Appeal by Gladman Developments Ltd

Land north of Bath Road, Corsham, Wiltshire, SN13 0QL

Against the refusal by Wiltshire Council of a planning application for:

"Variation of condition 22 (Foundation Investigation Plan) of 13/05188/OUT to allow commencement of development prior to the discharge of this condition."

APPEAL ref: APP/Y3940/W/18/3204107

Full Statement of Case



May 2018

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1 INTRODUCTION

1.1 Context

1.1.1 This Full Statement of Case is submitted by Gladman (the Appellant) and it relates to an appeal against Wiltshire Council's decision to refuse an application under S73 of the 1990 Town and Country Planning Act (as amended) for:

"Variation of condition 22 (Foundation Investigation Plan) of 13/05188/OUT to allow commencement of development prior to the discharge of this condition"

- 1.1.2 This Statement of Case is prepared in accordance with the latest Planning Inspectorate ("PINS") Procedural Guide for Planning Appeals – England (26 January 2018). It should be read alongside a Statement prepared by Malcolm Malton, of Wardell Armstrong, which provides an overview of the technical mining and amenity issues and is provided at **Appendix 18**.
- 1.1.3 As will become evident throughout this Full Statement of Case, the background to this appeal is complex. However, the determinative matters for consideration in this appeal are relatively straightforward, albeit the outcome is <u>time-critical for the Appellant</u>. Therefore, the Written Representations procedure is considered the most appropriate and expeditious procedure to resolve the matters in dispute.

1.2 Preamble

- 1.2.1 The appeal site comprises a 10.01Ha greenfield site, lying on the north-western edge of Corsham. In the vicinity of the appeal site is the Hartham Park mine, which are used to extract Bath stone and benefits from an extant minerals consent which endures until 2042. The extant permission allows the operator the encroach beneath the appeal site, in addition to existing dwellings to the south of Bath Road. A plan showing the extent of the mine workings in the area, relative to the appeal site, is included within Mr. Walton's Statement (see **Appendix 18**).
- 1.2.2 The appeal site benefits from an outline planning permission (allowed at appeal on 25 May 2015¹) for up to 150 dwellings and up to 1,394 Class B1 (offices) use with associated works (Decision Letter at **Appendix 1**). The application was in outline with all matters reserved, save for the means of access.
- 1.2.3 Gladman then marketed the site and agreed terms with Redrow Homes South West. Condition 2 of the outline permission required submission of Reserved Matters within <u>1 year</u> of the outline. Despite the challenging timeframe imposed by this condition, Redrow made reserved matters applications on 26th April 2016 (residential) and 13th May 2016 (commercial). These applications were approved on 6th September and 8th September 2017 respectively (Decision Notices provided at **Appendix 2**). Consequently, condition (3) of the outline permission requires works to begin on site within <u>1 year</u> of the final reserved matter being approved i.e. before 8th September 2018. If

¹ PINS Reference: APP/Y3940/A/14/2222641 (Land North of Bath Road, Corsham, Wiltshire SN13 0QL)

works on site are not commenced prior to this date, the outline planning permission will lapse. This is the context for the time-critical dimension of this appeal.

- 1.2.4 In the background, Redrow have now formally discharged <u>all</u> pre-commencement conditions and secured <u>all</u> necessary reserved matters approvals (including any further pre-commencement conditions imposed at the Reserved Matters stage) to enable a lawful start on site **subject to compliance with Condition 22**. This condition requires the submission and approval of a Foundation Design Plan prior to the commencement of development and was required to safeguard the residential amenity of the new occupiers against nearby mine workings.
- 1.2.5 Needless to say, the Appellant is using all reasonable endeavours to provide the Council with the information it requires, to the extent of underwriting fees incurred by the Council in seeking specialist technical advice from a leading acoustic expert. As detailed in the Wardell Armstrong Statement which accompanies this appeal, the latest technical noise and vibration testing results (and proposed mitigation) was submitted to the Council on 14 May 2018. Whilst the S73 application was refused two days later, a dialogue is ongoing with the Council outwith this appeal process. At the time of writing, the latest technical submission is being considered by the Council's appointed acoustic advisor.
- 1.2.6 As the Council readily concedes, the expectation is that a technical solution will be forthcoming shortly. The latest mitigation proposals for the noise-sensitive buildings on the appeal site comprises a 50mm thick rubberised material (Sylomer SR55) on the underside of the foundations. However, given the specialist nature of the modelling which has informed the proposed foundation design, sourcing and appointing suitable consultants to enable the Council to discharge Condition 22, has taken an inordinately long period of time.
- 1.2.7 Timescales have now overtaken matters and the Appellant is compelled to seek arbitration via this appeal.
- 1.2.8 In simple terms, the Appellant is seeking to vary condition 22 so as to enable initial site works <u>only</u>.
 The proposed wording of the condition would still preclude the construction of <u>any</u> noise-sensitive buildings until such time as a Foundation Design Plan has been formally approved by the Council.
- 1.2.9 In such a scenario, the Council would retain full control over the construction of any dwellings on the appeal site, as is the situation at present. However, if this appeal were allowed promptly, it would present a small window of opportunity before the 8th September 2018 to undertake initial site works, thereby securing the outline planning permission.
- 1.2.10 Any such works undertaken would be entirely at commercial risk to Redrow, however, this remains preferable to allowing the outline permission to lapse, particularly given the efforts to date in addressing this particular condition and also obtaining all other necessary approvals to enable development to commence. Given that both parties anticipate a technical solution to be forthcoming, this seems an entirely reasonable approach given the circumstances.

- 1.2.11 However, in refusing to vary condition 22, the Council is seemingly content to allow the outline planning permission to lapse, which is disproportionately punitive. It also ignores the inclusion of this site as a commitment (80 dwellings) in the Council's latest five year housing land supply statement.
- 1.2.12 The chronology of events, including detail on the technical mining issues, is set out in more detail in the accompanying Technical Statement by Malcolm Walton of Wardell Armstrong (see Appendix 18), alongside this Full Statement of Case.

2 THE APPEAL PROPOSALS AND RELATED INFORMATION

2.1 The Appeal Site

- 2.1.1 The site extends to 10.01ha and is located to the north of Bath Road, Corsham within the administrative boundary of Wiltshire.
- 2.1.2 Corsham is a market town located within the north of Wiltshire's administrative boundary. Corsham has a good range of community facilities and services. In the wider area locations such as Bath and Chippenham offer higher order services and employment opportunities. The site is situated to the north west of Corsham town centre and north of Bath Road (A4) which provides an east to west link to Chippenham and Bath and links to the strategic highway network, in particular the M4 motorway. There are four primary schools within the town plus Corsham School which is a secondary school with sixth form. All of the schools are accessible from the site.
- 2.1.3 The Corsham area uniquely includes a concentration of active and dormant mines which provide the Bath stone which is used locally. The site is underlain by the Great Oolite Group which is known to have been extensively mined by underground quarrying in the Corsham area. Within the site boundary is a mine airshaft which is visible on site and will be retained.
- 2.1.4 The appeal site is currently in agricultural use. The eastern boundary abuts residential development within Academy Drive. The southern boundary has a low stone wall and is directly adjacent to Bath Road which has a footpath on both edges of the carriageway. To the west of the site were former Ministry of Defence premises which has been granted planning permission for a mixed use residential led development which is now under construction. To the north via Guyers Lane are several farmsteads, of which the closest to the site is Guyers House Hotel which is grade II listed. The northern and eastern boundaries are screened by trees and hedgerows. The boundaries to the west and south are more exposed and bounded by a stone wall enabling views into the site from the roadside. A public right of way crosses the site.
- 2.1.5 The land levels gently fall west to east across the site with a 7metre difference in ground levels.

2.2 The Appeal Proposal

2.2.1 This statement sets out the planning case for the appeal against the decision of Wiltshire Council ("the Council") to refuse an application under S73 of the Town and Country Planning Act 1990 to vary Condition 22 attached to outline planning permission (reference: 13/05188/OUT) for:

"Variation of condition 22 (Foundation Investigation Plan) of 13/05188/OUT to allow commencement of development prior to the discharge of this condition"

2.2.2 The proposed wording for Condition 22, as taken from the S73 application form, would read as follows (original wording as strikethrough text and proposed additional wording underlined):

"(22) No development shall take place until Prior to the commencement of any dwelling or noise sensitive building on site, a Foundation Investigation Plan

must be submitted to and approved in writing by the local planning authority. The Foundation Investigation Plan shall include:

i) A foundation zoning plan which will identify the type and depth of foundations across the site.

ii) Vibration testing which shall take place during a trial mining test at appropriate locations to replicate both a typical case and a worst case of future mining both within the mine and at foundation level and bedrock level. The results of the test are then to be used by the foundation design engineer to ensure that noise and vibration levels of the foundations are at or below the criteria specified in condition 23. The vibration testing shall be carried out in accordance with a method statement which shall first have been submitted to and approved in writing by the local planning authority.

iii) The results of the vibration testing shall be provided to the local planning authority and shall be used to design vibration and sound isolation measures (where required) at each dwelling and noise sensitive building. The foundation design for each dwelling and noise sensitive building shall be submitted to and approved in writing by the local planning authority.

Development shall be carried out in accordance with the approved Foundation Investigation Plan."

2.2.1 An alternative wording put forward by the Appellant in its covering letter with the S73 application (dated 7 March 2018) read:

"No development shall take place <u>other than the permitted site access in general</u> <u>accordance with drawing no. 4746/01/01 dated October 2013,</u> until a Foundation Investigation Plan has been submitted to and approved in writing by the local planning authority. The Foundation Investigation Plan shall include:

A foundation zoning plan which will identify the type and depth of foundations across the site.

Vibration testing which shall take place during a trial mining test at appropriate locations to replicate both a typical case and a worst case of future mining both within the mine and at foundation level and bedrock level. The results of the test are then to be used by the foundation design engineer to ensure that noise and vibration levels of the foundations are at or below the criteria specified in condition 23. The vibration testing shall be carried out in accordance with a method statement which shall first have been submitted to and approved in writing by the local planning authority.

The results of the vibration testing shall be provided to the local planning authority and shall be used to design vibration and sound isolation measures (where required) at each dwelling and noise sensitive building. The foundation design for each dwelling and noise sensitive building shall be submitted to and approved in writing by the local planning authority.

Development shall be carried out in accordance with the approved Foundation Investigation Plan."

2.2.2 For ease of reference, Condition 23 of the outline permission reads as follows:

"(23) The foundations shall be designed to ensure that noise and vibration from underground mining activity shall not give rise to a noise level within any dwelling or noise sensitive building in excess of that equivalent to Noise Rating Curve 25 and vibration levels shall not exceed 0.1 to 0.2 ms^{-1.75} in accordance with the methodology in BS 6472-1-2008."

- 2.2.3 For the avoidance of doubt, no variation is hereby sought to condition 23.
- 2.2.4 The plans for which approval is sought are as follows:

Drawing Ref: Location Plan Ref: 2012-043/100

2.3 The Reasons for Refusal

- 2.3.1 The planning application was refused by Wiltshire Council under delegated authority. The Council's decision notice dated 16 May 2018 provides two reasons for refusal (RfR):
 - 1. The planning condition, by virtue of its timescale being implicitly linked to the deliverability of the development, and thus the individual merits of the outline application, is necessary to ensure the development remains as such. To vary this with the effect of allowing in theory an open-ended planning permission with no guarantee that the site is deliverable would prejudice the original decision and compromise the condition's compliance with the six tests.
 - 2. The application proposal fails to provide and secure the necessary and required services and infrastructure supporting the proposed residential development including Affordable Housing; Waste; Public Open Spaces; Education and is therefore contrary to Core Policies 3 and 43 of the adopted Wiltshire Core Strategy and Paragraphs 7, 14 & 17 of the National Planning Policy Framework March 2012.
 - 2.3.2 An Informative on the Decision Notice states:

"The applicant is advised that the Refusal Reason 2 is capable of being addressed and resolved through the preparation of a Section 106 Agreement/Deed of Variation to meet the identified Service & Infrastructure requirements arising from the development proposed."

- 2.3.3 The Delegated Report, which is considered in more detail at Chapter 7 of this Statement, and Decision Notice can be found at **Appendices 3** and **4** respectively.
- 2.3.4 In respect of Condition 22, the Officers Report on the S73 application states:

"Whilst the purpose of the condition is <u>not to serve as an additional screening</u> <u>exercise as to whether the development is acceptable in principle</u>, it is noted in light of the ongoing difficulty in discharging Condition 22 the achievability of the agreed noise criteria seems to have been significantly underestimated by the Appellant at the time of the Inquiry." (emphasis added)

2.3.5 On matters related to the timing of the Condition, the Officer concludes:

"Clearly, by preventing the commencement of development until a foundation design has been agreed, the condition safeguards against abortive work resulting from the commencement of foundations that do not accord with any agreed specification, potentially failing to meet the requirements of Condition 23. Only the foundations of 'noise sensitive buildings' (i.e. dwellings and offices) are exposed to this level of technical scrutiny and control through planning, however, with other elements such as highways, drainage, building safety and energy efficiency controlled through various alternative mechanisms such as S38/104/278 of the Highways Act and the Buildings Regulations. There seems to be no obvious technical reason, therefore, why these other matters should be forestalled pending the approval of noise-sensitive foundations, as these ultimately will have no significant bearing on the residential amenity with respect to noise and vibration from mineral workings that Conditions 22 and 23 seek to protect." (emphasis added)

2.3.6 Conspicuously, the Officers assessment then veers into matters which are considered wholly inappropriate in the context of the application/appeal to vary Condition 22:

"....it is emphasised that the Inspector's original judgement that the site's being immediately available and deliverable was a determinative factor in his allowing the appeal and granting outline permission, on the basis that the site could contribute immediately to addressing a (then) shortfall in the supply of housing. The Inspector reflects this by shortening the timescales for submission of reserved matters and commencement of development (Paragraph 162 of the decision). This situation has however altered radically in the recent past, with the Council successfully defending a 5-year housing land supply in successive appeals such that, were the appeal to be heard today, the outcome would very <u>likely be different</u>." (emphasis added)

2.3.7 Paragraph 162 of the appeal decision is considered within the following Chapter of this Statement. The Inspectors reasoning for shortening the timescales for submission of Reserved Matters etc was in recognition of the importance of this site to housing delivery within the five year period, as it stood at the time the appeal was allowed (1 April 2014 – 31 March 2019). The Appellant and Redrow are demonstrably fully committed to housing delivery on this site, as envisaged by the Inspector, within this period. As will become evident through this Statement, the Appellant has used (and continues to use) all endeavours to enable construction to begin immediately on this site.

- 2.3.8 The Council's current five year supply position is an irrelevance and any reference thereto in the context of this appeal, can only be interpreted as a tacit indication as to how the Council may regard the appeal site in future, should the Appellant be compelled to pursue a fresh application if the extant outline is allowed to lapse.
- 2.3.9 The Officer continues:

"To alter the wording of the condition so that resolution of the fundamental matters set out in Condition 22 would effectively be open-ended once works commenced on site, therefore, could severely reduce any certainty over the timely delivery of units, and in doing so diminish the relevance of the condition to the development permitted. Or in other words, to allow the site to be 'banked' in perpetuity through its partial implementation without any actual delivery of units would undermine the original decision and also create wider uncertainty over its contribution to overall housing supply. This distinction is, it is considered, fatal to the application as the timing of the condition is instrumental in - and inseparable from - the acceptability of the development in principle."

2.3.10 The Appellant strongly disputes the suggestion that the attempt to vary Condition 22 is simply an attempt to 'bank' the outline permission in perpetuity. This entirely dismisses the fact that Redrow have secured <u>all</u> necessary Reserved Matters approvals and all other pre-commencement conditions have been lawfully discharged, save for Condition 22, to enable immediate works to start on site. Indeed, the Officers Report makes no reference whatsoever to other conditions having been addressed in full and is not, therefore, fully representative of the actual circumstances and context in which this Appeal must be considered. Redrow is clearly committed to the delivery of housing on this site at the earliest possible opportunity and have used all endeavours to ensure that can happen.

2.4 **Response to Third Parties**

2.4.1 The Officers Report on the S73 application confirms that representations were made by 51 households, in addition to the Pickwick Association, Beechfield Park Trustees and Corsham Civic Society. The Council summarises the matters raised therein as relating primarily to the principle of varying an agreed condition, the lasting consequences of any abortive works and the ongoing difficult in discharging Condition 22 being indicative of the development being undeliverable. It is considered that all these matters are addressed within the Full Statement of Case, in response to the Council's reasons for refusal.

3 PLANNING HISTORY

3.1 Introduction

- 3.1.1 The planning history associated with the appeal site is complex and encompasses the original outline application and subsequent appeal, reserved matters approvals by Redrow Homes and previous S73 applications to vary Conditions attached to the outline planning permission.
- 3.1.2 For the avoidance of doubt, the full planning history is set out in chronological order below, insofar is it directly relates to the determinative matters in this appeal.

3.2 Outline Planning Application Ref: 13/05188/OUT (November 2013)

3.2.1 This application was made by Gladman and sought approval for:

"Outline planning application for erection of up to 150 dwellings, up to 1,394sqm B1 offices, access, parking, public open space with play facilities and landscaping. Land at Bath Road, Corsham SN13 OQL"

- 3.2.2 The application was in outline, with all matters reserved save for the means of access. It was validated by Wiltshire Council on 1st November 2013 and was accompanied by a suite of technical supporting documentation, including a Phase 1 (Desk Study) Investigation Report and a separate Site Stability Investigation Report, both prepared by Opus International Consultants (UK) Ltd. A Noise Assessment Report was also prepared by Wardell Armstrong (dated October 2013) which identified that the only existing noise source with the potential to impact the site was traffic noise from Bath Road.
- 3.2.3 In response, the Council's Environmental Health Officer (EHO) was consulted on the application, providing a single written response dated 12 November 2013 which raised no objection in principle, subject to the imposition of a condition (with suggested wording) requiring further work to be undertaken in accordance with the recommendations in the Opus Phase 1 Investigation Report².
- 3.2.4 It is apparent that further discussions then took place between the Planning Officer (Mr. Chris Marsh³) and Gladman's planning agent, Planning Prospects. Pursuant to this, a Supplementary Noise Assessment Report (dated April 2014) was prepared by Wardell Armstrong and states:

"1.5 Since the production of the noise assessment report, concern has been raised by Wiltshire Council's Planning Officer that consented underground quarrying works have the potential to cause noise impact on the residential amenity of future occupants of the proposed development.

² The wording suggested by the Environmental Health Officer is, for the most part, duplicated in Condition 19 as it appears on the outline planning permission

³ Until his departure from Wiltshire Council on 18 May 2018, Mr. Marsh has acted as the Case Officer on the site since November 2013

1.6 To the west of the proposed development, Bath Stone is removed from the Hartham Park mine operated by Hanson Aggregates. Mining activity is currently moving in northerly and westerly direction (away from the development). However, we understand that whilst Hanson currently have no plans to mine under the proposed development location, such activity is possible in the future, once the development is proposed".

3.2.5 With the co-operation of Hanson, Wardell Armstrong carried out a noise and vibration survey in April 2014 at ground level above the current mine working area at Hartham Park. Hanson confirmed that the noise monitoring location was directly above the current mine being worked at a depth of 21 metres. During the survey, the mine operator carried out all the normal mining activities. In the absence of any active mine working beneath the application/appeal site, this "comparable case study" approach (as Wardell Armstrong termed it) was considered entirely appropriate. The Supplementary Noise Assessment Report concluded (Para. 3.2.4) that:

> "3.2.4 Under the conditions tested, it would appear that no noise or vibration could be perceived at ground surface from rock sawing, rock bolting, mine vehicle movement or use of a hydraulic breaker or break/shape loose rock within the mine. Use of the breaker during scaling activity on the walls/ceiling of the mine was observed at ground surface intermittently during a 12 minute period despite this activity taking place over two periods amounting to 70 minutes in total (within a 150 minute working morning). No vibration from this activity could be detected at any time during the survey.

> 3.2.5 It is understood that mine scaling using a breaker is short term and transient in nature, and which is only likely to be audible at the surface over a small radius directly above the mining activity, and only when ambient noise levels are low.

32.6 It is therefore considered that there is a very low risk of future mining noise and vibration impact at the proposed development site."

- 3.2.6 At this point, it is unclear whether the Planning Officer undertook any further, formal consultation with the Council's EHO on receipt of the Supplementary Noise Assessment Report. No further written consultation responses from the EHO have ever appeared on the Council's website or were referenced in evidence at the ensuing Public Inquiry.
- 3.2.7 However, the Delegated Report recommending refusal of the application considers this issue at some length, under the sub-heading *Mining Operations and Residential Amenity:*

"The Council has also had regard to the extant consent for mineral extraction beneath the application site in association with the Hartham Mine operation and relating potentially to almost its full extent. To date, the consented mineral workings have progressed in a south-westerly direction from the oldest part of the mine, away from the application site. However, the consent runs until 2042 and, with the majority of its southwest portion now exploited, it is entirely probable that at some point within that time a substantial quantity of its northeast component will be worked.

Noise and vibration complaints have been received by the Council's Environmental Health team in relation to the active mining works in the area, with certain activities causing amenity issues for occupants of certain properties. These complaints have not, however, lead to the identification of a statutory nuisance under the terms of the Environmental Protection Act 1990. Subsequent to the Council's raising concern in respect of the paucity of information in relation to the likely impact of consented mineral works, the applicant has produced further information (Wardell Armstrong, February 2014⁴) in relation to this point.

Having consulted the Council's spatial planning manager in relation to the issue, it is confirmed that the Council has no minerals safeguarding objections to the proposal. It is apparent from the reports submitted that due consideration has been given to the NPPG guidance on assessing stability issues (replacing former PPG14) and by extension the relationship between the former / current underground mining operations and the surface of the application site. The recommendations set out in the report in relation to the structural implications of mining activity beneath (or in the vicinity of) the proposed housing are of course circumspect; however, for obvious reasons, this is to be expected. From a purely geotechnical perspective, it is found that the submitted reports appear to provide sufficient information upon which to reconcile site stability with the principle of development, in accordance with paragraph 121 of the NPPF.

The subsequently submitted noise assessment builds upon the technical evidence prepared initially in support the application. The current mining operations are discussed and have been assessed, and it is reasonable to extrapolate from this information the potential implications of the full exploitation of minerals consent beneath the site for the residential amenity of occupiers above. Although it would appear that the predominant source of noise emanates from road users, it is clear that the operation of machinery underground does have a propensity to be heard at surface. In the view of the Council's Environmental Health Officer, this has the potential to pose a significant risk to the residential amenity of future occupiers and must be properly addressed.

⁴ It is assumed this date reference is a typographical error in the Delegated Report. The Supplementary Noise Assessment Report was dated April 2014 and the Appellant is unaware of any additional information

The Officer has expressed the view that the amenity of those living or working in the new houses and offices may be adversely affected by existing authorised mining activity and has therefore recommended refusal of the application in its current form, given the lack of evidence to suggest that this is unfounded. Whilst this might, under different circumstances, be a matter that could be addressed by the appropriate phasing and/or location of development within the site – both in respect of surface construction and mineral workings – and agreed at the reserved matters stage, one is mindful that this is difficult for several reasons.

Firstly, the mining rights are held legitimately under an extant permission, for a considerable period of time and relating to almost the full extent of the site, such that their progress is likely to take a logical route from the northeast end of the existing operation. To attempt to vary this either through phasing or physical location poses the risk of sterilising the mineral altogether. Secondly, the amount of development proposed at surface under the current application when combined with the other physical constraints of the site – access, the right of way, mine shaft, public open space and landscape buffer – is such as to preclude any meaningful variation in layout sufficient to avoid conflict with the minerals consent. As this impact appears unavoidable, therefore, an objection is raised on amenity grounds whilst the probable impacts of implemented mining operations on residential amenity are unknown.

