERMISSION FOR A  
PROPOSED DEVELOPMENT AT RECTORY FARM (NORTH),  
YATTON, NORTH SOMERSET ("THE APPEAL SITE")

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APPELLANT'S OPENING STATEMENT

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1. North Somerset is an area where the national housing crisis is being felt particularly acutely.
2. It has been years since the Council was able to demonstrate the housing land supply ("HLS") required by national policy.
3. The out of date Core Strategy housing requirement (Policy CS13) was put forwards as an "*interim position*" pending a review to be completed by the end of 2018. Six years have passed since then and a new local plan remains a long way off.
4. The proposed new NPPF and accompanying standard method, set to become policy imminently (quite possibly before the determination of this appeal), requires nearly 9000 more homes than the target proposed in the Council's stalled Regulation 19 draft new local plan. The Council has announced that as a result it will not proceed with that draft.
5. In the meantime, the Core Strategy remains the adopted development plan. It is, however, out of date in several profound ways. Not just the housing requirement - but also the policies that seek to distribute that out

of date requirement. These include Policies CS14 and CS32, which have been found to be out of date in multiple appeal decisions. Inexplicably, in this case the Council maintains that these policies justify refusal of planning permission in their own right, as well as provide the framework for the application of the sequential test – yet its written evidence makes no reference at all to these earlier appeal decisions, let alone grappling with the reasoning in them.

6. The Council's first putative reason for refusal which is based upon these policies is untenable. The reasoning in the earlier appeal decisions about CS14 and CS32 is sound and remains applicable today.
7. The fourth putative reason for refusal relating to the site's safeguarding for a potential new primary school was withdrawn shortly before the exchange of proofs, not before the Appellant had gone to the expense of commissioning a proof of evidence from an education expert, Ben Hunter. That proof is appended to Mrs Ventham's planning proof and demonstrates that this reason was always ill-conceived.
8. That leaves the second and third putative reasons for refusal which related to flood risk.
9. The context for considering this issue is that the appeal site is currently safe from tidal flooding. The modelling shows that it is only in the year 2080, and in an *undefended* scenario factoring in climate change effects on sea levels, that the site would be inundated in a 1 in 200 year flood. This is, as explained by Mr Mirams in his proof and rebuttal, a hypothetical situation. Whilst it is perhaps unsurprising that a budget does not currently exist for the existing flood defences to be upgraded, given the need for doing so is still many decades away – it is inconceivable, given the number of homes that will in due course be affected by climate change induced increased flood risk (some 34,000 according to Mr Bunn's evidence), that the works will not be done before 2080. The Appellant

would have been content to pay a pro rata share towards this via CIL, but unfortunately the Council's approach has been to use flood risk as a reason for refusing development rather than seeking to use the development sector as an ally in helping to raise the funds to help deliver this known solution to known problem which it could have done through an up to date CIL charging schedule.

10. The Appellant's sequential test follows the principles set out by Holgate J. in *Mead Realisations Ltd v. SSLHUC* [2024] EWHC (Admin) 279. It should be noted that the Court of Appeal has granted Mead permission to appeal in that case, with a hearing date of 26<sup>th</sup> November 2024 (and a prospect, therefore, of a judgment before your determination of the present appeal, which may necessitate further representations). For now the Appellant's evidence applies the law as it currently stands following the judgment of Holgate J. The principles are set out in my written opinion attached to Mrs Ventham's proof at Appendix 6. This opinion was provided to the Council many months ago and was then included with the Appellant's Statement of Case for this appeal. The Council has not yet said whether it agrees with it or disagrees with it (and if so on what basis).
11. The sequential test has been done on three alternative bases : a district wide area of search, a Yatton Parish area of search (given the clearly evidenced Yatton-specific affordable housing shortfall which the appeal scheme would make a substantial contribution towards meeting), and an approach based upon accessibility to public transport (which the Council's planning witness, Mr Smith, advocated internally in correspondence subsequently disclosed pursuant to an FOI request).
12. On any approach, the appeal scheme is sequentially preferable.
13. The Council's counter-analysis is based upon a number of important errors, including (but not limited to):

- a. disaggregation to multiple unconnected sites which have no relationship with each other and which fall outside the concept of a “series” (the term used in the relevant part of the PPG) as that term was clarified by Holgate J.;
  - b. a reliance on sites which would deliver different types of housing (eg apartment-led schemes) which would meet a different kind of need, as well as sites that would not deliver the range of interconnected benefits that the appeal scheme would;
  - c. a failure to recognise the nature and extent of those benefits (in particular, in relation to affordable housing and public open space & allotments) which is what has led the Council not to require their delivery by their alternatives (thus inflating the range of alternative sites);
  - d. a failure to understand the effect of an option agreement or a promotion agreement on whether a site is “reasonably available” (as to which see Mr Jones’ evidence on behalf of the Appellant);
  - e. a failure to appreciate that sites which are already underway or which are already commitments in its housing land supply trajectory have already been taken into account in calculating the residual need which the proposed development would meet – they are therefore not alternatives to meeting that need.
14. Further and fundamentally, irrespective of whether the proposed development passes the sequential test, it is absolutely clear that there are insufficient sequentially preferable sites to come even close to meeting the Council’s market housing needs (both in the 5YHLS period and longer-term) or its affordable housing needs , or indeed the specific affordable housing needs of Yatton Parish. The judgment of Holgate J. was clear as to the importance of this in the planning balance:

