

APP/D0121/W/24/3343144

APPEAL BY

PERSIMMON HOMES SEVERN VALLEY

AGAINST THE NON-DETERMINATION BY NORTH SOMERSET COUNCIL  
OF AN APPLICATION FOR PLANNING PERMISSION FOR A PROPOSED  
DEVELOPMENT AT RECTORY FARM (NORTH), YATTON, NORTH SOMERSET

---

REPLY TO THE APPELLANT'S APPLICATION FOR COSTS

---

**As to RFR1 - (reliance on CS14 and CS32):-**

- 1 RFR1 alleges conflict with policies CS14 and CS32 of the Core Strategy's spatial strategy. The policy of CS14 is to direct most new housing development to Weston-super-Mare and the Weston Villages and the main town of Nailsea, Portishead and Clevedon. The third level of the sustainable development hierarchy comprises 9 service villages of which Yatton is one.
- 2 Development at each level of the sustainable development hierarchy is required by policies CS28, CS31 and CS32 to be located within or immediately adjacent to a settlement boundary, and to be limited in scale to the extent specified by each policy.
- 3 Policy CS32 stipulates that residential development adjacent to a service village normally should not comprise of more than about 25 dwellings.
- 4 When the appeal was made the Council did not possess a 4-year supply of land for housing. In other circumstances, the effect of NPPF paragraph 11d would be to render policies CS14 and CS32 out-of-date.
- 5 However, in this case the main issue is whether planning permission should be refused because of the risk of flooding. That triggers footnote 7 to paragraph 11d. The result is that the Council is entitled to rely on the proposal's conflict with policies CS14 and CS32 as a strong RFR.

6 In that context, paragraph 4 of the application for costs records:-

“Mr Smith conceded in cross examination that conflict with the spatial strategy would not be a basis for refusal in the event that the flood risk related reasons for refusal are not upheld.”

7 The obvious response to that is of course Mr Smith made that concession; if the flood risk related issues are not upheld paragraph 11d will bite in respect of CS14 and CS32. However, the complaint misses the point the Council was (and remains) reasonably entitled to rely on the proposal’s conflict with CS14 and CS32, not least because of NPPF footnote 7 and the manifest weakness of the Appellant’s case in respect of the sequential and exception tests. Further, even if the Appellant’s case on flood risk succeeds, Mr Smith cannot fairly be criticised for relying on the evidence of Mr Hewlett and Mr Bunn in contending the scheme conflicts with CS14 and CS32.

8 Thus, the application in respect of RFR1 is wholly without merit.

As to RF4: (primary school safeguarding)

9 The facts are:-

(1) The appellant’s statement of case raised the education issue at the point the appeal was lodged. It states:-

“With regard to the Sites and Policies Plan Part 2, the Appellant will refer to the identification of a parcel of land within the Site boundary as a primary school replacement site. The site was first safeguarded as part of the former North Somerset Local Plan (2000) for a replacement primary school and additional basic need provision. This was carried through to Policy SA8 of the SAP, which states that such land is allocated or safeguarded for the relevant community uses, and that alternative use of these sites will only be permitted if in accordance with Policy DM68 of the Sites and Policies Part 1: Development Management Policies. A replacement primary school has already been provided in Yatton with sufficient capacity and thus the justification for the safeguarding of this land for a primary school no longer exists.”

- (2) On 2 July 2024 the Council’s statement of case set out the Council’s position as follows:-

“Safeguarded school land

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

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

(3) Each of those matters was properly arguable. The question whether the school was still required, and thus whether the proposal would conflict with policies CS25 and DM68 turned on the parties’ technical assessment of the need for additional primary school places.

(4) The Inspector’s note of the CMC held on 18 July 2024 records:-

“Need for primary school places

The Council and the appellant have both instructed experts to deal with this matter and it is likely that further numerical data will be provided. The Council and the appellant agreed that it would be appropriate for the respective experts to meet as soon as possible to establish what could be agreed in a SoCG, so that the proofs can focus on matters in dispute. I agree with that approach.”

(5) The Council gave further consideration to the issue of need. On 16 August 2024 a meeting was held between the council’s education witness and the appellant’s consultant. The Council’s witness accepted the assessment of need advanced by the Appellant’s witness. Later that day, the Council’s Mr Smith emailed the appellant, their agent and the education consultant to conform:-

“Further to discussions this morning, the Council will no longer be contesting the fourth putative reason for refusal or putting forward evidence on the provision of school places.

I will update the Statement of Common Ground accordingly and circulate.”

10 Against that background it is submitted:-

(1) The allocation of part of the appeal site for a primary school and policies CS25 and DM68 required both parties, acting reasonably, to address the question of whether it would be needed for that purpose.

- (2) The work carried out by the Appellant’s consultant was therefore required in any event, not least to demonstrate “...[the] replacement primary school has already been provided in Yatton with sufficient capacity and thus the justification for the safeguarding of this land for a primary school no longer exists.”
- (3) The Council acted reasonably in accepting the Appellant’s consultant’s evidence on need to resolve the issue whether the allocation ought to be safeguarded.
- (4) The Appellant knew or ought to have known its meeting with the Council on 16 August 2024, 11 days before proofs of evidence were required to be exchanged, was intended to resolve the issue between the parties. Consequently, there was no need to complete a proof of evidence before the meeting, albeit its contents was doubtless helped to inform the parties’ negotiations.
- (5) Therefore, the Council’s conduct was reasonable and did not require the Appellant to incur wasted costs.

11 Therefore the inspector is invited to refuse the application for costs.

TIMOTHY LEADER

Dated 6 January 2025