From the assessments undertaken, it would appear the current and future mining operations do not lead to vibration being experienced at surface. However, from a minerals policy perspective, it is of some concern that the issue of safeguarding has not been fully addressed, or acknowledged, in the application details. One might reasonably expect the applicant to have provided a reasoned account of why the proposed housing development will not prejudice the legitimate rights of the mining company (Hanson Bath & Portland Stone Ltd) to implement their planning permission in the future. As discussed above, this may be unlikely, although the reverse impact is potentially significant to residential amenity. Although resolution of this matter may be technically achievable, at this time there is insufficient evidence to demonstrate the acceptability of the development in respect of Policies C3 and NE18 of the North Wiltshire Local Plan, CP57 of the Wiltshire Core Strategy and paragraph 123 of the NPPF".

3.2.8 A few pertinent matters can be extracted from the Officers Delegated Report, namely:

- The Council's Spatial Planning Manager raised no objection to the outline application;
- The operators of the mine raised no objection to the planning application.

- The Council did not allege any potential site stability issues or conflict with Paragraph 121 of the Framework.
- The Council considered it "unlikely" that housing would prejudice the legitimate rights of the mining company to implement their planning permission in future.
- The "views expressed" by the EHO, as referenced by the Planning Officer in the extract above, are not reflected in the only written consultation response seen to date.
- The Council considered that the resolution of this technical matter may be technically feasible.

3.3 The Council's Decision Ref: 13/05188/OUT (May 2014)

- 3.3.1 The outline application was refused under Delegated Authority by Notice dated 30th May 2014 (see **Appendix 5**) which set out five Reasons for Refusal (RfR):
 - 1. "The proposal is prejudicial to the Council's plan-led approach to sustainable development and the phasing of future growth. In accordance with the NPPF there is a deliverable 5 year supply of land for housing in place and there are no other material considerations that outweigh this position in favour of the proposal. On the balance of considerations, therefore, the proposal is unacceptable when having regard to the principles of polices CP2 and CP11 of the Wiltshire Core Strategy and paragraphs 12, 14, 17, 47, 49, 150, 196 and 216 of the National Planning Policy Framework.
 - 2. Insufficient evidence and mitigation has been provided to demonstrate that the proposal would not affect the integrity of the Bath and Bradford Bats SAC in order to satisfy the requirements of Regulation 61 of the Habitats Regulations, and in this and other respects the proposal fails to make adequate provision to avoid, mitigate or compensate for significant adverse effects upon protected species and priority habitats. The proposal is therefore contrary to Policies NE10 and NE11 of the adopted North Wiltshire Local Plan, CP50 of the emerging Wiltshire Core Strategy and Paragraph 118 of the National Planning Policy Framework.
 - 3. The proposal, although at outline stage, would adversely affect the landscape qualities of both the site itself and its setting in the context of the Pickwick Conservation Area, Corsham Special Landscape Area and Cotswolds AONB. The proposal is therefore contrary to Policies C3, NE4, NE15, HE1 and H3 of the adopted North Wiltshire Local Plan, CP51 and 58 of the emerging Wiltshire Core Strategy and Paragraphs 109 and 133 of the National Planning Policy Framework.
 - 4. Insufficient evidence has been provided to demonstrate that, <u>on the balance of</u> probabilities, the development by reason of its amount and siting would not give rise to the unacceptable loss of residential amenity to future occupiers as a result

of the consented mineral workings beneath the land. The proposal therefore fails to satisfy Policies C3 and NE18 of the adopted North Wiltshire Local Plan 2011, CP57 of the emerging Wiltshire Core Strategy or paragraph 123 of the National Planning Policy Framework.

- 5. In the absence of an appropriate legal agreement, the proposal fails to make adequate provision for affordable housing, public open space and play equipment, all of which should be provided on site. Additionally, the proposal fails to secure contributions towards education provision in the locality, contributions towards public transport, contributions towards leisure provision, contributions towards improving cemetery capacity, contributions towards waste collection as well as the lack of a scheme or contribution to secure the on-going maintenance of open space and play equipment on the site, all of which should take the form of an off-site financial contribution in lieu of on-site provision. The application is therefore contrary to Policies C2, H5 and CF3 of the adopted North Wiltshire Local Plan 2011 and CP3 of the emerging Wiltshire Core Strategy. " (emphasis added)
- 3.3.2 RfR4 is of particular note and remains pertinent to the current appeal.
- 3.3.3 Gladman subsequently submitted an appeal which was determined via a Public Inquiry which opened on 20th January 2015.

3.4 The Appeal Ref: APP/Y3940/A/14/2222641 (January 2015)

- 3.4.1 In relation to RfR4, Wardell Armstrong presented evidence on behalf of the appellant; the Council's Environmental Health Officer (Mr. Stephen Hunt) presented evidence on behalf of the LPA.
- 3.4.2 Paragraph 15 of the appeal decision confirms that the Inspector did not consider geoenvironmental or amenity issues to be one of the main issues for determination at that appeal. Indeed, the only reference in the appeal decision to the implications of nearby mine workings is limited to a single paragraph:

"147. The Council's 4th reason for refusal related to potential harm to the living conditions of future occupiers from noise and vibration resulting from underground mineral workings beneath the site³⁹. Additional technical information was produced during the Inquiry and it was ultimately agreed by the Council and the appellant that this matter could be addressed by conditions⁴⁰. The conditions would require a foundation investigation plan to be submitted for the approval of the Council, having regard to the results of vibration tests. A further condition would establish criteria for noise and vibration. The Pickwick Association [Rule 6 Party] expressed doubts that these measures would be effective. However, the suggested conditions reflect technical advice about foundation isolation systems which has been accepted by the respective noise experts for the Council and the appellant. In my view the conditions would be

effective in protecting the living conditions of future occupiers. In addition they would address a concern, expressed by some parties, that the scheme could have the effect of sterilising minerals under the site."

3.4.3 For completeness, Footnote 39 to this paragraph reads *"There are currently no active workings but there is an extant permission"*. Footnote 40 reads *"Statement of common ground on noise and vibration – GLD/LPA/09"*. The Document List for the Inquiry (set out on p33-34 of the Decision Letter) includes the following:

GLD/LPA/05 SoCG – Noise (unsigned) provided at **Appendix 6.**

GLD/LPA/09 SoCG – Amenity (Noise and Vibration) provided at Appendix 7.

GLD/LPA/10 Letter from TVS dated 4 February 2015 provided at Appendix 8.

3.4.4 Inspector Prentis allowed the appeal by Decision Letter dated 27 May 2015, clearly satisfied that potential amenity issues arising from underground workings in the vicinity, did not preclude residential development on the appeal site in principle. In relation to the anticipated timing of housing delivery on this site, the Inspector concluded:

"162. Conditions 1-3 are standard conditions for outline planning permissions setting timescales for the submission of reserved matters and commencement. However, I have reduced the standard time limits because the ability of the site to deliver housing within the 5 year period is an important consideration in this case."

- 3.4.5 As will become evident throughout this Statement, it is indisputable that the Appellant and Redrow remain fully committed to delivering housing within the 5 year period from the date the appeal was allowed. Indeed, it is only Condition 22 which is now preventing works from commencing on site.
- 3.4.6 On a secondary matter, the Council also made an unsuccessful application for a partial award of costs against Gladman in relation to *inter* alia noise and vibration caused by future mineral working beneath the appeal site.

3.5 Reserved Matters Application Ref: 16/03721/REM (April 2016)

3.5.1 The reserved matters application by Redrow, which related to the residential element of the outline approval, was made on 26th April 2016 and was described as:

Reserved Matters Application Relating to Appearance, Landscaping, Layout & Scale (following outline application 13/05188/OUT) Residential Development for 150 Units Together with Associated Highways, Drainage and Other Infrastructure Works, Landscaping and Play Area.

3.5.2 The application was approved with conditions on 8th September 2017.

3.6 Reserved Matters Application 16/04544/REM (May 2016)

3.6.1 This reserved matters application by Redrow, which related to the commercial element of the outline permission, was made on 13th May 2016 and was described as:

Reserved Matters Application for Access, Appearance, Layout & Scale (Following Outline Application 13/05188/OUT) Proposed B1 Employment Units on Land to the West of Bath Road Development Corsham.

3.6.2 Again, this application was approved with conditions on the 8th September 2017.

3.7 1st Application to Discharge Condition 22 of 13/05188/OUT (August 2016)

3.7.1 This submission comprises the Appellant's first attempt to discharge Condition 22 (which is now subject of this appeal). The application was made in August 2016 and following extensive revisions pursuant to feedback from Wiltshire Council, refused by Notice dated 28 February 2017 (see Appendix 9), for the following:

"The details submitted do not satisfy the following condition of the above planning application as these have failed to properly reflect typical or worst case conditions and demonstrate the facility to achieve the noise reduction criteria specified in Condition 23 to the outline permission. Accordingly, the foundation measures proposed would fail to provide sufficient mitigation to ensure an adequate standard of residential amenity to future occupiers and therefore pose a risk to the safeguarding of existing mineral workings beneath the site."

3.8 1st Variation of Condition 22 Ref: 17/01539/VAR (February 2017)

3.8.1 This S73 application also related to condition 22 of the outline application and was made on 17 February 2017. This sought the same variation to condition 22 to that currently under consideration at this appeal. On the advice of Officers, it was withdrawn, pending further vibration testing work which has been ongoing in the interim.

3.9 2nd Application to Discharge Condition 22 of 13/05188/OUT (May 2017)

3.9.1 A further attempt to discharge Condition 22 was made on 16 May 2017, in response to the Council's resistance to Condition 22 being varied. This submission remains undetermined at the time of writing.

3.10 2nd Variation of Condition Ref: 18/02373/VAR (March 2018)

3.10.1 This application is now subject of this appeal. It was validated on 9th March 2018 and refused by Notice dated 16th May 2018:

Variation of condition 22 (Foundation Investigation Plan) of 13/05188/OUT to allow commencement of development prior to the discharge of this condition.

3.11 Planning Application Ref: 18/01410/FUL (February 2018)

3.11.1 At the time of writing, Redrow have a current application for the substitution of five plots on the approved layout. This application was made on 23rd February 2018 and remains under consideration at the time of writing.

Reconfiguration and substitution of house types on plots 44, 45, 52, 54 and 57 of the residential development approved under reference 16/03721/REM and 13/05188/OUT at Land North of Bath Road, Corsham.

4 EXTANT CONDITIONS – CURRENT STATUS

4.1.1 The 2015 outline permission 13/05188/OUT, allowed at appeal, was subject to 23 conditions in total, of which the following required further information to be submitted to and approved by Wiltshire Council prior to the commencement of development.

Condition	Matter	Formally Discharged
5	Landscape and Ecological Management Plan	21 February 2017
6	Phasing Details	21 February 2017
15	Written Scheme of Archaeological Investigation	21 February 2017
16	Hard and Soft Landscaping Details	9 January 2018
18	Construction Method Statement	21 February 2017
19 (i and ii)	Intrusive Ground Investigation and Contamination Report	21 February 2017
20	External Lighting	13 September 2017
21	Public Art	28 March 2018
22	Foundation Investigation Plan	Subject of this Appeal

- 4.1.2 Therefore, all necessary pre-commencement conditions on the outline permission, save for that subject of this appeal, have been formally discharged. Relevant decision letters from Wiltshire Council are provided at **Appendix 10**.
- 4.1.3 In addition, the Council has also formally approved details in relation to the following general conditions on the outline permission:

Condition	Matter	Formally Discharged
7	Land Stability Risk Assessment	11 August 2016
8	Access Arrangements	13 September 2017
9	Travel Plan	21 February 2017
10	Hare and Hounds Roundabout Improvements	17 October 2017
11	A4 Bath Road Widening Scheme	17 October 2017
12	Guyers Lane Field Gate Closure	17 October 2017
13	Sewage Disposal Details	28 November 2017

14	Surface Water Drainage Details	28 November 2017
19 (iii)	Remediation Strategy	21 February 2018

- 4.1.4 Again, relevant correspondence from Wiltshire Council in reference to these conditions is provided at **Appendix 11**.
- 4.1.5 In addition, Reserved Matters Ref: 16/03721/REM which relates to the residential element, was approved subject to two conditions which required further information to be approved prior to the commencement of development.

Condition	Matter	Formally Discharged
2	Material Samples	13 December 2017
7	Compensatory Tree Planting Scheme	6 February 2018

4.1.6 Finally, Reserved Matters Ref: 16/04544/REM, which relates to the commercial element, was approved subject to a single condition which also required further information to be approved prior to the commencement of development:

Condition	Matter	Formally Discharged
2	Material Samples	19 January 2018

- 4.1.7 Again, relevant correspondence from Wiltshire Council in reference to the aforementioned reserved matters conditions is provided at **Appendix 12**.
- 4.1.8 On this basis, it is evident that all pre-commencement conditions attached to both the outline permission and subsequent reserved matters approvals, have been formally discharged by Wiltshire Council, save for that condition subject of this appeal.
- 4.1.9 At stated earlier, the purpose of this appeal is to facilitate a lawful commencement of development before 8th September 2018. Therefore, this appeal, which focusses on Condition 22 specifically, also affords the decision maker the opportunity to update conditions originally imposed at outline stage, to reflect any which have been discharged. PPG (Para: 015 Ref ID: 17a-015-20140306) advises:

"What is the effect of a grant of permission?

Where an application under section 73 is granted, the effect is the issue of a new planning permission, sitting alongside the original permission, which remains intact and unamended.

A decision notice describing the new permission should be issued, setting out all of the conditions related to it. To assist with clarity decision notices for the grant of planning permission under section 73 should also repeat the relevant conditions from the original planning permission, <u>unless they have already been</u> <u>discharged</u>.

As a section 73 application cannot be used to vary the time limit for implementation, this condition must remain unchanged from the original permission. If the original permission was subject to a planning obligation then this may need to be the subject of a deed of variation." (emphasis added)

4.1.10 On this basis, the Appellant has prepared a schedule of suggested conditions at **Appendix 13** to assist the Inspector. These conditions reflect all the details which have been approved by the Council to date and the situation as it presently stands. To further assist the Inspector, the Appellant proposes to liaise with the Council during the course of appeal proceedings, to seek its agreement over the wording of the suggested conditions. Accordingly, if minded to allow this appeal, the Inspector is respectfully invited to impose the suggested conditions as will be set out.

5 THE DEVELOPMENT PLAN

5.1 Introduction

5.1.1 Section 38 (6) of the Planning and Compulsory Purchase Act 2004 requires that applications for planning permission must be determined in accordance with the development plan unless material considerations indicate otherwise.

5.2 The Development Plan

- 5.2.1 The statutory Development Plan comprises:
 - Wiltshire Core Strategy Adopted January 2015;
 - Chippenham Site Allocations Plan Adopted May 2017;
 - Saved Policies of the North Wiltshire Local Plan 2011 Adopted June 2006;
 - Minerals Core Strategy Adopted June 2009
 - Waste Core Strategy Adopted July 2009
- 5.2.2 The Chippenham SAP, policies of the Local Plan (2011) and Waste Core Strategy are not pertinent to the Appeal proposal
- 5.2.3 The Core Strategy was adopted in January 2015 and covers the period from 2006 up to 2026. The site lies outside the settlement framework of Corsham in an area covered by a Source Protection Zone designation, that requires the assessment of risk to groundwater resources (Policy CP68).
- 5.2.4 The Minerals Core Strategy was adopted in June 2009 and the site is identified as being within a Mineral Safeguarding Area (Policy MCS6).
- 5.2.5 Article 35(b) of The Town and Country Planning (Development Management Procedure) (England) Order 2015 states:

"where planning permission is refused, the 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;"

- 5.2.6 The only policies of the Development Plan against which conflict is alleged in the RfR, are:
 - RfR2 Core Policies 3 and 43
- 5.2.7 As the Decision Notice itself advises, RfR2 is capable of being addressed in full via a Section 106 Agreement, which the Appellant will attend to during the course of this appeal, in accordance with the timescales set out by PINS Procedural Guidance. Therefore, it must be inferred that, subject to RfR2 being addressed with a suitable legal mechanism in place, the Council does not allege that the proposals are in conflict with the Development Plan.

5.2.8 In essence, this appeal falls to be determined against other material considerations including the history of the appeal site, technical approvals already in place, national policy and guidance and in particular, the 'six tests' which must be met by planning conditions.

5.3 Policies of Relevance

- 5.3.1 For completeness, extracts from the adopted Core Strategy 2015 are provided at **Appendix 14**.
- 5.3.2 Core Policy 3 (Infrastructure Requirements) essentially requires that all new development will be required to provide for the necessary on-site and, where appropriate, off-site infrastructure requirements arising from the proposal. It then sets out the mechanisms by which relevant contributions will be secured, how they will be prioritised and which organisations would be responsible for the delivery of the policy.
- 5.3.3 Core Policy 43 (Providing Affordable Homes) identifies the threshold by which a percentage of affordable housing will be sought on market housing sites.
- 5.3.4 At the outset of the Officers Report on the application, other policies are listed, however the Officer does not undertake any assessment of the application against these policies and indeed, none are referenced within the subsequent RfR. Accordingly, it must be concluded that, subject to a satisfactory legal agreement being in place, the proposals accord with the development plan and should, therefore, be approved without delay.

6 NATIONAL PLANNING POLICY AND OTHER MATERIAL CONSIDERATIONS

6.1 The National Planning Policy Framework (2012)

- 6.1.1 The National Planning Policy Framework ("NPPF or Framework") was published in March 2012. It sets out the Government's planning policies for England and how these are expected to be applied, it also sets out the requirements for the planning system only to the extent that it is relevant, proportionate and necessary to do so.
- 6.1.2 Paragraph 6 of the Framework sets out that, the policies in paragraphs 18 to 219 of the Framework, taken as a whole, "constitute the Government's view of what sustainable development in England means". Paragraph 7 of the Framework sets out that there are three dimensions to sustainable development (and roles the planning system needs to perform): economic; social, and; environmental. Paragraph 8 confirms these roles should not be undertaken in isolation as they are mutually dependent.
- 6.1.3 Applications must be determined in accordance with the development plan unless material considerations indicate otherwise. This is confirmed by Paragraphs 11, 12 and 196 of the Framework which continues to place importance on the plan-led approach.
- 6.1.4 The Framework is a material consideration in planning decisions. The Government has made clear its expectation, through the Framework, that the planning system should positively embrace well-conceived development to deliver the economic growth necessary and the housing needed to create inclusive and mixed communities. The presumption in favour of sustainable development is a key thread running through national policy for both plan making and decision taking. Paragraph 14 of the NPPF sets this out as follows:

"At the heart of the National Planning Policy Framework is a presumption in favour of sustainable development, which should be seen as a golden thread running through both plan-making and decision-taking... (abridged)

For decision-taking this means¹⁰:

- approving development proposals that accord with the development plan without delay; and
- where the development plan is absent, silent or relevant policies are out-of-date, granting permission unless:
- Any adverse impacts of doing so would significantly and demonstrably outweigh the benefits, when assessed against the policies in this Framework taken as whole; or
- Specific policies in this Framework indicate development should be restricted⁹."

Footnote 9 and 10

9 - For example, those policies relating to sites protected under the Birds and Habitats Directives (see paragraph 119) and/or designated as Sites of Special Scientific Interest; land designated as Green Belt, Local Green Space, an Area of Outstanding Natural Beauty, Heritage Coast or within a National Park (or the Broads Authority); designated heritage assets; and locations at risk of flooding or coastal erosion.

10 - Unless material considerations indicate otherwise.

6.1.5 In respect of noise and amenity issues, the Framework states at Paragraph 123 that:

"Planning policies and decisions should aim to:

- avoid noise from giving rise to significant adverse impacts²⁷ on health and quality of life as a result of new development;
- mitigate and reduce to a minimum other adverse impacts²⁷ on health and quality of life arising from noise from new development, including through the use of conditions;
- recognise that development will often create some noise and existing businesses wanting to develop in continuance of their business should not have unreasonable restrictions put on them because of changes in nearby land uses since they were established;²⁸ and
- identify and protect areas of tranquillity which have remained relatively undisturbed by noise and are prized for their recreational and amenity value for this reason.

Footnote 27 and 28

27 - See Explanatory Note to the Noise Policy Statement for England (Department for the Environment, Food and Rural Affairs)

28 - Footnote 28: Subject to the provisions of the Environmental Protection Act 1990 and other relevant law."

6.1.6 The Framework makes clear how it expects LPAs to approach decision taking at paragraphs 186-187:

> "Local planning authorities should approach decision-taking in a positive way to foster the delivery of sustainable development. The relationship between decision-taking and plan-making should be seamless, translating plans into high quality development on the ground.

> Local planning authorities should look for solutions rather than problems, and decision-takers at every level should seek to approve applications for sustainable development where possible. Local planning authorities should work proactively with applicants to secure developments that improve the economic, social and environmental conditions of the area."

6.1.7 In respect of the use of conditions, the Framework states at Paragraph 203, that:

"Local planning authorities should consider whether otherwise unacceptable development could be made acceptable through the use of conditions or planning obligations..."

6.1.8 Paragraph 206 further states:

"Planning conditions should only be imposed where they are necessary, relevant to planning and to the development to be permitted, enforceable, precise and reasonable in all other respects."

- 6.1.9 These are commonly referred to as the 'six tests' and are a determinative issue for this appeal.
- 6.1.10 It should also be noted that MHCLG has recently consulted on a revised Framework. Whilst this document should only be afforded limited very weight at this time, it is instructive to note that Paragraph 56 states:

"Conditions that are required to be discharged before development commences should be avoided, unless there is a clear justification²⁰

Footnote 20 - When in force, sections 100ZA(4-6) of the Town and Country Planning Act 1990 will require the applicant's written agreement to the terms of a pre-commencement condition, unless prescribed circumstances apply."

6.1.11 This is a clear implication that the potentially onerous consequences of pre-commencement conditions, and the subsequent delays to delivery of development they can cause, will be redressed through national policy amendments due to take force later this year. In addition, the need for applicants' written agreement to the use of any such conditions heralds a fresh and innovative approach to minimising the use of such conditions.

6.2 National Planning Practice Guidance

- 6.2.1 The Practice Guidance (PPG) was first published on 6th March 2014 and it expands and provides additional guidance on policies within the Framework.
- 6.2.2 In respect of the use of conditions, PPG advises (Reference ID: 21a-007-20140306), which is especially pertinent to this appeal:

"When can conditions be used that prevent any development until the requirements of the condition have been met (conditions precedent)?

Care should be taken when considering using conditions that prevent any development authorised by the planning permission from beginning until the condition has been complied with. This includes conditions stating that 'no development shall take place until...' or 'prior to any works starting on site...'.

Such conditions should only be used where the local planning authority is satisfied that the requirements of the condition (including the timing of compliance) are so fundamental to the development permitted that it would have been otherwise necessary to refuse the whole permission. A condition precedent that does not meet the legal and policy tests may be found to be unlawful by the courts and therefore cannot be enforced by the local planning authority if it is breached. Development carried out without having complied with a condition precedent would be unlawful and may be the subject of enforcement action." (emphasis added)

6.2.3 In essence, this is the central point of difference between the Appellant and the Council for the purposes of this appeal.

6.3 Wiltshire Housing Site Allocations Plan Development Plan Document

- 6.3.1 The purpose of the Wiltshire Housing Site Allocations Plan is to support delivery of new housing set out in the adopted Wiltshire Core Strategy 2015. The DPD is intended to revise, where necessary, settlement boundaries and allocated new sites for housing to ensure the delivery of homes across the plan period in order to maintain a five year land supply in each of Wiltshire's three Housing Market Areas over the period to 2026.
- 6.3.2 Formal consultation on the draft DPD was undertaken in July 2017 and it is anticipated that the draft DPD will be submitted to the Secretary of State for Examination in July 2018. Given that the draft DPD remains subject to unresolved objections and has not yet been subject to formal examination, it should be afforded limited weight in this appeal.