*“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 that is not sequentially preferable, that too may be taken into account in the overall planning balance” (para. 174)*

*“I can see that if Redrow had submitted to the Inspector that there was a substantial need for housing which could not be met entirely on sequentially preferable sites (and even more so in the next 5 years), so that additional sites with a similar or worse flood risk would need to be developed, that would be a significant factor to be addressed in the overall planning balance. It could reduce the weight to be given to the failure to satisfy the sequential test.” (para. 178)*

15. Holgate J’s analysis in this respect is consistent with the advice in the PPG that the aim of the sequential test *“help to ensure that development is steered to the lowest risk areas”*. To get anywhere close to meeting the District’s market and affordable housing needs, and to meeting Yatton Parish’s specific affordable housing needs, land which is in the same flood zone (3A) as the appeal site is going to have to be released for development. Applying Holgate J.’s judgment, therefore, the proper conclusion should be that even if the development proposed by the appeal scheme could *in isolation* be provided on one or more sequentially preferable sites, it would make an important contribution towards meeting, in a highly sustainable location with no other planning constraints, multiple unmet needs (market and affordable housing district wide and affordable housing in Yatton specifically) which cannot be met without reliance on sequentially preferable sites – and therefore the failure of the sequential test should carry reduced weight and not prevent the grant of planning permission (all the more so in circumstances where the risk does not arise until 2080 and there is a high probability that the flood defences will be improved by then so as to avoid the risk, and in the unlikely situation that they are not the development would still be safe as outlined below).
16. Turning to the exception test, the Council’s case as now advanced in its proofs of evidence has extended considerably beyond the putative

reasons for refusal <sup>1</sup> and the Council's statement of case.<sup>2</sup> Putative reason for refusal 3 is expressed to relate to the access and the risk of increased flooding elsewhere. This was also the focus of the Council's Statement of Case. These were the matters that Mr Mirams for the Appellant prepared his evidence to address. Mr Bunn's evidence now raises for the first time allegations that the houses on the appeal site would not be safe. A further new point is made by Mr Smith, namely that NPPF 170(a) (the need for 'wider sustainability benefits') is not satisfied. For the reasons given in Mr Mirams' and Mrs Ventham's rebuttals, these allegations are without merit - but fundamentally the Council should not be permitted to run these belated arguments now. To let them do so would make a mockery of the rules relating to reasons for refusal and statements of case. It would also risk unfairness to the Appellant. As for safe access and risk of increased flood risk elsewhere, the two points that *have* been made in a procedurally legitimate manner,

- a. in relation to access, Mr Bunn overlooks that the site would not flood without warning - it would take 14 hours from first overtopping of the sea defences for the waters to reach the site. Given this, you can have confidence that at the reserved matters stage a satisfactory Flood Evacuation and Management Plan can be submitted and approved in writing.
- b. in relation to increased flood risk elsewhere, Mr Bunn also overlooks the detailed discussions that the Appellant had with

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<sup>1</sup> Note the legal requirement in Article 35(1)(b) of the DMPO that where a council refuses planning permission the decision notice "*must state clearly and precisely their full reasons for the refusal, specifying all policies and proposals in the development plan which are relevant to the decision.*" There is no basis for inferring that in a non-determination case the standard of reasoning in putative reasons for refusal is less demanding - to do so would be to reward the Council for failing its statutory duty and to incentivize future such failures.

<sup>2</sup> See para. 12.1.1 of the PINS Procedure Guide: "*A full statement of case contains all the details and arguments (as well as supporting documents and evidence) which a person will put forward to make their case in the appeal*". [Procedural Guide: Planning appeals - England - GOV.UK \(www.gov.uk\)](http://www.gov.uk)

the Environment Agency . The Council had every opportunity to engage fully in that process but did not do so.

17. The Council's case on the exception test – both in its original form and as now radically changed – is also without merit.
18. There are no other constraints affecting the site or the proposed development. It is in a highly sustainable location and would deliver a range of important benefits as set out in section 13 of Mrs Ventham's proof.
19. For these reasons, as shall be elaborated in evidence, the Appellant will invite you to allow the appeal.

**CHARLES BANNER K.C.**

**Keating Chambers  
15 Essex Street  
London WC2R 3AA**

**24th September 2024**