6.4 Wiltshire Local Plan Review and Associated Evidence Base

- 6.4.1 The Council has recently commenced a review of its adopted Core Strategy, comprising a Local Plan Review Consultation Paper and the Swindon and Wiltshire Joint Spatial Framework Issues Paper, subject to public consultation in November 2017. Given the early stage in the preparation of this Plan, it should be afforded very limited weight as a material consideration in the determination of this appeal.
- 6.4.2 In terms of the evidence base to the emerging Plan, the appeal site is identified within the Council's Strategic Housing Land and Economic Availability Assessment (SHELAA) July 2017. The relevant extract is provided at **Appendix 15** and the appeal site assigned reference 3307. The SHELAA assesses the site as being suitable, achievable, available and deliverable. Overall, it is assessed by the Council as being developable in the short-term.
- 6.4.3 Moreover, it is clear that the Council has been reliant upon the appeal site since 2015 to support its claimed five year housing land supply position. The Council's latest Housing Land Supply Statement (March 2018), which covers the period 1 April 2017 31 March 2022, asserts that the appeal site will deliver 20 completions in 2019/20, 30 completions in 2020/21 and 30 completions in 2021/22; 80 dwellings in total.

6.4.4 The previous iteration, which adopted a base date of 1 April 2016, anticipated 149 dwellings being completed within the five year period 1 April 2016 – 31 March 2021. Relevant extracts are provided at **Appendix 16**. Clearly, the Council has been content to rely on this site delivering housing in support of its claimed housing land supply position in recent years. Indeed, as explicitly stated in the Officers report on this application/appeal, the Council has successfully persuaded 'successive' Inspectors of its claimed five year housing land supply position which includes the appeal site. It is a moot point whether others have been misled by the Council as to the deliverability of the appeal site previously; clearly, Redrow is committed to the delivery of the site and Gladman has used all endeavours to enable this.

6.5 Non-Statutory Guidance

- 6.5.1 The variation of this condition to allow implementation is in keeping with the Governments view on pre-commencement conditions, which are set out in the DCLG report, 'Government response to consultation on improving the use of planning conditions' (Dec 2016). The Government recognised in their consultation that planning conditions are an important function in achieving sustainable development but were "concerned that too many overly restrictive and unnecessary conditions are attached to planning permissions". The Government was particularly concerned with pre-commencement conditions which cause delays to development and the delivery of housing and have confirmed that measures to reduce their use will be implemented via the Neighbourhood Planning Bill. This is now evident in Paragraph 56 of the consultation draft Framework, published in March 2018.
- 6.5.2 A further consultation document from the Ministry of Housing, Communities and Local Government titled 'Improving the use of planning conditions' was published in January 2018, consulting on potential changes to pre-commencement conditions. With reference to pre-commencement conditions the document identifies that *"imposing such a constraint on development, when it is not justified, unnecessarily delays the delivery of development and drives up costs."*

7 CASE FOR THE APPELLANT

- 7.1.1 This Chapter summarises the case for the Appellant, in light of the foregoing. In essence, the Council alleges that a variation to Condition 22 would have the effect of allowing an open-ended planning permission with no guarantee that the site is deliverable which, in turn, would not meet the six tests.
- 7.1.2 Firstly, the Council does not allege any conflict with the development plan, save for those policies which would be addressed in full via a S106 legal agreement. Accordingly, the appeal proposals should benefit from the presumption in favour of sustainable development under Paragraph 14 of the Framework. For decision-taking, the Council should seek to approve proposals that accord with the Development Plan, without delay.
- 7.1.3 The matters of dispute relate solely to the timing of a single pre-commencement condition which remains the only obstacle to Redrow being able to progress site works. In simple terms, the Appellant maintains that it is entirely reasonable to vary condition 22 to enable some initial site works pending the imminent agreement of the Foundation Design before such time as any occupation of noise-sensitive buildings can take place. As the Officers Report on the application clearly acknowledges:

"Ultimately, the Council believes that a technical solution *is* achievable but the practicality and viability of what may be required is a matter falling squarely to the developer".

- 7.1.4 The Appellant fully accepts that the burden to demonstrate a technical solution to the foundation design is squarely its responsibility. However, the fact that the Council clearly acknowledges that a technical solution is achievable is testament to the ongoing dialogue to date between the two parties and concerted efforts to discharge or vary Condition 22 since the outline permission was granted. Given that both parties anticipate a technical solution will be forthcoming shortly, the only issue remaining principally relates to the matter of timing.
- 7.1.5 It is further emphasised that the practical effect of the condition, or its purpose, would not be prejudiced if this appeal were upheld. Again, this is acknowledged in the Officers report,

"In short, the standards of noise reduction required would remain unchanged [if the condition were varied] and thus likewise would the ultimate outcome in terms of the residential amenity enjoyed by future occupants of any development, together with users of the office accommodation. In any amended form requiring approval and implementation of suitable details for residential foundation design, therefore, the condition would remain as effective as before in technical terms."

7.1.6 Clearly, if the Council anticipated that the developer would be unable to meet the technical requirements of the condition, or to ensure the amenity of future occupiers could be adequately safeguarded, this may support its view that the condition is instrumental in – and inseparable from – the acceptability of the development in principle. In that situation, varying the condition may

indeed have the unintended consequence of enabling an open-ended planning permission, as termed by the Council. However, such a proposition is entirely dismissive of progress to date by the Appellant and Redrow in addressing all other pre-commencement requirements to enable a prompt start on site.

- 7.1.7 It is also dismissive of the imminence of a technical solution to Condition 22 being agreed between the parties, as duly acknowledged by the Council. In reality, both the Appellant and Redrow have invested substantial resources to this site to date and for commercial reasons, are clearly incentivised to ensure the prompt delivery (and sale) of dwellings on the appeal site, at the earliest possible opportunity. There is no better example of the Appellant's commitment to this site than its undertaking, given to the Council, to help meet the cost of appointing a specialist consultant to advise on the vibration testing/modelling. Therefore, varying Condition 22 would clearly not lead to an open-ended planning permission, as the Council blithely suggest, in this particular instance.
- 7.1.8 The Council go further, asserting that there would be no guarantee of housing being delivered on the appeal site. Again, notwithstanding the stated position of the Appellant and Redrow above, such a simplistic and blunt assessment could be equally applied to any housing site. The practical delivery of housing in the UK is fraught with legal, technical, procedural, environmental or other challenges at every stage of the process and clearly there can be no guarantees or certainties of housing delivery on any site. However, it is abundantly clear in this instance that Appellant/Redrow are fully committed to the timely delivery of housing on the appeal site and will seek to implement the permission at the earliest opportunity if the appeal is allowed.
- 7.1.9 Suffice to say, should this appeal be unsuccessful and the extant planning permission lapse, the Appellant would be compelled to reapply for planning permission afresh, causing yet further delay to the delivery of housing. Such an outcome cannot be commensurate with the objective within the Framework to boost the supply of housing, particularly as the appeal site essentially already benefits from full planning permission, save for the agreed depth of a rubberised material on the underside of the foundations.
- 7.1.10 Additionally, for the Council to suggest the Appellant is simply seeking to 'bank' an outline permission is a clear and cynical distortion of the facts. Moreover, any risks associated with undertaking initial site works, in advance of the foundation design being formally agreed with the Council, would be entirely at the risk of the developer; a point, again acknowledged, by the Officer in their report on the application.
- 7.1.11 Moreover, the Council does not object to the scope of works that would need to be undertaken in order to safeguard the outline permission, should this appeal be upheld and timescales facilitate a prompt start on site. This is confirmed in email correspondence with the Case Officer (dated 24 April 2018) and which is provided at **Appendix 17**, which states:

"For the avoidance of doubt, given the minimal works theoretically necessary to protect the permission(s) if the application [now this appeal] were successful, I do not object to the proposals on the grounds of potential abortive works being

undertaken and any associated harm to the appearance of the site or unnecessary disruption to local residents".

- 7.1.12 The Officer also concludes that, if the condition were varied, it would not meet three of the six tests; namely, it would not be relevant to planning, to the development to be permitted and reasonable in all other respects. Overall, the Council's position is that, if the condition were varied, it would effectively disregard the basis of the outline permission in the context of which it was originally imposed.
- 7.1.13 With respect, the Appellant disagrees entirely. The condition as proposed would meet all six tests and has been specifically drafted as proposed with those tests in mind. It would comfortably meet the reasonable test insofar as it will ensure that the amenity of any future occupiers in noise-sensitive buildings would be fully safeguarded. This is, quite simply, what Condition 22 seeks to achieve and the reason it was imposed in the first instance. Additionally, its relevance to planning and relevance to the development permitted cannot be disputed; as worded, it clearly remains relevant to planning and relevant to the development permitted.
- 7.1.14 In addition, Condition 22 (as proposed) is clearly necessary, enforceable, precise and reasonable in all other respect. Accordingly, it is concluded that the proposed condition meets the six tests.
- 7.1.15 It is also emphasised that whilst these proceedings relate solely to the wording of Condition 22, the overall suitability of this site for housing and employment purposes was clearly accepted by the Inspector in 2015. Moreover, the Inspector allowed the appeal without applying the "tilted balance" under Paragraph 14 of the Framework, which was disengaged (despite the lack of a five year supply) under Paragraph 119. In identifying the benefits of the proposed development, the Inspector concluded as follows:

"154. I turn to the factors weighing in favour of the appeal. It would make a significant contribution to the delivery of housing. This is an important factor given the general imperative to boost the supply of housing set out in the Framework. It is of particular importance here due to the HLS [Housing Land Supply] position in the NWWHMA [North West Wiltshire Housing Market Area]. Moreover, the scheme would deliver a significant number of affordable houses. It would also bring economic benefits. All of these social and economic benefits would be realised in the context of a sustainable form of development in a location which is consistent with the broad spatial strategy of the CS [Wiltshire Core Strategy 2015]. I note that the amount of the shortfall in HLS is not great. Nevertheless, having regard to the overall objectives of the CS and the Framework to deliver housing in sustainable locations I attach substantial weight to these factors."

7.1.16 In focussing on the practical requirements of Condition 22, there is a risk that the wider benefits of the proposed development to Corsham and Wiltshire may be overlooked. However, if this appeal were allowed, the Council would secure these benefits, including obligations within the S106

Agreement and New Homes Bonus, in addition to the delivery of market and affordable housing in an sustainable location.

7.1.17 For these reasons, it is respectfully requested that this appeal be allowed.

8 PLANNING OBLIGATION

8.1 S106 Agreement

- 8.1.1 A draft planning obligation by deed of undertaking under the Town and Country Planning Act 1990 section 106 accompanies this appeal. Rather than a deed of variation to the original S106 Agreement, this undertaking is a stand-alone agreement which operates by reference to the original S106 Agreement.
- 8.1.2 The obligations therein will remain unchanged and it is hoped that the Agreement can be completed bilaterally. Should this not be possible for any reason, the Agreement will be entered into unilaterally. In accordance with Annexe D.1 of PINS Procedural Guidance (January 2018), a certified planning obligation will be sent to PINS no later than seven weeks from the start date.

9 SUMMARY AND CONCLUSIONS

9.1 Introduction

9.1.1 This Full Statement of Case is submitted by Gladman and relates to an appeal against Wiltshire Council's decision to refuse an application under S73 of the 1990 Town and Country Planning Act (as amended) for:

"Variation of condition 22 (Foundation Investigation Plan) of 13/05188/OUT to allow commencement of development prior to the discharge of this condition"

9.2 Summary Overview

- 9.2.1 The appeal site benefits from an outline planning permission (allowed at appeal on 25 May 2015) for up to 150 dwellings and up to 1,394 Class B1 (offices) use with associated works. The application was in outline with all matters reserved, save for the means of access.
- 9.2.2 Redrow secured reserved matters approval 8th September 2017. Consequently, Condition 3 of the outline permission requires works to begin on site within <u>1 year</u> of the final reserved matter being approved i.e. before 8th September 2018.
- 9.2.3 Redrow have now formally discharged <u>all</u> pre-commencement conditions and secured <u>all</u> necessary reserved matters approvals to enable a lawful start on site **subject to compliance with Condition**22. This condition requires the submission and approval of a Foundation Design Plan prior to the commencement of development and was required to safeguard the residential amenity of the new occupiers against nearby mine workings.
- 9.2.4 The Appellant is proposing to vary the wording of Condition 22 to enable initial site works only. The construction of any noise-sensitive buildings would not be undertaken until such time as the Foundation Design has been agreed in writing with the Local Planning Authority. This agreement is anticipated imminently, however, timescales dictate that the Appellant is compelled to use all necessary means to safeguard the outline planning permission. Therefore, this appeal has been lodged pending ongoing discussions with the Council.
- 9.2.5 Needless to say, the Appellant is using all reasonable endeavours to provide the Council with the information it requires, to the extent of underwriting fees incurred by the Council in seeking specialist technical advice from a leading acoustic expert.
- 9.2.6 Subject to the receipt of a satisfactory S106 Agreement, the Council does not allege any conflict with the development plan. Therefore, under Paragraph 14 of the Framework, the proposals should be approved without delay. The appeal is further supported by other material considerations, not least the efforts to date of the Appellant/Redrow to address all other pre-commencement matters in order to commence the delivery of housing on the appeal site.

- 9.2.7 Furthermore, it has been demonstrated that the proposed wording of Condition 22 would be compliant with the 'six tests' as set out at Paragraph 204 of the Framework and guidance within PPG.
- 9.2.8 On this basis, it is respectfully requested that the appeal be allowed.

APPENDIX 1 – Appeal Ref:APP/Y3940/A/14/2222641 (Land North of Bath ROad Corsham)



Appeal Decision

Inquiry opened on 20 January 2015 Site visit made on 28 January 2015

by David Prentis BA BPI MRTPI

an Inspector appointed by the Secretary of State for Communities and Local Government

Decision date: 27 May 2015

Appeal Ref: APP/Y3940/A/14/2222641 Land North of Bath Road, Corsham, Wiltshire SN13 0QL

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant outline planning permission.
- The appeal is made by Gladman Developments Ltd against the decision of Wiltshire Council.
- The application Ref 13/05188/OUT, dated 18 October 2013, was refused by notice dated 30 May 2014.
- The development proposed is erection of up to 150 dwellings, up to 1,394 sqm B1 offices, access, parking, public open space with play facilities and landscaping.

Decision

 The appeal is allowed and outline planning permission is granted for erection of up to 150 dwellings, up to 1,394 sqm B1 offices, access, parking, public open space with play facilities and landscaping at Land North of Bath Road, Corsham, Wiltshire SN13 0QL in accordance with the terms of the application, Ref 13/05188/OUT, dated 18 October 2013, and the plans submitted with it subject to the conditions set out in the attached schedule.

Application for costs

2. At the Inquiry an application for costs was made by Wiltshire Council against Gladman Developments Ltd. This application is the subject of a separate decision.

Preliminary matters

- 3. The Inquiry sat for 7 days from 20 to 23 January, on 27 January and on 12 and 13 March 2015. There was an accompanied site visit on 28 January 2015 and I carried out various unaccompanied visits to the locality of the appeal site prior to and during the course of the Inquiry.
- 4. The Wiltshire Core Strategy (CS) was adopted by the Council on 20 January 2015, the opening day of the Inquiry. As a result various policies of the North Wiltshire Local Plan referred to in the Council's decision notice have now been superseded by the policies of the CS.
- 5. On 27 January 2015 the Council and the appellant made a joint request for an adjournment to allow for additional work to be done in relation to the

requirements of the Habitats Regulations¹. This included discussions between the Council and the appellant, the preparation of a further draft appropriate assessment and consultation with Natural England. Natural England responded to this additional work in a letter to the Council dated 2 March 2015². I comment further on these matters below in the section dealing with ecology and designated sites.

- 6. The application was submitted in outline with all matters reserved except for access. Illustrative drawings were submitted with the application. These included a development framework, a landscape framework and a masterplan.
- 7. A revised version of the masterplan (5468-L-03 rev L) was submitted with the appellant's proofs of evidence. This revision introduced a landscape corridor along the eastern site boundary which was intended to mitigate ecological impacts of the proposed development. Proposed houses close to the boundary were shown facing a private drive alongside the buffer whereas before they were shown backing onto the boundary. The Council objected to this plan being considered on the basis that it would determine the orientation of dwellings in the vicinity of the boundary. It was suggested that this could be prejudicial to the interests of adjoining residents who may not have expected this form of layout to be promoted.
- 8. However, I did not regard this as an amendment to the appeal scheme because the application was made in outline. Revision L of the masterplan was accepted on the basis that it would be a further illustrative plan which would sit alongside any other illustrative plans before the Inquiry. I did not consider that any party would be prejudiced because, if outline planning permission were to be granted, the Council would have control over the layout at the reserved matters stage.
- 9. During the adjournment the appellant submitted an Ecological Parameters Plan and illustrative landscape cross sections. These plans showed proposed ecological mitigation measures and were relied on in relation to the draft appropriate assessment referred to above. The Council carried out some neighbour consultations on these plans. In closing, the Pickwick Association stated that a wider consultation should have been carried out. However, I do not think that these plans were an amendment to the outline application. Like revision L of the masterplan, they were submitted as illustrative plans during the course of a properly publicised Inquiry. There was no requirement for the Council to carry out consultation at all so there can be no criticism that the consultation it did was not wide enough. That said, the Council submitted copies of the consultation responses received and I have taken these into account.
- 10. The appellants sought a screening opinion from the Council in relation to the need for Environmental Impact Assessment (EIA). The proposed development fell within the category of 'urban development projects' where the area of works exceeds 0.5ha³. On 28 October 2013 the Council confirmed that EIA would not be required. At the Inquiry the Council asked to be provided with documents relating to the EIA screening carried out in relation to the appeal on

¹ Regulation 61 of The Conservation of Habitats and Species Regulations 2010

² Document GLD/LPA/07

³ Schedule 2, paragraph 10(b) of the Town and Country Planning (Environmental Impact Assessment) Regulations 2011 as it then was. The threshold was increased by the Town and Country Planning (Environmental Impact) (Amendment) Regulations 2015 on 12 March 2015.

behalf of the Secretary of State. This information was duly provided⁴. In closing the Council confirmed that it was satisfied that there had been no error of law in this regard. I have kept this matter under review and have found no reason to differ from the Council's screening opinion.

- 11. An Agreement under s106 of the Town and Country Planning Act was submitted at the Inquiry. The Agreement would secure the delivery of 30% of the dwellings as affordable housing. It would also make provision for highway works, for approval by the Council of details of open spaces and play areas and for the subsequent management of these areas. In addition there would be financial contributions to sport and recreation, cemeteries and secondary education. This Agreement resolved the matters referred to in the Council's 5th reason for refusal.
- 12. The transitional period relating to Regulation 123 of the Community Infrastructure Levy Regulations ended after the close of the Inquiry. Accordingly, I sought further comments from the parties in relation to the five obligation limit referred to in Regulation 123. The Council and the appellant agree that the circumstances of this case are such that Regulation 123 is complied with. Moreover, the Agreement anticipates the adoption of the Council's Community Infrastructure Levy charging schedule and contains provisions which would avoid any double payment of infrastructure contributions.
- 13. I consider that the obligations contained in the Agreement would be necessary and reasonable. They would accord with the relevant statutory provisions⁵ and with the National Planning Policy Framework (the Framework) and I have taken them into account accordingly. I comment further below on the individual obligations.
- 14. After the close of the Inquiry there was a revision to Planning Practice Guidance (the Guidance) relating to updating evidence on the supply of housing sites. In addition, my attention was drawn to recent appeal decisions at Cricklade and Oaksey dealing with housing land supply in Wiltshire⁶ and to two planning permissions for housing which have been granted in or near Corsham⁷. The parties were invited to make further comments in the light of these matters and I have taken account of the responses received.

Main issues

15. I consider that the main issues in this case are:

- whether the Council can demonstrate that there is a 5 year housing land supply,
- the effect of the proposal on ecology, including any effects on designated sites and protected species,
- the effect of the proposal on the character and appearance of the area,
- the effect of the proposal on heritage assets,
- whether allowing the appeal would be prejudicial to a plan-led planning process, and
- whether the proposal would amount to a sustainable form of development.

⁴ Document GLD/20

⁵ Regulations 122 and 123 of the Community Infrastructure Levy Regulations 2010

⁶ Cricklade – APP/Y3940/A/14/2223354; Oaksey – APP/Y3940/A/14/2225214

⁷ Email from Derek Burt of 8 April 2015

Reasons

The policy context

16. The CS comprises the development plan for the purposes of the appeal. Core Policy 1 sets out the settlement strategy which identifies four tiers of settlements. Principal settlements are to be the primary focus for development with market towns also having the potential for significant development and local service centres seen as providing for more modest levels of growth. Corsham is identified as a market town. Core Policy 1 states:

Market Towns have the potential for significant development that will increase the jobs and homes in each town in order to help sustain and where necessary enhance their services and facilities and promote better levels of self containment and viable sustainable communities.

- 17. The delivery strategy for the CS is contained in Core Policy 2. It seeks to deliver at least 42,000 homes in Wiltshire between 2006 and 2026. Three housing market areas (HMA) are identified. Corsham is in the North and West Wiltshire HMA (NWWHMA) where the minimum housing requirement is 24,740. Table 1 in the CS sets out indicative housing requirements for settlements and community areas, the indicative requirement for Corsham Town being 1,220. However, this disaggregation to community areas is not intended to be so prescriptive as to be inflexible in terms of delivering the housing requirement for each HMA. Table 1 is intended to provide a strategic context for the preparation of a Housing Sites Allocation DPD and in order to plan for infrastructure provision. Core Policy 11 sets out the spatial strategy for the Corsham Community Area. Consistent with Table 1, it states that approximately 1,395 homes will be provided of which about 1,220 will be at Corsham. The CS notes that new growth at Corsham will be balanced, with housing delivery alongside employment.
- 18. Core Policy 2 also states that development outside the defined limits to development will not be permitted except in specific circumstances which do not apply to the housing element of the appeal scheme. As the appeal site is outside the defined limits the proposal is contrary to Core Policy 2.
- 19. Core Policy 34 is generally supportive of proposals for employment development within the principal settlements, market towns and local service centres. Where proposals are outside these settlements the policy sets out criteria which will be applied. Core Policy 50 states that development proposals must demonstrate how they protect features of nature conservation value as part of the design rationale. Measures to avoid and reduce disturbance of sensitive wildlife species are to be incorporated and all development should seek opportunities to enhance biodiversity.
- 20. Core Policy 51 seeks to protect, conserve and where possible enhance landscape character. The aspects of landscape character to be taken into account include landscape features of cultural, historic and heritage value. Core Policy 58 seeks to protect the historic environment, including the settings of designated heritage assets such as conservation areas. Core Policy 61 states that new development should be located and designed to reduce the need to travel particularly by private car and to encourage the use of sustainable transport alternatives.

Housing land supply

- 21. The Council and the appellant agreed that the relevant assessment period for both the housing requirement and the supply is 1 April 2014 to 31 March 2019. It was also agreed that the CS provides the housing requirement against which supply should be assessed and that the area to be assessed should be the NWWHMA. The Council and the appellant did not agree about the housing requirement or about some elements of supply.
- 22. The Inspector who conducted the examination of the CS (the CS Inspector) concluded that the Council could demonstrate a 5 year housing land supply (HLS)⁸. Planning Practice Guidance (the Guidance) states that:

The examination of Local Plans is intended to ensure that up-to-date housing requirements and the deliverability of sites to meet a 5 year supply will have been thoroughly considered and examined prior to adoption, in a way that cannot be replicated in the course of determining individual applications and appeals where only the applicant's/appellant's evidence is likely to be presented to contest an authority's position⁹.

In this case I consider that the CS Inspector's report and the CS evidence base form an important part of the evidence before me on HLS. However, the Guidance does not preclude a decision maker considering a planning appeal such as this from taking account of evidence which emerges subsequent to the consideration of HLS in a development plan examination.

The housing requirement and the supply needed

- 23. The Council's figure for the housing requirement in the NWWHMA is 24,740 in accordance with Core Policy 2. Allowing for completions in the period 2006 2014, the 5 year supply needed would be 6,160. In accordance with paragraph 47 of the Framework, it was agreed that a buffer of 5% would be appropriate¹⁰. On this basis the supply needed to accord with the Framework would be 6,468. The appellant argued that the requirement should be increased to take account of an allowance for 900 dwellings west of Swindon (the Swindon allowance).
- 24. The Swindon allowance relates to an existing commitment for 900 dwellings to the west of Swindon. Although located within Wiltshire, these dwellings are regarded as meeting the needs of Swindon. At paragraph 4.29 the CS states that 'As part of the planned early review of the CS, the Council will clarify that its housing requirement will be met without relying upon the delivery of homes to the west of Swindon'. These words were added by way of a modification recommended by the CS Inspector. He did not think that the housing requirement within Wiltshire should be partially met by relying on delivery west of Swindon. However, he concluded that 'This matter can be dealt with most expeditiously through the planned early review of the CS which will include the new joint SHMA, without prejudice to the overall soundness of the CS'¹¹.
- 25. The appellant argued that the CS Inspector's finding of soundness in relation to the CS as a whole was predicated on a commitment to a planned early review. However, the Council's Local Development Scheme 2015 (LDS), which was

⁸ See paragraph 96 of the report at CD11

⁹ Reference ID: 3-033-20150327

 $^{^{10}}$ See Statement of Common Ground on housing supply matters – document GLD/LPA/08 $^{\rm tt}$

¹¹ See paragraph 87 of the CS Inspector's report. The SHMA referred to is a joint Strategic Housing Market Assessment to be carried out by Wiltshire Council and Swindon Borough Council.

adopted on the same day as the CS, makes no such commitment. Furthermore, the LDS only states that the new joint SHMA will '*inform the need for a further review of Core Strategy policies*⁴². The appellant considers that the Council has reneged on its commitment to a planned early review. In these circumstances, it was suggested that the full housing requirement for Wiltshire will not be delivered in a timely way unless the Swindon allowance is added to the requirements for the 3 HMAs. On this approach the 900 units would be distributed proportionately, adding 225 to the requirement for the NWWHMA.

- 26. I agree with the appellant to the extent that the LDS is not consistent with paragraph 4.29 of the CS or with paragraph 87 of the CS Inspector's report. Bearing in mind the statutory nature of the document¹³ this is not a minor matter. On the other hand, the CS Inspector has recently considered how the Swindon allowance should be dealt with. In particular, he considered whether the Swindon allowance ought to be added to the requirements for the HMAs. That is not what he recommended. Instead, he concluded that this matter ought to be dealt with through a planned early review of the CS. His modification includes the commitment to an early review within the wording of the CS itself.
- 27. On balance, having regard to all the circumstances, I do not think that the lack of reference to the review in the LDS amounts to a sufficient change in circumstances to warrant adopting a housing requirement for the NWWHMA other than that set out in the CS. For the purposes of this appeal I agree with the Council's position which is that the supply needed in the NWWHMA to accord with the Framework is 6,468 dwellings.

The supply of housing sites

28. The respective positions of the Council and the appellant in relation to the supply of housing sites are summarised in the updated Statement of Common Ground (SoCG) on housing supply matters. The SoCG records changes made by the Council and the appellant during the course of the Inquiry. References to the Council's figures in the following sections of this report are references to the position as set out in the updated SoCG. I turn next to those sites where the contribution to HLS was in dispute at the end of the Inquiry. Some of these were discussed at an Inquiry which took place in April 2014 relating to proposed residential development at Park Road, Malmesbury¹⁴. I have taken account of the findings of the Inspector in that case¹⁵ (the Park Road Inspector) together with the other evidence before me on HLS matters.

Westinghouse Recreation Ground

29. The site has planning permission for 74 houses. Based on a telephone conversation, the appellant argued that the developer is considering a change to the design which would result in a reduction of 10 units. The Framework states that sites with planning permission should be considered deliverable unless there is clear evidence that they will not be delivered within 5 years. There was no suggestion that this site is not deliverable. In my view there is

 $^{^{\}rm 12}$ See paragraph 2.10 of the LDS

¹³ Section 15, Planning and Compulsory Purchase Act 2004

¹⁴ APP/Y3940/A/13/2200503

¹⁵ This was a case where the Secretary of State did not agree with the Inspector's recommendation. However, the Secretary of State accepted the Inspector's findings in relation to HLS.

insufficient evidence to warrant adopting a figure lower than the extant permission. I accept the Council's figure for this site.

Hunters Moon

30. The Council resolved to grant outline planning permission for up to 450 dwellings in January 2014 subject to the completion of a s106 agreement. The developer's trajectory envisaged first delivery of dwellings 18 months after the grant of planning permission. The Council adopted the findings of the Park Road Inspector. He considered that delivery in 2014/15 was unlikely but that, thereafter, the site could produce at the rate assumed by the Council. This conclusion was based on the absence of a planning permission at the time of the Park Road Inquiry. The position at this Inquiry was that the outline planning permission had still not been issued. Consequently, it now seems unlikely that there will be delivery in 2015/16. I therefore agree with the appellant's position which is a reduction of the Council's figure by 56 units.

Westbury North Junction

31. The site has full permission for 102 dwellings granted in October 2013. It is a former quarry, in-filled with waste materials, subsequently used for HGV parking and now vacant. The appellant queried the delivery trajectory on the basis that there has been no discharge of pre-commencement conditions. In particular, it was suggested that a condition relating to contaminated land was onerous and would be time-consuming to deal with. However, whilst the wording of the condition in question is quite detailed, in substance it is little different to many such conditions. I consider that the Council's trajectory allows a reasonable period for the discharge of conditions and see no reason to make any adjustment for this site.

Foundry Lane

32. The site is an industrial estate which has been identified for regeneration for some time. A mixed use redevelopment is being promoted which would include up to 115 residential units. There was a resolution to grant outline planning permission in December 2013 subject to the completion of a s106 agreement although as yet no permission has been issued. The Park Road Inspector found that an allowance of 75 completions within the 5 year period was reasonable, having been informed that the agreement was in the process of being finalised. In August 2014 the Council indicated that 4 years should be allowed for site remediation prior to commencement¹⁶. Even if that figure is unduly cautious, given the complexity of the site and the continued absence of a planning permission, delivery within the 5 year period now seems unlikely. I agree with the appellant that 25 units should be deducted from the Council's figure.

Burton Hill

33. The site is allocated in the draft Malmesbury Neighbourhood Plan (MNP) for approximately 50 dwellings. The MNP was subject to examination in September 2014 and there was a referendum in December 2014. At the time of the Inquiry the Council was in the process of drafting the document which would complete the process of making the plan. The MNP is therefore at an advanced stage and significant weight may be given to it. The appellant argued that an earlier strategic housing land assessment suggested that delivery from this site

¹⁶ Email from Neil Tiley dated 26 August 2014 at Appendix 11 of Ms Mulliner's proof of evidence

would be outside the 5 year period because of the need to co-ordinate separate land ownerships. Moreover, it was said that there was no evidence of a forthcoming planning application and that any assessment by the MNP examiner of deliverability would not have needed to consider the 5 year period.

34. In my view matters have moved on since the strategic housing land assessment. It is important to note the site has been considered recently in the context of the MNP examination process. Had the examiner found that there were significant obstacles to delivery no doubt he would have said so. As to delivery within 5 years, I accept the Council's evidence that an application is being worked up by a delivery task group with the involvement of the landowners. The evidence supports the Council's delivery trajectory and no adjustment is required for this site.

Backbridge Farm

- 35. The site is allocated in the MNP for 170 dwellings. The appellant argued that the MNP requires the provision of pedestrian and cycle routes which would involve the use of 3rd party land. In the absence of a formal agreement with the owners concerned there was effectively a ransom strip. In response, the Council commented that the access problems had been overstated. One of the 3^{rd} party owners concerned was the Council and one of the routes would be within an extension to a primary school site. A delivery task group had been established including representatives of the developer, the school and the education authority to bring forward proposals for the site.
- 36. As with the previous site, it is important to note that this site has recently been considered in the context of the examination of the MNP. The report of the MNP examiner emphasises the importance of the pedestrian and cycle links. It also records that representatives of the school attended the examination. The examiner concludes that 'From the evidence given on these matters I am satisfied that there is every possibility that the required pedestrian and cycle links would be secured through development¹⁷. The Guidance states that where potential ownership problems, such as ransom strips, are identified an assessment will have to be made as to how and when they can realistically be overcome¹⁸. In making that assessment I attach significant weight to the MNP examiner's report. I conclude that there is a realistic prospect that housing will be delivered at this site within the 5 year period. No adjustment to the Council's figure is needed.

North Chippenham

37. The Council resolved to grant outline planning permission for up to 750 dwellings together with employment uses and a local centre in April 2014, subject to a s106 Agreement. Permission has yet to be issued. The developer provided a revised trajectory in March 2014 indicating delivery of 360 units within the 5 year period. This figure was accepted by the Park Road Inspector and is relied on by the Council. The developer's trajectory assumed that the outline planning permission would be in place by April 2015. Consequently, the absence of such permission at the time of the Inquiry was not evidence of slippage and no adjustment to the Council's figure is needed.

¹⁷ Paragraph 3.34 of the examiner's report at Appendix 13 of Ms Mulliner's proof of evidence ¹⁸ Reference ID: 3-020-20140306

Patterdown and Rowden (South West Chippenham)

- 38. The site had previously been identified in the draft CS as a strategic allocation for 800 dwellings plus employment uses. The adopted version of the CS does not include strategic allocations at Chippenham. Instead, the Council intends to bring forward a Chippenham Sites Development Plan Document¹⁹. The Council's trajectory for this site includes delivery in 2016/17. As an outline application for 1000 houses was only submitted in December 2014 the appellant suggested that it was unlikely that there would be delivery before 2017/18.
- 39. The Park Road Inspector accepted the Council's trajectory which assumed a two year period between submission of an outline application and delivery. On that basis, given that the application was only actually made in December 2014, the site would start to produce completed units in the 4th quarter of 2016/17. Making a proportionate allowance for that quarter, and assuming that delivery would thereafter follow the Council's trajectory (slipped by one year), it is reasonable to allow for 190 units within the 5 year period²⁰. This is a reduction of 85 from the Council's figure.

Ashton Park, Trowbridge

- 40. The site is a strategic allocation in the CS for 2,600 homes together with employment land. Much of the site is controlled by Persimmon Homes, currently the developer of a nearby site at Castle Mead producing around 100 units per year. The Council and the appellant agreed that the site should produce completed dwellings from 2017/18. However, the appellant argued that Persimmon is unlikely to develop significant numbers of houses at Ashton Park until it has completed Castle Mead. Consequently the appellant suggested that only a few houses would be delivered in 2017/18 and that the build up in delivery thereafter would be slower than in the Council's trajectory.
- 41. A Statement of Common Ground between the Council and Persimmon Homes produced in May 2013 noted that there would be at least 4 outlets at Ashton Park, plus affordable housing. Although there would be limited overlap with Castle Mead competition between the two sites was not seen as a major issue. The Park Road Inspector noted that there had been some slippage in the submission of an outline application and reduced the projected delivery within the 5 year period from 600 to 350 accordingly. This is the figure now relied on by the Council. I consider that the scale of Ashton Park is such that it is likely there would be multiple outlets, as stated in the Statement of Common Ground. In my opinion there is insufficient evidence to support the appellant's suggestion that the build rates should be reduced. No adjustment to the Council's figure is therefore justified.

West of Warminster

42. The site is a strategic allocation in the CS for 900 dwellings together with employment land. The Council's trajectory assumes delivery from 2016/17. Given that no application has yet been submitted this now seems unlikely. The appellant suggests that the Council's trajectory should slip by one year. I agree. This results in a reduction of 140 from the Council's figure.

¹⁹ The Statement of Common Ground records that the CS Inspector found that the Sustainability Appraisal did not support the strategic allocations at Chippenham.

²⁰ The calculation is 15 units in the 4th quarter of 2016/17, 75 units in 2017/18 and 100 units in 2018/19.

Station Road, Westbury

- 43. The site was previously allocated in the West Wiltshire Local Plan and is now a strategic allocation for 250 dwellings in the CS. The Council adopts the developer's trajectory which shows 50 units in 2018/19. There would be a need for a link road to cross a railway line as part of the development. The appellant argued that no planning application has been submitted and questioned the viability of the site.
- 44. I understand that the site has been allocated for some time without development being brought forward. However, it has recently been reviewed in the context of the CS examination. The CS Inspector's report addressed the issue of viability, noting that the evidence presents 'a degree of ambivalence as to the viability of the site'. Even so, the Inspector went on to say that the Council's revised viability evidence led to a reduction in affordable housing aspirations which will enhance the likelihood of viable delivery. He concluded that 'the Station Road site is justified as a strategic allocation'. I attach significant weight to the CS Inspector's findings and conclude that there is a realistic prospect of delivery at this site. In terms of timing, the Council's trajectory indicates delivery in the final year of the 5 year period. This allows sufficient time for an application to be submitted and determined. No adjustment to the Council's figure is required.

Victoria Road, Warminster

45. The site has planning permission for 18 dwellings. However, a further planning application has been submitted for 8 dwellings and 3 retail units. On balance it seems more likely that this site will deliver 8 houses and it is therefore appropriate to make a reduction of 10 units from the Council's figure.

Conclusions on housing land supply

- 46. The supply needed in the NWWHMA, derived from the CS, is 6,468. This figure includes a 5% buffer in accordance with the Framework. The Council's figure for supply is 6,530. For the reasons given above I consider that this figure should be reduced by 316. The resulting figure is 6,214 which is below the supply needed to accord with the Framework. I acknowledge that the shortfall is not great. Indeed, the available supply exceeds the 6,160 that would be needed if it were not necessary to add a buffer. However, the Framework makes clear at paragraph 47 that a buffer should be added to ensure choice and competition in the housing market.
- 47. It follows that, in the NWWHMA, the Council cannot demonstrate a 5 year supply of deliverable housing sites with the buffer required by the Framework. In these circumstances the Framework states that relevant policies for the supply of housing should not be considered up-to-date.
- 48. The Council did not dispute that, insofar as Core Policy 2 seeks to restrict housing outside the limits of development, it is a relevant policy for the supply of housing which would be deemed to be out-of-date if there were found not to be a 5 year HLS. The appeal scheme also includes B1 office development. Core Policy 34 of the CS deals with employment land and is not a relevant policy for the supply of housing. I return to the application of development plan policy to the B1 element of the scheme later in this decision.

- 49. Paragraph 14 of the Framework states that where relevant policies are out-of date planning permission should be granted unless any adverse impacts of doing so would significantly and demonstrably outweigh the benefits or where specific policies in the Framework indicate that development should be restricted. This is a case where paragraph 14 is not engaged, for reasons discussed in the concluding section of this decision.
- 50. I have referred above to two recent appeal decisions relating to sites at Oaksey and Cricklade which were drawn to my attention after the close of the Inquiry. Both sites are within the NWWHMA and in each case the Inspector accepted the conclusion of the CS Inspector in relation to the existence of a 5 year HLS. It can be seen from the Oaksey decision that the appellant in that case did not contest the CS Inspector's conclusion on HLS. Whilst there was some discussion of the allowance for windfall sites, it appears that the delivery trajectories for individual HLS sites were not discussed at the hearing.
- 51. It can be seen from the Cricklade decision that both the housing requirement and the HLS were disputed. I agree with the Cricklade Inspector that the CS requirement, disaggregated to the 3 HMA, provides the correct basis for establishing the requirement. The Inspector does not comment on individual supply sites and I do not know what detailed information was before him on this matter. It is clear that he attached very significant weight to the findings of the CS Inspector.
- 52. In common with the Cricklade Inspector I have afforded substantial weight to the report and conclusions of the CS Inspector. However, at the Inquiry evidence was put before me which demonstrates that, for some sites, the position now is materially different to the evidence that was before him. Neither the Framework nor PPG suggest that such evidence should be disregarded. Case law stresses the importance of an evidence based approach to the consideration of HLS²¹. On the basis of that evidence I have reached a different conclusion to the Oaksey and Cricklade Inspectors.
- 53. Finally, I note that since the Inquiry the Council has permitted housing development on two sites at or near Corsham, amounting to 152 dwellings. However, it would not be appropriate simply to add that figure to the supply that would be tantamount to changing the base date of the HLS exercise. Moreover, some of these units are already accounted for in the HLS figures. The Council and the appellant have agreed that the correct base date for this appeal is 1 April 2014. If any later base date were used it would be necessary to review all the elements of the HLS exercise.

Effect on ecology, including designated sites and protected species

54. The appeal site comprises an arable field, within which there are some freestanding trees, and an area of grassland. There are corridors of trees and vegetation adjoining the northern and eastern site boundaries. These are associated with the grounds of Guyers House and open farmland to the north and with the back gardens of houses in Academy Drive to the east. The site is bounded by Bath Road to the south, beyond which is the urban area of Corsham. To the west it is bounded by Guyers Lane, beyond which there is a

 $^{^{21}}$ Wainhomes v Secretary of State for Communities and Local Government [2013] EWHC 597 (Admin) – see for example paragraph 35 of the judgement

group of houses fronting Bath Road and open farmland. In the south west part of the site there is an airshaft leading to a disused underground quarry.

55. The site is not subject to any nature conservation designations. However, it is used by protected species, notably bats. All UK bats are protected species. An ecological appraisal and a bat survey were submitted with the application in 2013. This work identified several species of bats using the site. In response to matters raised by the Council and Natural England (NE) further bat surveys were undertaken during 2014.

Designated sites

- 56. The ecological appraisal identified one Special Area of Conservation (SAC) and 3 Sites of Special Scientific Interest (SSSI) in the area around the appeal site together with some non-statutory wildlife sites. The Box Mine SSSI is about 1.6km to the south west of the appeal site. This SSSI also forms part of the Bath and Bradford on Avon Bats SAC. The SAC is made up of various separate areas, the next nearest being respectively 7.5km and 9.6km from the site. The ecological appraisal did not identify any significant impacts on designated sites other than the Box Mine component of the SAC. This conclusion was not disputed by the Council and I see no reason to disagree.
- 57. The SAC is a European site and Regulation 61 of the Habitats Regulations therefore applies. The Council and the appellant agreed that the application is likely to have a significant effect on the SAC. Consequently, in accordance with Regulation 61, an appropriate assessment of the implications for that site must be made. To assist the Inquiry a draft appropriate assessment was prepared and agreed between the Council and the appellant²². The draft appropriate assessment concluded that the project was not likely to affect the integrity of the SAC, either alone or in combination with other plans and projects. NE was consulted and advised that it concurred with the assessment conclusions, provided that all mitigation measures are appropriately secured in any permission given²³. I have taken account of the draft appropriate assessment, together with the views of NE and all other evidence before the Inquiry in order to make my own appropriate assessment.
- 58. The interest features of the SAC are greater horseshoe bat (GHB), Bechstein's bat (Bechstein's) and lesser horseshoe bat (LHB). There are relatively large populations of GHB and LHB and a small population of Bechstein's which is estimated to be just 20 individuals. Unless bats are trapped or identified in the hand Bechstein's cannot be distinguished from other bats of the *Myotis* family. Due to the rarity of Bechstein's considerable survey effort is needed to confirm their presence or absence in circumstances where *Myotis* bats are detected.
- 59. Box Mine is the most important roosting, hibernation and swarming site for the qualifying species in the locality although other underground sites are used. The conservation objectives for Box Mine include avoiding the disturbance of the qualifying species, ensuring that the integrity of the site is maintained and that the site makes a full contribution to achieving favourable conservation status for each of the qualifying features.
- 60. Box Mine is not understood to be physically connected with the underground quarry at the appeal site by any underground route. To confirm whether or not

²² GLD/LPA/06

²³ NE letter of 2 March 2015 – GLD/LPA/07

the qualifying species are hibernating below ground, bat trapping was undertaken at the airshaft in March/April 2014. Natterer's and Daubenton's bats were trapped but no Bechstein's, GHB or LHB. The airshaft is used by *Myotis* bats as a swarming site in late summer. The difficulty of confirming the presence or absence of Bechstein's had been an outstanding matter of concern to the Council. However, following the 2014 surveys both the Council and NE are now satisfied with the level of survey work and agree that the airshaft is not used significantly by Bechstein's or by the other qualifying species.

- 61. Bat activity surveys identified modest numbers of GHB and LHB using the northern boundary of the site as a commuting route. *Myotis* bats, which could include Bechstein's, were also recorded using the northern and eastern boundaries for much of the summer with large increases in activity during September. Foraging activity was also recorded.
- 62. The survey evidence shows that the 3 qualifying species are not using the underground quarry or the trees within the site as roosts. However, the commuting routes may well be used to reach foraging areas and roosts in the locality so the proposed development may have indirect effects. It is likely to require external lighting associated with roads, footpaths and buildings. As the qualifying species are known to be light sensitive, increased lighting close to the commuting routes is likely to disturb bats, potentially impacting on the conservation objectives for the SAC.
- 63. Mitigation measures have been proposed to avoid or reduce the potential impacts. The key features, as shown on the ecological parameters plan, would be landscape buffers of at least 15m width containing species-rich grassland and tree/shrub planting along the western, northern and eastern boundaries. These buffers would be designed and managed to protect the commuting routes. In addition there would be a 10m offset to the closest elevation of any buildings. To my mind the key issues to be addressed are whether this mitigation would be effective and whether it could be adequately secured, bearing in mind the outline nature of the appeal scheme.
- 64. The indicative design of the buffers is shown on the illustrative landscape cross sections. These show that the buffers would be of sufficient width to include hedgerow and tree planting on either side of a central grassland strip. A close boarded fence would be contained within the planting closest to the proposed development in order to cut down light spill into the buffer zone. A lighting report has been submitted which includes modelled lighting levels across the site. This shows that light levels within the buffers could be kept below 1.0 lux, the level which is generally regarded as the threshold for bat disturbance. The survey information has identified how the site is used by commuting and foraging bats and I consider that there is sufficient knowledge about the behaviour of the qualifying species to be confident that the mitigation measures would be effective in protecting the commuting routes.
- 65. The Council and the appellant suggested a condition which would require the submission of reserved matters to accord with the ecological parameters plan including the dimensions and lighting levels referred to above. Further conditions could be imposed requiring the approval of a Landscape and Ecological Management Plan, to ensure that the future maintenance of the buffers was appropriate to their mitigation function, and the approval of an external lighting scheme. I am satisfied that these conditions would secure the

implementation of the proposed mitigation measures without prejudicing the Council's ability to consider the planning merits of any reserved matters submissions.

66. In conclusion, my assessment is that the commuting routes could be adequately protected from the proposed development subject to the imposition of appropriate planning conditions. On this basis the project would not be likely to affect the integrity of the SAC either alone or in combination with other plans or projects. For the same reasons, the project would not be likely to harm the Box Mine SSSI.

Protected species - bats

- 67. The surveys have identified several bat species at the site, including the 3 referred to above. Insofar as these species are using the site for commuting and foraging the mitigation measures described above would be of value to all of the bat species. The Council's main concern was the effect of the proposal on the use of the airshaft and underground quarry by bats. The surveys show that it is likely that Natterer's bats and Daubenton's bats are using the quarry for hibernating. In addition, swarming activity has been observed at the airshaft in the late summer and autumn. The surveys indicated a maximum of 10 bats swarming at any one time. The ecological function of swarming is closely related to breeding which normally takes place underground. Studies have shown that individual bats travel from a wide area to reach swarming sites. Such sites are comparatively rare and the Council is aware of only 3 in Wiltshire.
- 68. Mitigation proposals are shown on the ecological parameters plan. A buffer zone would be formed around the airshaft with a minimum of 15m between the shaft and the office development to the south west and a minimum of 25m between the shaft and the residential development to the north east. The buffer zone would have trees towards the edge and an open area for swarming around the shaft. Wildlife corridors, similar to the landscape corridors described above, would link this area to the western and southern boundaries.
- 69. The Council's concern was that the introduction of urban development in proximity to the airshaft would result in the deterioration of a breeding site of a European protected species, potentially in breach of Article 12 of the Habitats Directive. The Council considers that there is an unacceptable degree of uncertainty with regard to both the significance of the swarming site and the nature and significance of the impacts of development on the swarming arena. Moreover, it was argued that the effectiveness of the proposed mitigation cannot be sufficiently understood because there is no precedent for developing close to a swarming site. For all these reasons the Council considered that it was unlikely that NE would be able to provide the necessary licence for the scheme and planning permission should therefore be refused.
- 70. The appellant agreed that that a licence from NE would be sought. However, it was argued that the existing habitat is sub-optimal for bats because it is open and exposed arable land. Natterer's and Daubenton's are woodland bats adapted to cluttered woodland environments. The mitigation would provide optimal habitat around the airshaft and connectivity with the wider area.
- 71. The EC Guidance on the application of Article 12 states that:

'Breeding sites and resting places are to be strictly protected because they are crucial to the life cycle of animals and are vital parts of a species' entire habitat. Article 12(1)(d) should therefore be understood as aiming to safeguard the continued ecological functionality of such sites and places, ensuring that they continue to provide all the elements needed by a specific animal to rest or to breed successfully. The protection applies all year round if these sites are used on a regular basis.²⁴

- 72. The emphasis in the EC Guidance is on the continued ecological functionality of the breeding or resting site. The evidence before me indicates that the key aspects of functionality here are the underground quarry, where breeding is thought to take place, the swarming arena and the connectivity to the wider area.
- 73. I accept the evidence of the appellant's bat expert that there has been sufficient survey work. The species using the airshaft have been identified, the maximum numbers using it for swarming at any one time have been established and there have been direct observations of swarming activity on a number of occasions. The Council argued that the total numbers of bats using the site over a season is not known. Whilst that may be so, I am satisfied that there is sufficient information to properly understand the significance of the swarming site and to inform the design of the mitigation measures.
- 74. It is important to bear in mind that the swarming site is not in a remote rural location. It is around 50m from the busy A4 which has tall lighting columns. It is also close to urban development to the south of the A4. No survey information has been provided regarding current light levels at the airshaft. However, the appellant's bat expert suggested that these are likely to be above the 1.0 lux level which is the threshold for affecting the behaviour of bats²⁵. Having viewed the site at night I share that view. I agree with the appellant that the current conditions are sub-optimal for bats.
- 75. The appellant submitted information about other swarming sites in the Corsham area and also in Derbyshire and Yorkshire. This evidence shows that sheltered and relatively cluttered woodland environments provide suitable habitat for Natterer's and Daubenton's bats. Consequently there is no reason to think that planting trees around the perimeter of the buffer zone, leaving the area around the shaft clear, would create conditions unsuited to these species.
- 76. The numbers of bats observed swarming were relatively low, with a maximum of 10 on one occasion and generally fewer than 5. The majority of the swarming activity observed was above the airshaft. Whilst there was an instance of swarming behaviour to the south of the airshaft this was just 2 individuals on a single occasion. The lighting conditions which could be achieved in the buffer zone, and the corridors connecting it to the southern and western boundaries, have been modelled in some detail. The modelling showed that light levels could be maintained below the 1.0 lux threshold. For much of the buffer zone levels would be below 0.1 lux. This would certainly be no worse than existing conditions and may well be a material improvement.

²⁴ Page 45 of the Guidance Document on the Strict Protection of Animal Species of Community Interest under the Habitats Directive 92/43/EEC, included at Appendix I to GLD/23.

²⁵ Mr Goodman, in answer to my questions

- 77. Taking the survey data together with the information about other swarming sites and the modelled lighting conditions, I consider that there can be a high degree of confidence that the ecological functionality of the airshaft breeding site would be adequately protected by the proposed mitigation.
- 78. It is also necessary to consider potential physical impacts on underground breeding sites by construction works and potential disturbance to hibernating bats from noise and vibration. The extent of the underground quarry linked to the airshaft has been surveyed. The appellant's engineering consultants have submitted a technical note which states that the likelihood of piled foundations being needed on this site is negligible. There remains a possibility of unmapped shallow workings which might potentially be used by bats. This potential risk could be addressed by way of a condition requiring a land stability risk assessment to be submitted for approval alongside the submission of reserved matters. The possible need for any seasonal restrictions on building works in parts of the site, to avoid disturbance during hibernation, could be addressed within a Construction Method Statement. Such statements are commonly secured by planning conditions to mitigate impacts during construction.
- 79. In conclusion, I consider that the impact of the proposal on bats is not a matter which weighs against the grant of planning permission. In these circumstances case law indicates that:

If a proposed development is found acceptable when judged on its planning merits, planning permission for it should normally be granted unless in the planning authority's view the proposed development would be likely to offend article 12(1) and unlikely to be licensed under the derogation powers²⁶.

- 80. My conclusion is that, with the proposed mitigation, the proposed development would be unlikely to result in the deterioration of a breeding site of a European protected species. On that basis a licence may not be required. However, it is not for me to determine whether or not a licence would be required as that would be the duty of NE. Moreover, in this case it is common ground that a licence would be applied for²⁷. Questioned on this point, the appellant's bat expert stated that a licence would be applied for to ensure that the developer would be protected against any potential offence²⁸.
- 81. If such an application were made NE would have regard to the 3 licensing tests set out in Regulation 53 of the Habitats Regulations. The need for housing is capable of amounting to an imperative reason of overriding public importance, particularly in circumstances such as these where the supply of housing sites falls short of that required by the Framework. The shortfall in housing supply also indicates a lack of satisfactory alternative sites.
- 82. The Council suggested that there could be an alternative layout, perhaps omitting the proposed roundabout junction in the vicinity of the airshaft. There was little specific evidence before me on potential alternative layouts. However, I saw that opportunities for forming satisfactory vehicular accesses to the A4 Bath Road are constrained by existing buildings and the need to take account of the existing junction with the B3109 Bradford Road. From what I saw on site

²⁶ Paragraph 96, R (on the application of Christopher Prideaux) and Buckinghamshire County Council and FCC Environment UK Ltd [2013] EWHC 1054 (Admin)

²⁷ Paragraph 3.7, Statement of Common Ground on Bats – GLD/LPA/11

²⁸ Mr Goodman, during cross-examination by Mr Richards

it seems unlikely that there would be a satisfactory alternative to forming a roundabout junction at this point.

83. For the reasons given above, I do not consider that the proposal would be detrimental to the maintenance of the population of the species in question at a favourable conservation status. Consequently, the evidence before me does not indicate that that this is a case where NE would be unlikely to grant a licence.

Other protected species

84. There is no aquatic habitat for great crested newt or common toad on the site although there is some terrestrial habitat for both species. Any impacts on terrestrial habitat would be outweighed by habitat created within the scheme. The Council and appellant agreed that impacts on great crested newt, common toad, badger and birds would be low and could be mitigated by standard approaches secured through conditions²⁹.

Loss of parkland habitat

- 85. The Council and the appellant did not agree on the value that should be attached to the existing habitat. The Council argued that, as parkland, the appeal site represents a priority habitat whereas the appellant characterised it as being dominated by arable land with low ecological value overall. These differences narrowed somewhat during the Inquiry with the parties agreeing that the site does not meet the criteria for a parkland County Wildlife Site because it has only 2 veteran trees rather than the required 3. On the other hand it was agreed that the site does meet the UKBAP criteria for parkland habitat³⁰. It is therefore a site 'of value' in the terms of the CS.
- 86. Whilst the site meets the criteria for parkland habitat there are a number of factors which bear on my assessment of its ecological value. First, the Council accepted that arable farming over an extended period will have reduced the value of the habitat normally associated with parkland. There are only 2 veteran trees and one of these had collapsed at the time of my site visit. As it stands, the remaining veteran tree is not part of a mosaic of parkland habitats. The surveys of invertebrates, bryophytes and lichen which have been carried out identified the presence of common and widespread species. Consequently, whilst the site is a priority habitat in a technical sense, the evidence before me indicates that its actual ecological value is relatively low.
- 87. The Council suggested that there is potential for some restoration of the ecological value of the site. Whilst that may be so, there was little evidence before the Inquiry that this is a likely prospect.
- 88. The illustrative layouts and the ecological parameters plan show how the remaining veteran tree, and other free-standing mature trees, would be retained within the proposed development. Dry stone walls contribute to the range of habitats within the site. Although around half of the total length of such walls would be removed, this would be replaced by an equivalent length of new dry stone wall. The illustrative landscape proposals include features designed to enhance biodiversity, including new grassland, extensive tree and hedge planting, swales and ponds. There would be 2.8ha of terrestrial habitat suitable for great created newt and common toad. Full details of all these

²⁹ Ecology Statement of Common Ground – Parkland and veteran trees – GLD/LPA/03

³⁰ Ecology Statement of Common Ground – Parkland and veteran trees – GLD/LPA/03

measures could be secured at reserved matters stage and by the imposition of conditions.

Conclusions on ecology

- 89. Core Policy 50 of the CS states that development proposals must demonstrate how they protect features of nature conservation value. Where such features cannot be retained, removal shall only be acceptable where the ecological impacts have been mitigated as far as possible and compensatory measures have been secured to ensure that there is no net loss of the local biodiversity resource. All proposals should avoid and reduce disturbance of sensitive wildlife species and seek opportunities to enhance biodiversity.
- 90. The most important features of the appeal site are the airshaft, which is a breeding site for bats, and the commuting routes used by several bat species including those associated with the SAC. These features would be retained and protected by the proposed mitigation measures. Other features, including mature trees and dry stone walls, would be retained as far as practicable and compensatory features would be provided. I have concluded that the project would not be likely to affect the integrity of the SAC and that it would not result in the deterioration of the breeding site.
- 91. There would be a loss of parkland habitat which is regarded as being 'of value' in the CS. However, the actual ecological value of the site is relatively low. Specific features associated with parkland would be retained and in my view any loss of value would be outweighed by the extensive biodiversity enhancement measures incorporated in the scheme. I consider that, overall, there would be no net loss of the local biodiversity resource and that the scheme as a whole would accord with Core Policy 50.

Effect on the character and appearance of the area

- 92. The relationship between the appeal site, the adjoining countryside and the urban area of Corsham has been described at the beginning of the preceding section. The Wiltshire Landscape Character Assessment identifies the site as being within the Malmesbury Corsham Limestone Lowland character area. The characteristics of this area are said to include gently undulating lowland farmland, a pattern of large geometric fields and dry stone walls marking field boundaries. I consider that the appeal site shares these characteristics.
- 93. The site is crossed by a public footpath leading from Bath Road. The path passes through the grounds of Guyers House and then leads north towards the Cotswolds Area of Outstanding Natural Beauty (AONB). The edge of the AONB is around 650m from the appeal site.

Landscape and visual effects

94. The application was accompanied by a Landscape and Visual Impact Assessment (LVIA). The LVIA assessed the landscape of the appeal site as having low/medium susceptibility to change. The effect on the landscape of the site and immediate context was assessed as minor adverse. The main visual impacts identified were moderate adverse effects on a relatively small number of residential receptors and on users of the public footpath and minor adverse effects on users of Bath Road and Guyers Lane.

- 95. The Council and the Pickwick Association argued that the LVIA had generally understated both the susceptibility of the site to change and the degree of the landscape impacts. It was suggested that the proposals would be harmful to the landscape setting of Corsham, in that the site forms a green gateway into the town, and that Bath Road has formed a distinct boundary to the northern extent of the town.
- 96. With regard to the susceptibility of the site to change, it is relevant to note that its existing character is subject to urban influences. The busy Bath Road bounds the southern side of the site and houses are visible to the east and south. Whilst the site is identified as parkland for the purposes of the ecological assessment, its visual character is essentially that of an agricultural field. It does have dry stone walls, which are a feature of parkland, and there are some free-standing trees. However, there is no sense of a coherent or consciously designed landscape structure.
- 97. The site is adjacent to part of the Pickwick Conservation Area. I will return to its contribution to the setting of the conservation area in the following section. The key point to note here is that there is limited inter-visibility between the appeal site and the conservation area. I do not consider that the proximity of the conservation area materially increases the landscape sensitivity of the appeal site. In summary, I agree with the findings of the LVIA that this is a site with low/medium susceptibility to change.
- 98. There would be an adverse change in the character of the site itself in that an open arable landscape, characteristic of the locality, would be replaced by urban development. I consider that this would be a harmful impact of the proposed development, although the degree of harm would be tempered by the low/medium susceptibility of the landscape. Layout and design is a reserved matter. However, the illustrative masterplan shows how mitigation could be embedded in the design and layout of the scheme. This could be achieved by creating a central public open space, related to the line of the footpath, and by setting new development within a strong landscape structure. These features of the illustrative layout could be secured at the reserved matters stage.
- 99. The Council and the Pickwick Association agreed with the appellant in relation to the general extent of visual effects. These would not be widespread due to the effects of landform and vegetation. They would be confined, in the main, to views from Bath Road, Guyers Lane, nearby houses and the public footpath.
- 100. Turning to the landscape setting of Corsham, I note that the open nature of the site is readily apparent from the approach to the town along Bath Road. However, I do not consider that the site has a gateway function. The approach to Corsham from the west is characterised by a mix of urban development and open countryside. The southern side of the road is fairly consistently developed. The northern side is less so but there is extensive development at the Copenacre site³¹ and there are houses at Traveller's Rest, Guyers Cottages and Academy Drive. As seen on a map or aerial photograph Bath Road does indeed define the northern edge of part of the urban area of Corsham. However, as seen on the ground there is no strong visual edge at this point.
- 101. The greatest visual effects would be on nearby residential occupiers and on users of the footpath. In both cases the illustrative layout offers a degree of

 $^{^{\}rm 31}$ A vacant MoD site which is to be redeveloped for housing

mitigation. Substantial landscape buffers are proposed around the site boundaries. At present the footpath passes through an open field, albeit with views of housing nearby. It would become part of an urban extension. However, the illustrative masterplan shows that it need not be closely confined by housing, passing instead through a broad public open space for about half its length and then along a green corridor. In conclusion, I accept the assessment of the LVIA that these would be moderate adverse visual effects.

Effects on designated landscapes

- 102. The Council and the Pickwick Association accepted that there is no intervisibility between the site and the AONB. No party identified viewpoints within the AONB from which the proposed development would be seen. On my site visits I saw that the character of the footpath changes to the north of Guyers House. Urban influences are much reduced and there are views northwards to higher ground within the AONB. The nearest boundary of the AONB is on the other side of a low ridge and from this point there are no views southwards towards Corsham and the appeal site.
- 103. Nevertheless, it was argued by the Council that the experience of approaching the AONB via the footpath would be adversely affected by the appeal scheme. Whilst that may be so, as noted above any impact on users of the path would be no more than moderate adverse. Moreover, any such effect would be confined to that section of the path which is within the appeal site. In any event, this would not be an impact on the landscape of the AONB itself.
- 104. I conclude that the evidence before me does not identify any material impact on the landscape of the AONB. In relation to national policy³², the landscape and scenic beauty of the AONB would be conserved.
- 105. The Council's reasons for refusal include reference to the Corsham Special Landscape Area. This was a local landscape designation found in previous local plans. It was not carried forward into the CS. At the Inquiry, the Council did not seek to argue that it should be regarded as a significant factor in this appeal.

Conclusions on character and appearance

106. The loss of a greenfield site would result in some harm to the character and appearance of the area. There would be adverse visual effects, particularly for nearby residents and users of the public footpath. To this extent the appeal scheme would not accord with Core Policy 51 which seeks to protect and conserve landscape character. On the other hand the negative impacts would be mitigated as far as possible, as required by the policy, through the inclusion of structural landscape features which could be secured at the reserved matters stage. The extent of visual impacts would not be widespread and there would be only limited harm to the landscape setting of Corsham. There would be no harm to the landscape and scenic beauty of the AONB.

Effect on heritage assets

107. There are no designated heritage assets within the appeal site. This section of my decision discusses effects on the settings of designated heritage assets, the adequacy of survey information in relation to archaeology and whether

³² Paragraph 115 of the Framework

there are any non-designated heritage assets which merit consideration in the context of this appeal. The Built Heritage Assessment submitted with the application identified a number of listed buildings in the locality. However, at the Inquiry the designated heritage assets of concern to the Council and the Pickwick Association were the Pickwick Conservation Area and Guyers House, a Grade II listed building. I agree that the other listed buildings identified in the assessment are either too far from the appeal site, or have an insufficiently direct relationship with it, for there to be any material impact on their settings or their significance.

Effect on the setting of the Pickwick Conservation Area

- 108. Pickwick developed as a separate village which became linked to Corsham by 20th century development. There was no conservation area appraisal or character statement before the Inquiry. There was however a brief description of the conservation area which notes that Pickwick was a staging post on the London coach route, referred to by Charles Dickens in *Pickwick Papers*. The village has developed in a linear fashion along Bath Road. The fabric is substantially stone, which results in a high degree of unity in the street scene. At the western end of the conservation area there are two large houses set in grounds, enclosed with high stone walls, at Pickwick Manor and Beechfield House. In my view all of these features contribute to the character and appearance of the conservation area and to its significance as a designated heritage asset.
- 109. The Framework defines setting as the surroundings in which a heritage asset is experienced. The Pickwick Conservation Area is primarily experienced from viewpoints within the designated area. No external viewpoints which are of importance to understanding or experiencing the conservation area have been identified in the evidence. There is limited inter-visibility between the conservation area and the appeal site although there is some, for example views to and from houses in Academy Drive.
- 110. The properties at Academy Drive, which are within the conservation area, back on to the appeal site. These houses are within the grounds of Beechfield House. They are part of a modern residential development which replaced previous development within the grounds. The Academy Drive development has been attractively designed and is sympathetic to its sensitive location within the landscaped grounds of Beechfield House. However, the relationship of these modern houses to the conservation area would not be materially affected by development behind them, at the appeal site. No doubt there would be views of new housing, partially screened by the proposed landscape buffer, from the back of the Academy Drive houses. That would not however have any material impact on the significance of the conservation area as a designated heritage asset.
- 111. There are views eastwards along Bath Road which encompass the appeal site together with elements of the conservation area. These views are dominated by highway infrastructure and predominantly modern development. There are also glimpses of buildings, such as No 51 Bath Road, which make a positive contribution to the conservation area. However, to my mind any such views cannot be characterised as important in the sense of contributing to an experience or understanding of the conservation area.

112. The appeal site forms part of the setting of the conservation area. However, setting is not a heritage designation in its own right. Whilst the proposed development would change the character of the appeal site it does not follow that this would harm the significance of the conservation area. Although there would be changes to views into and out of the conservation area, these changes would not affect important views. There would be no harm to the character and appearance of the conservation area. Nor would there be harm to its significance as a designated heritage asset.

Effect on the setting of Guyers House

- 113. Guyers House is a Grade II listed building set in landscaped grounds adjoining the northern boundary of the appeal site. The house is approached by a tree-lined drive from Guyers Lane which passes alongside the appeal site boundary. The list description notes that the house dates from the 17th century with 19th century additions. It has both historic and architectural interest due to its age and the quality of its architecture. The principal elevation faces south east onto a lawn, pond and landscaped grounds. There are substantial planting belts to the south and east of the grounds. From first floor windows it is possible to gain some filtered views, through the boundary planting, over parts of the appeal site to Bath Road.
- 114. Guyers House was formerly a farmhouse and is now a hotel. From 1921 the appeal site was farmed, together with other land, by the occupiers of Guyers House. The family planted two beech trees within the appeal site as a memorial to a son who was killed in World War II. The appeal site was sold away from the house in the 1950s. The present owners acquired the property in 1989. They restored the house and grounds and began planting trees and hedges on the boundary to screen the effects of street lighting along Bath Road³³.
- 115. In assessing the importance of the appeal site to the significance of Guyers House as a designated heritage asset I take account of visual, functional and historic connections. The visual links are now very limited due to the planting along the drive and the southern and eastern edges of the grounds. The house is barely visible in winter views from the appeal site and Bath Road. Views out are restricted, as described above. Moreover there is no evidence that this is a recent or transient change – the ordnance survey map of 1886 shows planting belts to the south and east of the house. It appears that the planting that has taken place since 1989 has reinforced a landscape structure established in the 19th century.
- 116. Guyers House was a farmhouse and, whilst there is only direct evidence relating to the period from 1921, it seems likely that the appeal site was farmland associated with the house long before that time. Consequently there was a functional link which came to an end in the 1950s.
- 117. The issue of parkland has been discussed above in relation to ecology and landscape. In terms of the historic environment, the tithe map of 1838 shows Guyers House surrounded by fields. There is no evidence of parkland at this stage. The ordnance survey map of 1886 shows the drive to the house on an alignment to the north of the present drive. There are free-standing trees and clumps within the appeal site, suggestive of a parkland character. However,

³³ Mr Hungerford, one of the owners of Guyers House, gave this information in his written statement and in answer to my questions

there is no evidence of any designed landscape linking the house to the appeal site. On the contrary, as noted above, planting belts to the south and east of the site were already in place.

- 118. Having regard to all the above factors, I consider that the appeal site should be regarded as part of the setting of Guyers House notwithstanding the limited visual connectivity between the two. The functional link has gone and there is no link resulting from a designed landscape. The continued presence of farmland does however contribute something to the understanding of Guyers House as a former farmhouse. In my view the contribution that the appeal site makes to the overall significance of Guyers House is a small one.
- 119. The effect of the appeal scheme would be to bring urban development much closer to the southern edge of the grounds of Guyers House. There would be little impact on views to and from the house because the existing planting at Guyers House would be supplemented by extensive new planting along the landscape corridors within the appeal site. Given the predominantly residential nature of the appeal scheme there is no reason to think that there would be significant harm from noise and disturbance. On the other hand there would be an erosion of the rural setting of the farmhouse which would result in some harm to the significance of the designated heritage asset.
- 120. In the terms of the Framework³⁴, I consider that the degree of harm would be less than substantial. Moreover, for the reasons given above I would characterise it as minor. In these circumstances the Framework requires any harm to be balanced against the public benefits of the proposal. I return to that balance in the conclusions to my decision. Having regard to the relevant statutory duty,³⁵ I conclude that the setting of Guyers House would not be preserved.

Archaeology

121. The application was supported by an Archaeological Desk-Based Assessment. This concluded that there are no known archaeological heritage assets within the site and that there is a low potential for the presence of unknown buried heritage assets. The Pickwick Association argued that a field evaluation ought to be carried out before any planning permission is granted. However, the County Archaeologist was satisfied that appropriate site investigations, including trial trenching, could be secured by a condition. I share that view.

Non-designated heritage assets

122. The Pickwick Association suggested that Guyers Cottages, which front Bath Road and back onto the appeal site, should be regarded as non-designated heritage assets. However there is no evidence that these cottages have been identified by the local planning authority as heritage assets, whether in a local list or in any other document. In my view they do not fall within the definition of a heritage asset as set out in the Framework. The cottages should of course be taken into consideration as part of the existing townscape. That is something that the Council would no doubt take into account at the reserved matters stage.

³⁴ Paragraph 134

³⁵ Section 66 – Planning (Listed Buildings and Conservation Areas) Act 1990

Conclusions on heritage assets

123. In conclusion, I have not identified any harm in relation to the setting of the Pickwick Conservation Area, archaeology or non-designated heritage assets. In these respects the appeal proposals would accord with Core Policy 58. I have concluded that there would be minor harm to the significance of Guyers House, a matter I comment on further below.

Whether there would be prejudice to a plan-led planning process

- 124. The central role of development plans in the planning system is made clear in primary legislation and the Framework. The Framework states that local plans should as far as possible reflect a collective vision and a set of agreed priorities for the sustainable development of the area. However, both the legislation and the Framework require other material considerations to be taken into account. In relation to housing, the Framework states that relevant policies for the supply of housing should not be considered up-to-date in cases, such as this, where there is not a 5 year HLS with the required buffer. Even so, it is appropriate to consider the implications of allowing the appeal scheme for the planning process in Wiltshire as part of the overall balance of planning considerations.
- 125. The Core Strategy was adopted in January 2015. Whilst it includes some strategic allocations it is not intended to include all of the allocations that will be needed to deliver the housing requirement for Wiltshire. The CS is to be followed by site allocation Development Plan Documents (DPD) and Neighbourhood Plans (NP). Allocations in Corsham are expected to be made through the Corsham NP but could also be made through a site allocation DPD.
- 126. Work is in progress on the issues and options stage of the NP. The position at the close of the Inquiry was that the consultation period on the application to designate the area for the NP was due to end on 18 March 2015. The NP steering group anticipates that consultation on a draft plan would take place in January/March 2016. The Council's Local Development Scheme indicates that the examination of the Wiltshire Housing Site Allocations DPD will begin in late 2015 with adoption in 2016. Both plans are at an early stage of preparation and have yet to emerge even as draft documents.
- 127. It is important to recall that Core Policy 1 identifies Corsham as a Market Town with the potential for significant development. At the Inquiry the Council accepted³⁶ that the scale of development proposed in the appeal scheme would not be inconsistent with the settlement strategy set out in Core Policy 1. I therefore conclude that allowing the appeal would not prejudice the overall spatial strategy of the adopted CS. I turn next to the effect on the planning process at the level of the Corsham community area.
- 128. Core Policy 11 states that approximately 1,220 houses will be provided at the town of Corsham during the plan period. The CS Inspector agreed with the Council that it was not necessary to make a strategic allocation at Corsham. There have been significant numbers of completions and permitted sites, such that the CS states that sites for only another 330 houses are needed. Community representatives drew attention to further recent permissions and current applications which would do much to meet this total. The appellants did

³⁶ Ms Gibson, in cross examination by Mr Tucker

not disagree that it seems likely that 330 will be exceeded, perhaps well before the end of the plan period.

- 129. If the appeal were dismissed the merits of the appeal site could then be considered alongside other candidate sites through either the NP or the DPD process. The Council argued that, having participated in the CS process, the expectation of the community is that is what should happen. Evidence was produced to show that there are a number of potential development sites, generally to the south west of Corsham. On the other hand, the figures set out in Core Policy 11 are not maxima so allowing the appeal would not prevent the merits of other sites being considered through those processes.
- 130. Turning to the employment element of the scheme, Core Policy 34 sets out 4 criteria for employment development outside the development limits of market towns. Criterion (i) is that the site is adjacent to the settlement and seeks to retain businesses currently within it and criterion (iv) is that the development is essential to the wider strategic interests of the economic development of Wiltshire³⁷. Whilst the proposed B1 office units would be available to existing businesses in Corsham there is no evidence of any need or demand for the units from such businesses. Nor is there any evidence that the development is essential for wider strategic interests. Consequently, it has not been shown that the criteria have been met and the proposed B1 units would conflict with Core Policy 34.
- 131. In conclusion, allowing the appeal would not prejudice the broad spatial strategy of the adopted CS. Nevertheless, there would be some prejudice to a plan-led planning process within the Corsham community area. There would also be a conflict with the CS in relation to the employment element.

Whether the proposal would amount to a sustainable form of development

- 132. The settlement strategy of the CS, together with the delivery strategy, seeks to define where development will be most sustainable across Wiltshire's settlements. As noted above, Corsham is identified as a market town and the scale of development proposed is consistent with the settlement strategy.
- 133. Corsham contains community facilities including schools, primary healthcare, pharmacies, supermarkets and a range of shops and leisure facilities. The transport assessment submitted with the application states that these facilities are generally within both walking and cycling distance of the appeal site. There are bus services within Corsham and there are also services to Bath and Chippenham. The assessment concluded that the site is well located to allow for travel by sustainable modes. That conclusion was not disputed by the Council and I see no reason to take a different view. The s106 Agreement would secure the provision of bus stops and a pedestrian crossing island on Bath Road. I consider that the proposal would therefore accord with Core Policy 61 which states that new development should be located and designed to reduce the need to travel, particularly by private car, and to encourage the use of sustainable transport alternatives.
- 134. As noted above, the employment element of the scheme would not accord with Core Policy 34. However, the CS states that new growth in Corsham will be balanced with housing delivery alongside employment. This does not mean

³⁷ Criteria (ii) and (iii) are not relevant to this case

that it will be appropriate for every housing site to include employment uses. However, to my mind the scale of the appeal scheme is such that the inclusion of an employment element in a housing-led development would be consistent with the aim of achieving balanced growth.

135. The Framework sets out three dimensions to sustainable development – the economic role, the social role and the environmental role. The definition of sustainable development includes all of the policies in paragraphs 18 to 219 of the Framework³⁸. In this part of my appeal decision I describe the main factors that inform my judgement as to whether the proposal would be a sustainable form of development. In reaching that view I take account of all the matters referred to in this decision, including the 'other matters' referred to below.

The economic role

- 136. The appeal proposal would bring a number of economic benefits. The B1 element of the scheme could accommodate additional jobs. In addition, the scheme would generate employment during construction and spending by the new households would support jobs and services in the local economy.
- 137. The Framework states that the economic and other benefits of the best and most versatile (BMV) agricultural land are to be taken into account. In this case around 80% of the site is categorised as BMV land. However, the officer's report noted that there was no probable economic disadvantage to any agricultural operation. The Council did not argue that loss of BMV land ought to be regarded as a key issue in this appeal. Even so it is a disadvantage of the scheme to which some weight should be attached.
- 138. A matter raised by the owner of Guyers House was a concern that the appeal scheme would undermine the economic viability of the hotel business, thereby threatening employment. In fact there was very little evidence in support of this suggestion. The hotel is, and would remain, an attractive historic building set in landscaped grounds close to the AONB. I attach little weight to this factor.

The social role

- 139. The Council and the appellant agreed that the appeal site would make a positive contribution to the supply and delivery of housing and that the scheme would be substantially completed within the current 5 year period. This is an important matter, having regard to the objective of the Framework to boost the supply of housing. Moreover, it is of particular importance given the HLS position referred to above.
- 140. In addition, 30% of the units would be delivered as affordable housing. Delivery would be secured through the s106 Agreement. This would help to meet housing needs in the locality and contribute to reducing the shortfall in affordable housing.

The environmental role

141. The site is well located to allow for travel by sustainable modes. The needs of walking, cycling and public transport have been taken into account through

³⁸ Paragraph 6 of the Framework

the layout and the terms of the s106 Agreement. This contributes to the environmental role.

- 142. Whilst there would be some landscape harm, the extent of visual impacts would not be widespread and there would be only limited harm to the landscape setting of Corsham. There would be no harm to the AONB. Significant mitigation for landscape impacts would be embedded in the design of the scheme.
- 143. There would be no harm to any designated nature conservation site or to the conservation status of any protected species. Whilst there would be some loss of parkland, the ecological value of the appeal site is low. Significant biodiversity enhancement is proposed and there would be no net loss of the local biodiversity resource.
- 144. In relation to the historic environment, I have identified minor harm to the significance of Guyers House, as a result of development within its setting.

Conclusion on sustainable development

145. Taking all the above factors into account, I conclude that on balance the appeal scheme would be a sustainable form of development.

Other matters

- 146. The s106 Agreement would secure the highway works needed to provide vehicular access to the site and to take account of other transport modes. It would provide for approval by the Council of details of open spaces and play areas and for the subsequent management of these areas. These provisions would be needed to meet the requirements for open space generated by the scheme. In addition, there would be financial contributions to sport and recreation, cemeteries and secondary education. The Council provided evidence about how these sums had been calculated and how they would be used in ways which would be properly related to the appeal scheme. I consider that the obligations contained within the s106 Agreement would mitigate impacts resulting from the proposal. They are therefore neutral factors in the overall balance of planning considerations.
- 147. The Council's 4th reason for refusal related to potential harm to the living conditions of future occupiers from noise and vibration resulting from underground mineral workings beneath the site³⁹. Additional technical information was produced during the Inquiry and it was ultimately agreed by the Council and the appellant that this matter could be addressed by conditions⁴⁰. The conditions would require a foundation investigation plan to be submitted for the approval of the Council, having regard to the results of vibration tests. A further condition expressed doubts that these measures would be effective. However, the suggested conditions reflect technical advice about foundation isolation systems which has been accepted by the respective noise experts for the Council and the appellant. In my view the conditions would be effective in protecting the living conditions of future occupiers. In addition they would address a concern, expressed by some parties, that the scheme could have the effect of sterilising minerals under the site.

³⁹ There are currently no active workings but there is an extant permission

⁴⁰ Statement of common ground on noise and vibration – GLD/LPA/09

- 148. Some local residents are concerned about traffic conditions in the locality, particularly in relation to Bath Road. The application was accompanied by a transport assessment which included modelling of the relevant junctions. The Council agreed that the proposed junctions would be acceptable in terms of layout and visibility and that there would be no detriment to the local road network or to highway safety. I agree.
- 149. I conclude that these other matters do not add significantly either to the case in favour of the appeal or to the case against it.

Conclusions

- 150. The Council cannot demonstrate that it has the supply of housing sites needed to accord with the Framework. Consequently, the Framework states that relevant policies for the supply of housing should not be considered up-todate. However, this is a case where it is common ground between the Council and the appellant that appropriate assessment under the Habitats Regulations is required. I agree and have carried out such an assessment. Paragraph 119 of the Framework states that the presumption in favour of sustainable development (paragraph 14) does not apply where development requiring appropriate assessment under the Habitats Regulations is being determined. Accordingly, I have considered the balance of issues without any such presumption.
- 151. With regard to effects on ecology, I have concluded that the proposal would not be likely to affect the integrity of the SAC and that it would not result in the deterioration of the breeding site for bats. Although there would be a loss of parkland habitat the actual ecological value of the site is relatively low. Any loss of value would be outweighed by the extensive biodiversity enhancement measures incorporated in the scheme. Overall, I consider that there would be no net loss of the local biodiversity resource. Consequently ecology is not a matter which weighs significantly in the planning balance.
- 152. I have concluded that there would be some harm to the significance of Guyers House, a designated heritage asset. The harm would be '*less than substantial'*, in the terms of the Framework, and I consider that it would be minor. Paragraph 134 requires this harm to be balanced against the public benefits of the proposal. In this case I have identified economic and social benefits which are described above. I consider that these benefits are sufficient to outweigh the harm to the significance of the heritage asset. I therefore find that the appeal scheme would not conflict with policies of the Framework relating to the historic environment.
- 153. Notwithstanding my conclusion that the harm to significance would be minor, I have found that the setting of Guyers House (a Grade II listed building) would not be preserved. Mindful of s66 of the Planning (Listed Buildings and Conservation Areas) Act 1990 that is a matter to which I must have special regard.
- 154. I turn to the factors weighing in favour of the appeal. It would make a significant contribution to the delivery of housing. This is an important factor given the general imperative to boost the supply of housing set out in the Framework. It is of particular importance here due to the HLS position in the NWWHMA. Moreover, the scheme would deliver a significant number of affordable houses. It would also bring economic benefits. All of these social and

economic benefits would be realised in the context of a sustainable form of development in a location which is consistent with the broad spatial strategy of the CS. I note that the amount of the shortfall in HLS is not great. Nevertheless, having regard to the overall objectives of the CS and the Framework to deliver housing in sustainable locations I attach substantial weight to these factors.

- 155. The factors weighing against are conflicts with the CS in relation to defined limits of development, effects on landscape and the historic environment, loss of BMV agricultural land and potential prejudice to a plan-led planning process. Core Policy 2, insofar as it restricts housing development outside settlement boundaries, is deemed to be not up-to-date due to the HLS position. I therefore attach limited weight to this conflict. The employment element of the scheme would not accord with Core Policy 34. That said, I have concluded that the scale of the proposal is such that the inclusion of an employment element in a housing-led development would be consistent with the CS aim of achieving balanced growth at Corsham. Given that the housing element is needed, I consider that the inclusion of some employment supports the general intentions of the CS as a whole.
- 156. There would be some harm to the character and appearance of the area. However, the impacts would be mitigated as far as possible through the inclusion of structural landscape features which could be secured at the reserved matters stage. The extent of visual impacts would not be widespread and there would be no harm to the landscape of the AONB.
- 157. I have not identified any harm in relation to the setting of the Pickwick Conservation Area, archaeology or non-designated heritage assets. I have concluded that there would be minor harm to the significance of Guyers House, the setting of which would not be preserved. Although the harm would be minor, this is nevertheless a matter to which I attach considerable importance and weight.
- 158. As discussed above, loss of BMV agricultural land is a disadvantage of the scheme to which some weight should be attached but is not a key issue in this case.
- 159. Allowing the appeal would result in some prejudice to a plan-led planning process within the Corsham community area because the merits of the site could not be considered alongside other candidates in the context of the NP or site allocation DPD. On the other hand, the housing figures for Corsham set out in Core Policy 11 are not maxima so allowing the appeal would not prevent the merits of other sites being considered through those processes. Moreover, it is important to note that both the NP and DPD processes are at a very early stage of preparation. This limits the amount of weight to be attached to this factor.
- 160. My overall assessment is that the factors weighing against the appeal are not sufficient to outweigh the factors weighing in favour. The appeal should therefore be allowed.

Conditions

161. The Council and the appellant suggested conditions which were discussed at the Inquiry. There was no significant dispute between the Council and the appellant in relation to the substance of the conditions. I have considered the

suggested conditions in the light of advice set out in the Guidance. In some cases I have combined conditions and/or adjusted detailed wording for clarity and to avoid duplication.

- 162. Conditions 1-3 are standard conditions for outline planning permissions setting timescales for the submission of reserved matters and commencement. However, I have reduced the standard time limits because the ability of the site to deliver housing within the 5 year period is an important consideration in this case.
- 163. Condition 4 requires the reserved matters to accord with the Ecological Parameters Plan and condition 5 requires the submission of a Landscape and Ecology Management Plan. Condition 7 requires a Land Stability Risk Assessment to be carried out to mitigate the risk of damage to underground workings which may be used by bats. These conditions are needed to secure the ecological mitigation relied on in the appropriate assessment and, more generally, to protect wildlife and secure enhancements to biodiversity.
- 164. Condition 6 deals with phasing and is needed to ensure that affordable housing and public open space are brought forward at appropriate stages of the development. Conditions 8, 10, 11 and 12 deal with implementation of the site access works, highway and footway works in the vicinity of the site and the stopping up of an existing access. These conditions are needed to ensure that there would be satisfactory pedestrian and vehicular access to the site, in the interests of highway safety and to avoid any detriment to the local highway network.
- 165. Condition 9 provides for a Travel Plan to encourage the use of sustainable modes of transport. Conditions 13 and 14 require details of foul and surface water drainage in the interests of managing risks of flooding and pollution.
- 166. Condition 15 is needed to protect the archaeological potential of the site. Condition 16 requires details of hard and soft landscaping and condition 17 deals with replanting of any trees which fail. These conditions are needed to protect the character and appearance of the area. I have not included details of play equipment in condition 16 because this matter is covered in the s106 Agreement.
- 167. Condition 18 provides for a Construction Method Statement in the interests of highway safety and the living conditions of nearby residents during the construction phase. Any restrictions on construction work to avoid disturbance to hibernating bats would also be covered by this condition.
- 168. Condition 19 requires investigation and, if necessary, remediation works in respect of potential contamination of land in the interests of managing risks of pollution. Condition 20 required a scheme of external lighting. This forms one element of the ecological mitigation measures and is also needed in the interests of the character and appearance of the area. Condition 21, which deals with public art, supports the design quality of the scheme.
- 169. Condition 22 requires the submission of a Foundation Investigation Plan and condition 23 sets the noise and vibration criteria that the design of foundations would have to achieve. These conditions are needed to protect the living conditions of future residents of the appeal site in the event that an extant

consent for underground mineral working were to be implemented in the future.

David Prentis

Inspector

APPEARANCES

FOR THE LOCAL PLANNING AUTHORITY:

Hugh Richards

Hugh Richards	of Counsel, instructed by the Head of Legal Services for Wiltshire Council
He called Carolyn Gibson BA(Hons) Mark Henderson BSc(Hons) MA MRTPI John Burgess BA(Hons) DipLA CMLI Chris Marsh BA(Hons) MPlan MRTPI Jon Taylor MCIEEM MSc PgDip BSc	Spatial Planning Team Leader, Wiltshire Council Interim Manager, Monitoring and Evidence Team, Wiltshire Council Director, Swan Paul Partnership Ltd Senior Planning Officer, Wiltshire Council Landscape and Design Team Manager, Wiltshire Council
FOR THE APPELLANT:	
Paul Tucker He called Jacqueline Mulliner BA(Hons) BTP(Dist) MRTPI Tim Dean BA(Hons) DipTP MRTPI David Beardmore MSc MA DipLD(Dist) DipLArch(Dist) DipUD Dip Bldg Cons FRTPI CMLI IHBC Timothy Jackson BA(Hons) DipLA CMLI Robert Barnes MA BA(Hons) MRTPI Kate Hollins BA MSc CMIEEM CEnv Kurt Goodman MSc BSc(Hons) MCIEEM	Queen's Counsel, instructed by Tim Dean of Gladman Developments LtdDirector, Terence O'Rouke LtdPlanning Director, Gladman Developments LtdDirector, Beardmore AssociatesDirector, FPCR Environment and Design LtdDirector, Planning Prospects LtdDirector, FPCR Environment and Design LtdAssociate Director, FPCR Environment and Design Ltd
FOR THE PICKWICK ASSOCIATIO	ON:
Jane McDermott BArch PGDipUD Angela Bence-Wilkins	Chairman of the Pickwick Association and member of Corsham Town Council's Neighbourhood Plan Steering Group Landscape Architect

Angela Bence-Wilkins CMLI Peter Cox Cert Archaeology MCIA

Director, AC Archaeology Ltd

David Taylor	On behalf of the Pickwick Association
INTERESTED PERSONS:	
Cllr Philip Whalley	Member of Wiltshire Council and Corsham Town Council
Cllr Peter Pearson	Vice Chairman of Corsham Town Council and Chairman of the Neighbourhood Plan Steering Group
Guy Hungerford Tony Clark Derek Burt	Guyers House Hotel Trustee of the Beechfield Trust Local resident

DOCUMENTS SUBMITTED DURING THE INQUIRY

Submitted by the appellant

- GLD/07 List of appearances
- GLD/08 Extract from the Town and Country Planning (Environmental Impact Assessment) Regulations
- GLD/09 Proof of evidence of Mr Goodman
- GLD/10 Judgement in the *Gregory* case [2013] EWHC 63 (Admin)
- GLD/11 Extract from Planning Policy Guidance ID ref 4-031-20140306
- GLD/12 Opening submissions
- GLD/13 Wiltshire Local Development Scheme January 2015
- GLD/14 Appendices to proof of evidence of Mr Beardmore
- GLD/15 Table submitted by Mr Jackson
- GLD/16 Table submitted by Ms Mulliner
- GLD/17 Exchange of emails between Natural England and the Planning Inspectorate
- GLD/18 Document list
- GLD/19 Draft s106 Agreement
- GLD/20 Bundle relating to EIA screening on behalf of the Secretary of State
- GLD/21 Tree Lower Plant Survey FPCR
- GLD/22 Ecological parameters plan and illustrative landscape cross sections
- GLD/23 Additional inquiry documents from FPCR February 2015
- GLD/24 Letter from Stirling Maynard dated 17 February 2015 with associated highways plans
- GLD/25 Corsham Community Plan
- GLD/26 Contested HLS trajectory positions
- GLD/27 Judgement in *Stroud District Council* case [2015] EWHC 488 (Admin)
- GLD/28 Additional inquiry documents from FPCR March 2015
- GLD/29 Updated list of suggested conditions
- GLD/30 Counsel's opinion on appeal decision at Ashflats Lane, Stafford
- GLD/31 Closing submissions
- GLD/32 Annex to closing submissions housing land supply
- GLD/33 Response to costs application
- GLD/34 Closing submissions clean copy⁴¹
- GLD/35 Annex to closing submissions housing land supply clean copy

⁴¹ The versions of GLD/31 and GLD/32 handed in at the Inquiry had some missing text due to printing problems. Clean copies were provided shortly after the Inquiry – there was no change to the content.

- Submitted by the Council
- LPA/01 Plan of Special Area for Conservation
- LPA/02 Opening submissions
- LPA/03 Revised Plan of Special Area for Conservation
- LPA/04 Invertebrates and ecological assessment Colin Plant Associates
- LPA/05 Surveying terrestrial and freshwater invertebrates for conservation evaluation – Natural England research report
- LPA/06 Consultation responses to ecological parameters plan and illustrative landscape cross sections
- LPA/07 Judgement in *Crane* case [2015] EWHC 425 (Admin)
- LPA/08 Judgement in *Prideaux* case [2013] EWHC 1054 (Admin)
- LPA/09 Note identifying superseded sections of Mr Taylor's proof of evidence
- LPA/10 Additional conditions suggested by Mr Marsh
- LPA/11 Closing submissions
- LPA/12 Costs application

Agreed between the appellant and the Council

GLD/LPA/01 Statement of Common Ground (SoCG) – Housing supply matters

- GLD/LPA/02 Ecology joint position statement
- GLD/LPA/03 SoCG Parkland and veteran trees
- GLD/LPA/04 Suggested phasing condition
- GLD/LPA/05 SoCG Noise (unsigned)
- GLD/LPA/06 Draft Appropriate Assessment regarding Bath and Bradford Bats SAC
- GLD/LPA/07 Letter from Natural England to the Council dated 2 March 2015
- GLD/LPA/08 Updated SoCG Housing supply matters
- GLD/LPA/09 SoCG Amenity (noise and vibration)
- GLD/LPA/10 Letter from TVS dated 4 February 2015
- GLD/LPA/11 SoCG Bats
- GLD/LPA/12 S106 Agreement dated 12 March 2015

Submitted by the Pickwick Association

- PA/01 Summary by Ms McDermott
- PA/02 Summary by Mr Cox
- PA/03 Summary by Ms Bence-Wilkins
- PA/04 Closing submissions by Mr Taylor
- PA/05 Judgement in *Gerber* case [2015] EWHC 524 (Admin)

Statements submitted by other parties Cllr Whalley Cllr Pearson Tony Clark Guy Hungerford Derek Burt

Inspector's documents

- IN/01 Draft conditions relating to ecological mitigation
- IN/02 Letter from Natural England of 27 January 2015

Schedule of conditions

- 1) Details of the appearance, landscaping, layout, and scale, (hereinafter called "the reserved matters") shall be submitted to and approved in writing by the local planning authority before any development begins and the development shall be carried out as approved.
- 2) Application for approval of the reserved matters shall be made to the local planning authority not later than one year from the date of this permission.
- 3) The development hereby permitted shall begin not later than two years from the date of this permission or one year from the date of approval of the last of the reserved matters to be approved, whichever is the later.
- 4) The reserved matters submitted pursuant to Condition 1 shall accord with the principles for the development of the site as shown on the Ecological Parameters Plan 5468-E-08 revision H. In particular the reserved matters shall include the provision of:
 - a landscape/ecological corridor at least 15m in width to the west, north and east boundaries of the site plus a further offset of at least 10m to the closest elevation of any buildings, in accordance with the principles shown on the Ecological Parameters Plan
 - ii) a buffer zone around the airshaft in the south west corner of the site in accordance with the principles shown on the Ecological Parameters Plan
 - iii) measures to provide dark areas within the landscape/ecological corridors to the west, north and east boundaries of the site which shall have an illuminance of no more than 1.0 lux measured at 2.5m above ground level within an area to be agreed in writing by the local planning authority
 - iv) measures to provide dark areas within the buffer zone around the airshaft in the south west corner of the site which shall have an illuminance of no more than 0.1 lux measured at 2.5m above ground level within an area to be agreed in writing by the local planning authority
- 5) No development shall take place until a Landscape and Ecological Management Plan (LEMP) has been submitted to and approved in writing by the local planning authority. The LEMP shall include long term design objectives, management arrangements and maintenance schedules for all landscape and open space areas. The LEMP shall include measures to provide and maintain a suitable habitat for bats and other wildlife species and shall be generally in accordance with the recommendations set out in section 4 of the Ecological Appraisal by FPCR dated 14 October 2013. Development shall be carried out in accordance with the approved LEMP and shall thereafter be permanently retained as such.
- 6) No development shall take place until details of the phasing of the development have been submitted to and approved in writing by the local planning authority. The details shall include the phasing of market and affordable housing units, public open spaces and equipped play areas. Development shall be carried out in accordance with the approved phasing details.

- 7) The reserved matters submitted pursuant to Condition 1 shall be accompanied by a Land Stability Risk Assessment which shall be submitted to and approved in writing by the local planning authority. The Land Stability Risk Assessment shall include details of intrusive site investigations, an assessment of land stability risks and mitigation measures to protect any underground workings from damage during the construction and operational phases of the development hereby approved.
- 8) No building hereby approved shall be occupied before the access arrangements shown on drawing No 4746/01/01 hereby approved have been implemented in accordance with that drawing and in accordance with further details of surface treatment, lighting and drainage which shall first have been submitted to and approved in writing by the local planning authority.
- 9) No building hereby approved shall be occupied before a travel plan has been submitted to and approved in writing by the local planning authority. The travel plan shall be generally in accordance with the framework travel plan (Stirling Maynard July 2013). The travel plan shall be implemented as approved and permanently maintained in operation thereafter.
- 10) No building hereby approved shall be occupied before a minor improvement scheme for the Hare and Hounds roundabout has been implemented in accordance with details which shall first have been submitted to and approved in writing by the local planning authority. The scheme shall include adjustments to road markings and traffic islands.
- 11) No building hereby approved shall be occupied before a scheme for the widening to 2m of the southern footway of the A4 Bath Road between No 5 Bath Road and the Bath Road/Academy Drive roundabout has been implemented in accordance with details which shall first have been submitted to and approved in writing by the local planning authority. The scheme shall make provision for the relocation of any lighting columns and electricity or telephone poles within the footway.
- 12) No building hereby approved shall be occupied before the field gate access to the site from Guyers Lane has been permanently stopped up in accordance with details which shall first have been submitted to and approved in writing by the local planning authority.
- 13) No building hereby approved shall be occupied before works for the disposal of sewage from the development have been carried out in accordance with details which shall first have been submitted to and approved in writing by the local planning authority.
- 14) No building hereby approved shall be occupied before surface water drainage works have been implemented in accordance with details which shall first have been submitted to and approved in writing by the local planning authority. Before these details are submitted an assessment shall be carried out of the potential for disposing of surface water by means of a sustainable drainage system and the results of the assessment shall be provided to the local planning authority. Where a sustainable drainage system is to be provided, the submitted details shall:

- provide information about the design storm period and intensity, the method employed to delay and control the surface water discharged from the site and the measures taken to prevent pollution of receiving groundwater and/or surface waters;
- ii) include a timetable for implementation; and
- iii) provide a management and maintenance plan for the lifetime of the development which shall include the arrangements for adoption by any public authority or statutory undertaker and any other arrangements to secure the operation of the scheme throughout its lifetime.
- 15) No development shall take place until a written programme of archaeological investigation has been submitted to and approved in writing by the local planning authority. The programme shall include onsite work and off-site work such as the analysis, publishing and archiving of the results. The programme shall be implemented as approved before the commencement of the development.
- 16) No development shall take place until full details of both hard and soft landscape works, including a programme for implementation, have been submitted to and approved in writing by the local planning authority. These details shall include proposed finished levels or contours, means of enclosure, car parking layouts, other vehicle and pedestrian access and circulation areas, hard surfacing materials and minor artefacts and structures such as street furniture, refuse or other storage units. The details shall also include the location, size and condition of existing trees and hedgerows, shall identify those to be retained together with measures for their protection during construction and shall show details of new planting areas, tree and plant species, numbers and planting sizes. The works shall be carried out as approved in accordance with the approved programme.
- 17) If within a period of 5 years from the date of the planting of any tree that tree, or any tree planted in replacement for it, is removed, dies, or becomes seriously damaged or defective, another tree of the same species and size as that originally planted shall be planted at the same place within the next planting season unless the local planning authority gives its written approval to any variation.
- 18) No development shall take place, including any works of demolition, until a Construction Method Statement has been submitted to, and approved in writing by, the local planning authority. The approved Statement shall be adhered to throughout the construction period. The Statement shall provide for:
 - i) the parking of vehicles of site operatives and visitors
 - ii) loading and unloading of plant and materials
 - iii) storage of plant and materials used in constructing the development
 - iv) the erection and maintenance of security hoarding including decorative displays and facilities for public viewing, where appropriate
 - v) wheel washing facilities

- vi) measures to control the emission of dust and dirt during construction
- vii) a scheme for recycling/disposing of waste resulting from demolition and construction works
- viii) measures to avoid the risk of noise and vibration impacting upon bats roosting within underground workings
- 19) No development shall take place until an investigation of the history and current condition of the site to determine the likelihood of the existence of contamination arising from previous uses has been carried out and all of the following steps have been complied with:
 - i) A written report has been submitted to and approved in writing by the local planning authority which shall include details of the previous uses of the site and any adjacent sites for at least the last 100 years and a description of the current condition of the site with regard to any activities that may have caused contamination. The report shall confirm whether or not it is likely that contamination may be present on the site and the potential impact of any adjacent sites.
 - ii) If the above report indicates that contamination may be present on, under or potentially affecting the site from adjacent land a more detailed site investigation and risk assessment shall be carried out in accordance with DEFRA and the Environment Agency's 'Model Procedures for the Management of Land Contamination CLR11'. A report detailing the site investigation shall be submitted to and approved in writing by the local planning authority.
 - iii) If the report submitted pursuant to step (i) or (ii) indicates that remedial works are required, full details must be submitted to and approved in writing by the local planning authority. The remedial works shall be carried out as approved prior to the commencement of development or in accordance with a timetable that has been agreed in writing by the local planning authority. On completion of the remedial works the applicant shall provide written confirmation to the local planning authority that the works have been completed in accordance with the approved details.
- 20) No development shall take place until an external lighting scheme has been submitted to and approved in writing by the local planning authority. The scheme shall include lighting columns, light fittings, measures to reduce light spill and illuminance plots. Development shall be carried out in accordance with the approved details and thereafter permanently retained as such.
- 21) No development shall take place until details of public art to be incorporated within the scheme have been submitted to and approved in writing by the local planning authority. Development shall be carried out in accordance with the approved details.
- 22) No development shall take place until a Foundation Investigation Plan has been submitted to and approved in writing by the local planning authority. The Foundation Investigation Plan shall include:

- i) A foundation zoning plan which will identify the type and depth of foundations across the site.
- ii) Vibration testing which shall take place during a trial mining test at appropriate locations to replicate both a typical case and a worst case of future mining both within the mine and at foundation level and bedrock level. The results of the test are then to be used by the foundation design engineer to ensure that noise and vibration levels of the foundations are at or below the criteria specified in condition 23. The vibration testing shall be carried out in accordance with a method statement which shall first have been submitted to and approved in writing by the local planning authority.
- iii) The results of the vibration testing shall be provided to the local planning authority and shall be used to design vibration and sound isolation measures (where required) at each dwelling and noise sensitive building. The foundation design for each dwelling and noise sensitive building shall be submitted to and approved in writing by the local planning authority.

Development shall be carried out in accordance with the approved Foundation Investigation Plan.

23) The foundations shall be designed to ensure that noise and vibration from underground mining activity shall not give rise to a noise level within any dwelling or noise sensitive building in excess of that equivalent to Noise Rating Curve 25 and vibration levels shall not exceed 0.1 to 0.2 ms^{-1.75} in accordance with the methodology in BS 6472-1-2008.

APPENDIX 2 - Reserved Matters Approvals 16/03721/REM and 16/04544/REM



Town & Country Planning Act 1990

Notice of Approval of Reserved Matters

Application Reference Number: 16/03721/REM

Agent Redrow Homes South West Redrow House West Point Great Park Road Bradley Stoke Bristol BS32 40G	Applicant Redrow Homes South West Redrow House West Point Great Park Road Bradley Stoke Bristol BS32 40G
BS32 4QG	BS32 4QG

Particulars of Development: - Reserved Matters Application Relating to Appearance, Landscaping, Layout & Scale (following outline application 13/05188/OUT) Residential Development for 150 Units Together with Associated Highways, Drainage and Other Infrastructure Works, Landscaping and Play Area.

At: Land North of Bath Road Corsham Wiltshire SN13 0QL

In pursuance of their powers under the above Act, the Council hereby PERMIT the above development to be carried out in accordance with the details of the RESERVED MATTERS submitted by you, and subject to compliance with the conditions specified hereunder;-

1 The development hereby permitted shall be carried out in accordance with the following approved plans:

RHSW.5365.PL001 rev J - Planning Layout 5064/20/01 rev C - Refuse Vehicle Swept Path Analysis 5064/20/02 rev B - Refuse Vehicle Swept Path Analysis Received 20 July 2017

RHSW.5365.SMP001 rev D - Surface Material Plan RHSW.5365.AHP001 rev C - Affordable Housing Plan RHSW.5365.EP001 rev D - Enclosures Plan RHSW.5365.MP001 rev G - Material Plan RHSW.5365.SH001 rev C - Storey Heights 5064/SK01 rev C - Preliminary Levels 1794 01 K - Landscape Masterplan 1794 02 E - Detailed Planting Plan (1 of 7) 1794 03 D - Detailed Planting Plan (2 of 7) 1794 04 C - Detailed Planting Plan (3 of 7) 1794 05 C - Detailed Planting Plan (4 of 7) 1794 06 C - Detailed Planting Plan (5 of 7) 1794 07 F - Detailed Planting Plan (6 of 7) 1794 08 C - Detailed Planting Plan (7 of 7) Received 27 June 2017

5064/501 rev A - Attenuation Pond Details Received 1 February 2017

F-SD-5365-01 - Stock Fencing Details Received 7 September 2016

04644 TPP - Tree Protection Plan 1794 09 A - Detailed LEAP Proposals Received 26 April 2016

Housetype Booklet "Bath Road, Corsham" F-SDO902 - Knee Rail Fencing F-SDO906 rev A - Screen Fencing, 1.8m High, Standard Effect dwg: Natural Dry Stone Wall Received 18 April 2016

REASON: For the avoidance of doubt and in the interests of proper planning.

2 No development shall commence on site until the exact details and samples of the materials to be used for the external walls and roofs have been submitted to and approved in writing by the Local Planning Authority. Development shall be carried out in accordance with the approved details.

REASON: The application contained insufficient information to enable this matter to be considered prior to granting planning permission and the matter is required to be agreed with the Local Planning Authority before development commences in order that the development is undertaken in an acceptable manner, in the interests of visual amenity and the character and appearance of the area.

3 All soft landscaping comprised in the approved details of landscaping shall be carried out in the first planting and seeding season following the first occupation of the building(s) or the completion of the development whichever is the sooner. All shrubs, trees and hedge planting shall be maintained free from weeds and shall be protected from damage by vermin and stock. Any trees or plants which, within a period of five years, die, are removed, or become seriously damaged or diseased shall be replaced in the next planting season with others of a similar size and species, unless otherwise agreed in writing by the local planning authority. All hard landscaping shall also be carried out in accordance with the approved details prior to the occupation of any part of the development or in accordance with a programme to be agreed in writing with the Local Planning Authority.

REASON: To ensure a satisfactory landscaped setting for the development and the protection of existing important landscape features.

4 The screen walls and/or fences shown on the approved plans shall be erected prior to the first occupation of their respective dwellings hereby permitted and shall be retained and maintained as such at all times thereafter.

REASON: To prevent overlooking & loss of privacy to neighbouring property.

5 No dwelling shall be first occupied until its turning area and parking spaces and access thereto have been completed in accordance with the details shown on the approved plans. The areas shall be maintained for those purposes at all times thereafter.

REASON: In the interests of highway safety.

6 Notwithstanding the provisions of the Town and Country Planning (General Permitted Development) (England) Order 2015 (or any Order revoking or re-enacting or amending that Order with or without modification), the garages hereby permitted shall not be converted to habitable accommodation.

REASON: To secure the retention of adequate parking provision, in the interests of highway safety.

7 No development shall commence on site until a scheme of compensatory tree planting, including details of specie(s), planted size, location and future maintenance regime, has been submitted to and approved in writing by the Local Planning Authority. The said planting shall have been carried out within the first planting season following the first occupation of the development in full accordance with the approved scheme, in accordance with which the tree(s) shall be maintained at all times thereafter.

REASON: To mitigate the loss of tree T15

- 8 INFORMATIVE TO APPLICANT: Any alterations to the approved plans, brought about by compliance with Building Regulations or any other reason must first be agreed in writing with the Local Planning Authority before commencement of work.
- INFORMATIVE TO APPLICANT:
 Please be advised that nothing in this permission shall authorise the diversion, obstruction, or stopping up of any right of way that crosses the site. You are advised to contact the PROW officer.
- 10 INFORMATIVE TO APPLICANT: The applicant is requested to note that this permission does not affect any private property rights and therefore does not authorise the carrying out of any work on land outside their control. If such works are required it will be necessary for the applicant to obtain the landowners consent before such works commence.

If you intend carrying out works in the vicinity of the site boundary, you are also advised that it may be expedient to seek your own advice with regard to the requirements of the Party Wall Act 1996.

11 INFORMATIVE TO APPLICANT: Please note that Council offices do not have the facility to receive material samples. Please deliver material samples to site and inform the Planning Officer where they are to be found.

Signed

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Director for Economic Development & Planning

Dated: 08 September 2017

NOTES

1. Other Necessary Consents. This document only conveys permission for the proposed development under Part III of the Town and Country Planning Act 1990 and the applicant must also comply with all the byelaws, regulations and statutory provisions in force in the area and secure such other approvals and permissions as may be necessary under other parts of the Town and Country Planning Act 1990 or other legislation.

In particular the applicant is reminded of the following matters:-

- 1.1 The need in appropriate cases to obtain approval under Building Regulations. (The Building Regulations may be applicable to this proposal. Please contact the Council's Building Control team before considering work on site);
- 1.2 The need to obtain an appropriate order if the proposal involves the stopping up or diversion of a public right of way or other highway (including highway verge)
- 1.3 The need to obtain a separate "Listed Building Consent" to the demolition, alteration or extension of any listed building of architectural or historic interest;
- 1.4 The need to make any appropriate arrangements under the Highways Act 1980, in respect of any works within the limits of a highway. The address of the Highway Authority is County Hall, Trowbridge, BA14 8JD (It is the responsibility of the applicant to ascertain whether the proposed development affects any listed building or public right of way / other highway, including highway verge).

2. **Appeals.** If the applicant is aggrieved by the decision of the local planning authority to grant permission subject to conditions, he may appeal to the Secretary of State for the Environment in accordance with Section 78(1) of the Town and Country Planning Act 1990 within six months of the date of this decision. (Information and forms relating to the appeals process can be found at the Planning Portal – <u>www.planningportal.gov.uk/planning/appeals</u>). The Secretary of State has the power to allow a longer period for the giving of a notice of appeal but he will not normally be prepared to exercise this power unless there are special circumstances which excuse the delay in giving notice of appeal. The Secretary of State is not required to entertain an appeal if it appears to him that permission of the proposed development could not have been so granted otherwise than subject to the conditions imposed by the local planning authority, having regard to the statutory requirements, to the provisions of the development order, and to any directions given under the order. He does not in practice refuse to entertain appeals solely because the decision of the Local Planning Authority was based on a direction given by him.

If the applicant wishes to have any further explanation of the reasons for the conditions imposed on this permission it will be given on request and a meeting arranged if necessary.

- 3. **Purchase Notices.** If permission to develop land is granted subject to conditions, whether by the local planning authority or by the Secretary of State for Communities and Local Government, and the owner of the land claims that the land has become incapable of reasonably beneficial use in its existing state and cannot be rendered capable of reasonably beneficial use by the carrying out of any development which has been or would be permitted, he may serve on the District Council a purchase notice requiring the Council to purchase his interest in the land in accordance with the provisions of Part VI of the Town and Country Planning Act 1990.
- 4. **Compensation.** In certain circumstances, a claim may be made against the local planning authority for compensation, where permission is refused or granted subject to conditions by the Secretary of State on appeal or on a reference of the application to him. The circumstances in which such compensation is payable are set out in Section 114 of the Town and Country Planning Act 1990.
- 5. Discharge of Conditions. The Government introduced new fees for the discharge of planning conditions from 6th April 2008. The fee is payable per request and not per condition. The fee chargeable is £25 per request for householder development and £85 per request for all other types of development. The fee must be paid when the request is made, and cannot be received retrospectively. It does not matter when the permission was granted as long as it remains extant. The request, identifying the permission (with reference number) and the conditions concerned, should be made by using the 1 APP forms which are available on the Councils Website or the Planning Portal.

You are advised that the as local planning authority has up to 12 weeks to consider the request, that you apply well in advance of when you intend to start work

- 6. If this permission relates to the creation of new dwellings/commercial units or conversion of buildings into dwellings/commercial units, you are required to apply for street naming and numbering to ensure that the new buildings are allocated accurate addresses and registered with the Royal Mail. Relevant application forms, guidance notes and fee sheets are available to download at http://www.wiltshire.gov.uk/planninganddevelopment/streetnaming or you can contact the Address Information Team on 01225 770508 or by email at streetnaming@wiltshire.gov.uk
- 7 Informative There is a legal duty of care incumbent on the customer and contractor that all commercial waste generated as a result of the works hereby authorised is safely contained, transported and disposed of lawfully in line with the Environmental Protection Act 1990 and Environmental Permitting Regulations 2016 (as well as any other related legislation). Failing to do so can lead to individuals or organisations being prosecuted for unlawful waste management.



Town & Country Planning Act 1990

Notice of Approval of Reserved Matters

Application Reference Number: 16/04544/REM

Agent	Applicant
Trevor Wright	Redrow Homes Ltd.
Thrive Architects	Redrow House
Suite 11	West Point
Kestral Court	Great Park Road
Harbour Road	Bradley Stoke
Portishead	Bristol
BS20 7AN	BS32 4qg

Particulars of Development: - Reserved Matters Application for Access, Appearance, Layout & Scale (Following Outline Application 13/05188/OUT) Proposed B1 Employment Units on Land to the West of Bath Road Development Corsham

At: Land North Of Bath Road, Corsham, Wiltshire

In pursuance of their powers under the above Act, the Council hereby PERMIT the above development to be carried out in accordance with the details of the RESERVED MATTERS submitted by you, and subject to compliance with the conditions specified hereunder;-

1 The development hereby permitted shall be carried out in accordance with the following approved plans:

1794 11 C - Detailed Planting Proposals Employment Land REDR160424-SW SL.01 rev D - B1 Office Units Site Layout Received 27 June 2017

B.e1 rev B - Block B Elevations B.e2 rev B - Block B Elevations B.p1 rev B - Block B Ground Floor Plan B.p2 rev B - Block B First Floor Plan B.s1 - Block B Section A-A Received 12 December 2016

SLP.01 rev A - Site Location Plan EL.01 rev A - Engineering Layout A.e1 rev A - Block A Elevations A.e2 rev A - Block A Elevations A.p1 rev A - Block A Ground Floor Plan A.p2 rev A - Block A First Floor Plan Received 16 September 2016

BS.01 - Bin & Cycle Store Plans & Elevations Received 2 September 2016 REASON: For the avoidance of doubt and in the interests of proper planning.

2 No development shall commence on site until the exact details and samples of the materials to be used for the external walls and roofs have been submitted to and approved in writing by the Local Planning Authority. Development shall be carried out in accordance with the approved details.

REASON: The application contained insufficient information to enable this matter to be considered prior to granting planning permission and the matter is required to be agreed with the Local Planning Authority before development commences in order that the development is undertaken in an acceptable manner, in the interests of visual amenity and the character and appearance of the area.

3 No walls shall be constructed on site, until a sample wall panel, not less than 1 metre square, has been constructed on site, inspected and approved in writing by the Local Planning Authority. The panel shall then be left in position for comparison whilst the development is carried out. Development shall be carried out in accordance with the approved sample.

REASON: in the interests of visual amenity and the character and appearance of the area.

4 No paint or stain finish shall be applied to external timber (including external walls and window joinery), until details of the paint or stain to be applied have been submitted to and approved in writing by the Local Planning Authority. Development shall be carried out in accordance with the approved details prior to the development being first brought into use.

REASON: In the interests of visual amenity and the character and appearance of the area.

5 All soft landscaping comprised in the approved details of landscaping shall be carried out in the first planting and seeding season following the first occupation of the buildings or the completion of the development whichever is the sooner. All shrubs, trees and hedge planting shall be maintained free from weeds and shall be protected from damage by vermin and stock. Any trees or plants which, within a period of five years, die, are removed, or become seriously damaged or diseased shall be replaced in the next planting season with others of a similar size and species, unless otherwise agreed in writing by the local planning authority.

REASON: To ensure a satisfactory landscaped setting for the development and the protection of existing important landscape features.

6 No part of the development hereby permitted shall be first occupied until the access, turning area and parking spaces have been completed in accordance with the details shown on approved plan EL.01 rev A - Engineering Layout (received 16 September 2016). The areas shall be maintained for those purposes at all times thereafter.

REASON: In the interests of highway safety.

7 Notwithstanding the provisions of the Town and Country Planning (General Permitted Development) (England) Order 2015 (or any Order revoking or re-enacting or amending that Order with or without modification), no buildings or structures, gates, walls, fences or other means of enclosure, other than those shown on the approved plans, shall be erected or placed anywhere on the site on the approved plans.

REASON: To safeguard the character and appearance of the area.

8 Notwithstanding the provisions of the Town and Country Planning (General Permitted Development) (England) Order 2015 (or any Order revoking or re-enacting or amending that Order with or without modification), there shall be no additions, extensions or external alterations to any building forming part of the development hereby permitted and no plant, machinery or other incidental structure shall be installed outside any such building on the site on the approved plans.

REASON: In the interests of the amenity of the area and to enable the Local Planning Authority to consider individually whether planning permission should be granted for additions, extensions or external alterations, or the installation of any outdoor plant, machinery or other structure.

9 No external lighting shall be installed on site until details of lighting, external cowls, louvers or other shields to be fitted to reduce light pollution have been submitted to and approved in writing by the Local Planning Authority. The approved measures shall be put in place before the floodlights are first brought into use and shall be retained and maintained in accordance with the approved details at all times thereafter.

REASON: To protect species and to minimise light pollution in the interests of ecology and the amenities of the area.

10 INFORMATIVE TO APPLICANT:

Any alterations to the approved plans, brought about by compliance with Building Regulations or any other reason must first be agreed in writing with the Local Planning Authority before commencement of work.

11 INFORMATIVE TO APPLICANT:

The applicant should note that the grant of planning permission does not include any separate permission which may be needed to erect a structure in the vicinity of a public sewer. Such permission should be sought direct from Thames Water Utilities Ltd / Wessex Water Services Ltd. Buildings are not normally allowed within 3.0 metres of a Public Sewer although this may vary depending on the size, depth, strategic importance, available access and the ground conditions appertaining to the sewer in question.

12 INFORMATIVE TO APPLICANT:

The applicant is requested to note that this permission does not affect any private property rights and therefore does not authorise the carrying out of any work on land outside their control. If such works are required it will be necessary for the applicant to obtain the landowners consent before such works commence.

If you intend carrying out works in the vicinity of the site boundary, you are also advised that it may be expedient to seek your own advice with regard to the requirements of the Party Wall Act 1996.

13 INFORMATIVE TO APPLICANT: Please note that Council offices do not have the facility to receive material samples.

Please note that Council offices do not have the facility to receive material samples. Please deliver material samples to site and inform the Planning Officer where they are to be found.

Signed

Atom Comminde

Director for Economic Development & Planning

Dated: 06 September 2017

NOTES

1. Other Necessary Consents. This document only conveys permission for the proposed development under Part III of the Town and Country Planning Act 1990 and the applicant must also comply with all the byelaws, regulations and statutory provisions in force in the area and secure such other approvals and permissions as may be necessary under other parts of the Town and Country Planning Act 1990 or other legislation.

In particular the applicant is reminded of the following matters:-

- 1.1 The need in appropriate cases to obtain approval under Building Regulations. (The Building Regulations may be applicable to this proposal. Please contact the Council's Building Control team before considering work on site);
- 1.2 The need to obtain an appropriate order if the proposal involves the stopping up or diversion of a public right of way or other highway (including highway verge)
- 1.3 The need to obtain a separate "Listed Building Consent" to the demolition, alteration or extension of any listed building of architectural or historic interest;
- 1.4 The need to make any appropriate arrangements under the Highways Act 1980, in respect of any works within the limits of a highway. The address of the Highway Authority is County Hall, Trowbridge, BA14 8JD (It is the responsibility of the applicant to ascertain whether the proposed development affects any listed building or public right of way / other highway, including highway verge).

2. **Appeals.** If the applicant is aggrieved by the decision of the local planning authority to grant permission subject to conditions, he may appeal to the Secretary of State for the Environment in accordance with Section 78(1) of the Town and Country Planning Act 1990 within six months of the date of this decision. (Information and forms relating to the appeals process can be found at the Planning Portal – <u>www.planningportal.gov.uk/planning/appeals</u>). The Secretary of State has the power to allow a longer period for the giving of a notice of appeal but he will not normally be prepared to exercise this power unless there are special circumstances which excuse the delay in giving notice of appeal. The Secretary of State is not required to entertain an appeal if it appears to him that permission of the proposed development could not have been so granted otherwise than subject to the conditions imposed by the local planning authority, having regard to the statutory requirements, to the provisions of the development order, and to any directions given under the order. He does not in practice refuse to entertain appeals solely because the decision of the Local Planning Authority was based on a direction given by him.

If the applicant wishes to have any further explanation of the reasons for the conditions imposed on this permission it will be given on request and a meeting arranged if necessary.

- 3. **Purchase Notices.** If permission to develop land is granted subject to conditions, whether by the local planning authority or by the Secretary of State for Communities and Local Government, and the owner of the land claims that the land has become incapable of reasonably beneficial use in its existing state and cannot be rendered capable of reasonably beneficial use by the carrying out of any development which has been or would be permitted, he may serve on the District Council a purchase notice requiring the Council to purchase his interest in the land in accordance with the provisions of Part VI of the Town and Country Planning Act 1990.
- 4. **Compensation.** In certain circumstances, a claim may be made against the local planning authority for compensation, where permission is refused or granted subject to conditions by the Secretary of State on appeal or on a reference of the application to him. The circumstances in which such compensation is payable are set out in Section 114 of the Town and Country Planning Act 1990.
- 5. Discharge of Conditions. The Government introduced new fees for the discharge of planning conditions from 6th April 2008. The fee is payable per request and not per condition. The fee chargeable is £25 per request for householder development and £85 per request for all other types of development. The fee must be paid when the request is made, and cannot be received retrospectively. It does not matter when the permission was granted as long as it remains extant. The request, identifying the permission (with reference number) and the conditions concerned, should be made by using the 1 APP forms which are available on the Councils Website or the Planning Portal.

You are advised that the as local planning authority has up to 12 weeks to consider the request, that you apply well in advance of when you intend to start work

- 6. If this permission relates to the creation of new dwellings/commercial units or conversion of buildings into dwellings/commercial units, you are required to apply for street naming and numbering to ensure that the new buildings are allocated accurate addresses and registered with the Royal Mail. Relevant application forms, guidance notes and fee sheets are available to download at http://www.wiltshire.gov.uk/planninganddevelopment/streetnaming or you can contact the Address Information Team on 01225 770508 or by email at streetnaming@wiltshire.gov.uk
- 7 Informative There is a legal duty of care incumbent on the customer and contractor that all commercial waste generated as a result of the works hereby authorised is safely contained, transported and disposed of lawfully in line with the Environmental Protection Act 1990 and Environmental Permitting Regulations 2016 (as well as any other related legislation). Failing to do so can lead to individuals or organisations being prosecuted for unlawful waste management.

APPENDIX 3 – S73 Application Delegated report

CASE OFFICER'S REPORT

Application Reference:	18/02373/VAR
Date of Inspection:	22.03.2018
Date site notice posted:	22.03.2018
Date of press notice:	N/A

POLICIES

Core Policy 57 (Ensuring high quality design and place shaping) of the adopted Wiltshire Core Strategy.

Saved Policy NE18 (Noise and pollution) of the North Wiltshire Local Plan 2011.

Paragraphs 17, 109 and 123 of the National Planning Policy Framework

The Noise Policy Statement for England (NPSE) (Department for the Environment, Food and Rural Affairs) and Environmental Protection Act 1990 are relevant considerations.

ISSUES

The application seeks the variation of a planning condition, with specific regard to the point at which required details must be agreed relative to the commencement of development, in relation to land north of Bath Road, Corsham.

The application relates to a 10ha site lying immediately North of Bath Road, on the western side of Corsham. The site is currently an open field enclosed by a mixture of trees, stone walls and short terrace of historic cottages, with some additional isolated trees. A public footpath crosses diagonally from the southeast corner toward the Grade II-listed Guyers House to the North. The site falls within a larger area subject to an extant minerals consent (ref N98/1945/LP) in relation to the extraction of Bath stone from beneath the land, which remains valid until 2042. At the time of writing, the mine operator, who has been active in the area since early 2016, has made significant progress from the historic shaft at the southeast corner of the application site, working northward, West and East, intersecting further historic shallower workings. At any time, several stone faces, typically with a ceiling height of approximately 20m below surface level, are being worked through a process that includes the use of cutting saws, hydraulic breaking, pneumatic 'pecking' and roof pinning.

Outline planning permission was granted on appeal in May 2015 in respect of the erection of up to 150 dwellings and up to 1,394m² employment space, together with associated access, landscaping and infrastructure, on the site (13/05188/OUT refers). The potential conflict with the extant minerals consent and ongoing mining operations having been identified as an original reason for refusal, the Council and Appellant negotiated and recommended two planning conditions requiring that a suitable foundation design was devised in order to mitigate the impact of ground borne noise and vibration on future occupiers. The conditions were accepted by the Inspector and applied in the course of allowing the appeal; they read as follows:

22) No development shall take place until a Foundation Investigation Plan has been submitted to and approved in writing by the local planning authority. The Foundation Investigation Plan shall include:

- i) A foundation zoning plan which will identify the type and depth of foundations across the site.
- ii) Vibration testing which shall take place during a trial mining test at appropriate

locations to replicate both a typical case and a worst case of future mining both within the mine and at foundation level and bedrock level. The results of the test are then to be used by the foundation design engineer to ensure that noise and vibration levels of the foundations are at or below the criteria specified in condition 23. The vibration testing shall be carried out in accordance with a method statement which shall first have been submitted to and approved in writing by the local planning authority.

iii) The results of the vibration testing shall be provided to the local planning authority and shall be used to design vibration and sound isolation measures (where required) at each dwelling and noise sensitive building. The foundation design for each dwelling and noise sensitive building shall be submitted to and approved in writing by the local planning authority.

Development shall be carried out in accordance with the approved Foundation Investigation Plan.

23) The foundations shall be designed to ensure that noise and vibration from underground mining activity shall not give rise to a noise level within any dwelling or noise sensitive building in excess of that equivalent to Noise Rating Curve 25 and vibration levels shall not exceed 0.1 to 0.2 ms-1.75 in accordance with the methodology in BS 6472-1-2008.

An application to discharge Condition 22 was submitted on 10 August 2016; after several iterative revisions and ongoing discussion with the Local Planning Authority, the application was refused on 28 February 2017 for the following reason:

"The details submitted do not satisfy the following condition of the above planning application as these have failed to properly reflect typical or worst case conditions and demonstrate the facility to achieve the noise reduction criteria specified in Condition 23 to the outline permission. Accordingly, the foundation measures proposed would fail to provide sufficient mitigation to ensure an adequate standard of residential amenity to future occupiers and therefore pose a risk to the safeguarding of existing mineral workings beneath the site."

Since that time, a further application to discharge the condition has been submitted, a testing methodology formally agreed and a 'live' monitoring exercise undertaken, the results of which are currently awaited.

The current application seeks to vary the terms of Condition 22 in respect of the timing of approval of technical details, in order that commencement of development would not be forestalled by the absence of agreement in this respect. In practice this would affect only the first five words of the condition as presently worded, and would not affect the technical requirements of the condition in terms of the methodology or level of mitigation to be achieved.

The applicant has proposed the following alternative wordings:

<u>Prior to the commencement of any dwelling or noise sensitive building on site</u>, a Foundation Investigation Plan <u>must</u> be submitted...

Or

"No development shall take place, other than the permitted site access in general accordance with drawing no. 4746/01/01 dated October 2013, until..."

An earlier application for the same variation was previously withdrawn (17/01539/VAR refers).

REPRESENTATIONS

Corsham Town Council – objections; "that the application be refused on the grounds that no development should commence on site until the conditions specified by the Planning Inspector have been discharged. The application was felt to be contrary to the spirit and the letter of the Planning Inspector's decision and conditions."

Environmental Health – objections, citing the uncertainty introduced by recent attempts to discharge Condition 22, wholesale application of the noise standards and 'in principle' implications

51 letters of objection (by household) have been received from local residents, including those made on behalf of the Pickwick Association (which many of the public representations simply reproduce), Beechfield Park Trustees and Corsham Civic Society, raising the following concerns:

- Varying the mutually agreed condition at this stage is unacceptable in principle;
- Proceeding with the development with no guarantee of satisfying the condition could lead to abortive work leaving lasting visual harm at the application site and causing undue disruption to existing residents;
- The failure to discharge the condition to date is further indication that a technical solution is likely to be unfeasible and thus the site undeliverable in practice.

For the absolute avoidance of doubt, comments relating to future ground stability are a matter of due diligence and liability borne dually by the mine operator and any future developer of the site, and are not relevant to the condition in question or the determination of this application. The Council is aware of the extent of rock cover and workable mineral beneath the application site and this has informed testing methodology to date.

Matters considered and determined in the course of the outline and reserved matters applications are also irrelevant for the purposes of the current application.

ASSESSMENT:

As no attempt is being made to alter the technical standards required by Conditions 22 and 23, the salient considerations are as follows:

- What planning function does the condition serve?
- What does the current timing achieve?
- Could the function be served through an alternative timing/wording?

What planning function does the condition serve?

In considering the proposal it is first important to identify the purpose of the condition as currently worded. The Inspector's report provides the reasoning for Conditions 22 and 23 as below, concluding that, with the conditions providing reassurance, the matter of mining noise and vibration does not weigh significantly in the balance of considerations.

147. The Council's 4th reason for refusal related to potential harm to the living conditions of future occupiers from noise and vibration resulting from underground mineral workings beneath the site. Additional technical information was produced during the Inquiry and it was ultimately agreed by the Council and the appellant that this matter could be addressed by conditions. The conditions would require a foundation investigation plan to be submitted for the approval of the Council, having regard to the results of vibration tests. A further condition would establish criteria for noise and vibration. The Pickwick Association expressed doubts that these measures would be effective. However, the suggested

conditions reflect technical advice about foundation isolation systems which has been accepted by the respective noise experts for the Council and the appellant. In my view the conditions would be effective in protecting the living conditions of future occupiers. In addition they would address a concern, expressed by some parties, that the scheme could have the effect of sterilising minerals under the site.

149. I conclude that these other matters do not add significantly either to the case in favour of the appeal or to the case against it.

The Inspector sets out explicitly the reasoning for Conditions 22 and 23 in the final paragraph of his report:

169. Condition 22 requires the submission of a Foundation Investigation Plan and condition 23 sets the noise and vibration criteria that the design of foundations would have to achieve. These conditions are needed to protect the living conditions of future residents of the appeal site in the event that an extant consent for underground mineral working were to be implemented in the future.

Clearly Condition 22 is reasonable and necessary in order to protect the residential amenity of future occupiers against excessive noise and vibration and, in turn, to ensure that recognised mineral reserves are not sterilised as a consequence of domestic complaints in this regard; Paragraphs 147 and 169 above make reference to the 'living conditions of future occupiers/residents' specifically. The provisions of the Environmental Protection Act 1990 prioritise the living conditions of domestic premises and therefore it is reasonable to assume that any standard acceptable in a domestic setting would be adequate for a building in any other use. Nonetheless (and notwithstanding the Inspector's report), Condition 23 includes explicit reference to other *'noise sensitive building(s)'* and therefore would extend to the proposed office buildings as bound by the specified noise limits. Although together forming the fundamental basis of the development, this universal restriction would not in itself eliminate either of the alternative wordings put forward by the applicant.

The Inspector accepted the view at appeal that the site was immediately available and deliverable (see Paragraph 162) and, in accepting that the matter of noise and vibration could be dealt with by condition, accepted that on the basis of the information available at the time there was a reasonable prospect that any conflict could be overcome in this regard. Whilst the purpose of the condition is not to serve as an additional screening exercise as to whether the development is acceptable in principle, it is noted in light of the ongoing difficulty in discharging Condition 22 the achievability of the agreed noise criteria seems to have been significantly underestimated by the Appellant at the time of the Inquiry. Ultimately, the Council believes that a technical solution *is* achievable but the practicality and viability of what may be required is a matter falling squarely to the developer.

In short, the standards of noise reduction required would remain unchanged and thus likewise would the ultimate outcome in terms of the residential amenity enjoyed by future occupants of any development, together with users of the office accommodation. In any amended form requiring approval and implementation of suitable details for residential foundation design, therefore, the condition would remain as effective as before in technical terms.

What does the current timing achieve?

Clearly, by preventing the commencement of development until a foundation design has been agreed, the condition safeguards against abortive work resulting from the commencement of foundations that do not accord with any agreed specification, potentially failing to meet the requirements of Condition 23. Only the foundations of 'noise sensitive buildings' (i.e. dwellings

and offices) are exposed to this level of technical scrutiny and control through planning, however, with other elements such as highways, drainage, building safety and energy efficiency controlled through various alternative mechanisms such as S38/104/278 of the Highways Act and the Buildings Regulations. There seems to be no obvious technical reason, therefore, why these other matters should be forestalled pending the approval of noise-sensitive foundations, as these ultimately will have no significant bearing on the residential amenity with respect to noise and vibration from mineral workings that Conditions 22 and 23 seek to protect.

However, following on from an earlier paragraph, it is emphasised that the Inspector's original judgement that the site's being immediately available and deliverable was a determinative factor in his allowing the appeal and granting outline permission, on the basis that the site could contribute immediately to addressing a (then) shortfall in the supply of housing. The Inspector reflects this by shortening the timescales for submission of reserved matters and commencement of development (Paragraph 162 of the decision). This situation has however altered radically in the recent past, with the Council successfully defending a 5-year housing land supply in successive appeals such that, were the appeal to be heard today, the outcome would very likely be different. To alter the wording of the condition so that resolution of the fundamental matters set out in Condition 22 would effectively be open-ended once works commenced on site, therefore, could severely reduce any certainty over the timely delivery of units, and in doing so diminish the relevance of the condition to the development permitted. Or in other words, to allow the site to be 'banked' in perpetuity through its partial implementation without any actual delivery of units would undermine the original decision and also create wider uncertainty over its contribution to overall housing supply. This distinction is, it is considered, fatal to the application as the timing of the condition is instrumental in - and inseparable from - the acceptability of the development in principle.

A number of representations express concern that the unintended consequences of the proposed relaxation of the condition's trigger point may be that development is commenced but it is subsequently established that a suitable foundation design is in fact unachievable or unviable. This may potentially result in the abandonment of the site by the developers, leaving behind unsightly abortive works already undertaken. It seems unlikely, however, that a housebuilder would commit substantial resource with little guarantee of delivering any saleable product given the relatively limited level of work necessary to legally commence a development. It is also worthy of note that the developer in any case would only be able to implement works which have already been found acceptable – albeit in the context of a much larger scheme – and thus these would not be uncontrolled but would be beyond the scope of enforcement if the developer then departed. It is not considered that varying the timing of the condition would expose the Council to any greater liability than the original terms of the condition in such circumstances; the risk is borne by the developer.

The applicant draws attention to recent DCLG/MHCLG consultation documents advocating a reduction in the use of 'overly restrictive and unnecessary conditions' in relation to Condition 22. However, the applicant was in full agreement with the wording of the condition as originally devised during the course of the Inquiry, finding that it was reasonable at that time. Given that the purpose of the recommendations is to speed up the 'delivery of development' it is clearly immaterial whether or not incidental facilities such as accesses can be installed if no new houses may even start to be built; in other words the variation sought makes squarely no difference to the delivery of housing. Moreover, the sense of the guidance is clear in that Local Planning Authorities should avoid overly restrictive and/or unnecessary pre-commencement conditions. As discussed above, the pre-commencement trigger is demonstrably reasonable when considered holistically with the outline application in this instance.

For the reasons explained above, however, it is considered that the timing of the condition as currently worded goes beyond the simple amenity and safeguarding reasons for the condition, and to the heart of the outline permission itself.

Could the function be served through an alternative timing/wording?

Taking into account the above findings, it is necessary to consider whether an appropriate alternative wording can be found whilst maintaining the purpose of the condition and compliance with the six tests, requiring that conditions are:

- 1. necessary;
- 2. relevant to planning and;
- 3. to the development to be permitted;
- 4. enforceable;
- 5. precise; and
- 6. reasonable in all other respects

The necessity for a technical solution to residential foundation design and the robust standard to be achieved is not in question, such that clearly the condition would remain necessary, relevant to planning and to the development to be permitted in this sense. It is not considered that adjusting the trigger point in principle would compromise the technical necessity for or relevance of Condition 22, as its scope and purpose has been explained to concern only the noise sensitive buildings whose commencement would remain restricted.

However, the condition's timing serves another purpose and ensures that the condition is wholly relevant to planning, to the development to be permitted and reasonable in all other respects. To vary its wording in either manner proposed, or some variant thereof, would compromise the condition's compliance with these critical tests owing to its effectively disregarding the basis of the outline permission in the context of which it was originally imposed. Accordingly, it is not considered that a varied wording specifying some other trigger for the approval of technical details that are so fundamental to the delivery of housing in particular (i.e. the only element and consideration commanding any significant weight in favour of the scheme) would be reasonable.

Conclusions

It is accepted by all parties that a bespoke technical solution is required in order to protect occupiers from groundborne noise and vibration and that this is a constraint that applies, for the time being, to the entire site such that conflict could not be averted simply by changes to layout, for instance. The prospects of resolution are therefore binary; either the issue can be addressed by a viable technical solution or it cannot, and the condition will be discharged or not accordingly. Following approval of the reserved matters, lawful implementation of the office and residential elements of the development must take place before 6 and 8 September 2018. This will have afforded the applicant some 39 months following the outline decision in which to address the conditions' requirements; this is considered more than reasonable for what ultimately will be a standardised foundation design.

The original condition remains appropriate in respect of the timescales for the approval of details and its remaining as such should not unduly compromise the applicant's ability to comply with its requirements in a timely manner. The condition is required to secure an appropriate standard of residential amenity for future occupants, and indeed protect the availability of mineral workings beneath the site, and its timing justified in the context of the balance of considerations pertaining to the development as a whole. It is therefore considered that its original wording should be maintained. As the grant of permission under S73 would be in effect to create a parallel permission to the original outline approval, it is necessary to apply a further reason for refusal owing to the absence of a suitable legal agreement to secure the necessary planning contributions and infrastructure, the requirement for which remains unchanged. It should be noted that this is considered entirely capable of resolution through a Deed of Variation however in light of the recommendation it would not be reasonable to request this at the present time.

RECOMMENDATION:

That the application is REFUSED, for the following reasons:

- 1 The planning condition, by virtue of its timescale being implicitly linked to the deliverability of the development, and thus the individual merits of the outline application, is necessary to ensure the development remains as such. To vary this with the effect of allowing in theory an open-ended planning permission with no guarantee that the site is deliverable would prejudice the original decision and compromise the condition's compliance with the six tests.
- 2 The application proposal fails to provide and secure the necessary and required services and infrastructure supporting the proposed residential development including Affordable Housing; Waste; Public Open Spaces; Education and is therefore contrary to Core Policies 3 and 43 of the adopted Wiltshire Core Strategy and Paragraphs 7, 14 & 17 of the National Planning Policy Framework March 2012.

INFORMATIVE TO APPLICANT:

The applicant is advised that the Refusal Reason 2 is capable of being addressed and resolved through the preparation of a Section 106 Agreement/Deed of Variation to meet the identified Service & Infrastructure requirements arising from the development proposed.

APPENDIX 4 – S73 Application - Decision Notice (16 May 2018)



Town & Country Planning Act 1990

Notice of Refusal of Planning Permission for Variation/Non-compliance with a condition imposed on an earlier Permission

Application Reference Number: 18/02373/VAR

Alexalidita WayAlexalidita WayCongletonCongletonCheshireCheshireCW12 1LBCW12 1LB	Cheshire	Cheshire
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Particulars of Development: - Variation of condition 22 (Foundation Investigation Plan) of 13/05188/OUT to allow commencement of development prior to the discharge of this condition.

At: Land North of Bath Rd, Corsham, Wiltshire, SN13 0QL

In pusuance of their powers under the above Act, the Council hereby REFUSE TO GRANT PLANNING PERMISSION for the removal or variation of the condition(s) proposed in the above application for the following reasons:

- 1 The planning condition, by virtue of its timescale being implicitly linked to the deliverability of the development, and thus the individual merits of the outline application, is necessary to ensure the development remains as such. To vary this with the effect of allowing in theory an open-ended planning permission with no guarantee that the site is deliverable would prejudice the original decision and compromise the condition's compliance with the six tests.
- 2 The application proposal fails to provide and secure the necessary and required services and infrastructure supporting the proposed residential development including Affordable Housing; Waste; Public Open Spaces; Education and is therefore contrary to Core Policies 3 and 43 of the adopted Wiltshire Core Strategy and Paragraphs 7, 14 & 17 of the National Planning Policy Framework March 2012.

INFORMATIVE TO APPLICANT:

The applicant is advised that the Refusal Reason 2 is capable of being addressed and resolved through the preparation of a Section 106 Agreement/Deed of Variation to meet the identified Service & Infrastructure requirements arising from the development proposed.

Signed

Nk

Tim Martienssen Director Economic Development and Planning

Dated: 16 May 2018

REFUSAL OF PERMISSION FOR DEVELOPMENT

If the applicant wishes to have an explanation of the reasons for this decision, it will be given on request and a meeting arranged if necessary.

1. Appeals

If the applicant is aggrieved by the decision of the Local Planning Authority to refuse permission for the proposed development, he/she may appeal to the Secretary of State for the Environment in accordance with Section 78 of the Town and Country Planning Act, 1990. Appeals must be made on a form which is obtainable from The Planning Inspectorate, Customer Support Unit, Temple Quay House, 2 The Square, Temple Quay, Bristol, BS1 6PN, (Telephone 0117 372 Alternatively forms can be downloaded from the web site: 6372). www.planninginspectorate.gov.uk. Changes introduced by the Government in April 2009 mean that an appeal relating to the refusal of a stand-alone application for householder development (such as an alteration/extension to a house; or a garage or other outbuilding proposed within the garden) must be made within 12 weeks of the date of the refusal. This applies to applications received as valid by Wiltshire Council on or after April 6th 2009. All other appeals, including householder appeals for extensions to listed buildings that are accompanied by an appeal against a refusal of listed building consent must be made within 6 months of the date of the refusal. The Secretary of State has power to allow a longer period for the giving of a notice of appeal but he will not normally be prepared to exercise this power unless there are special circumstances which excuse the delay in giving notice of appeal. The Secretary of State is not required to entertain an appeal if it appears to him that permission for the proposed development could not have been so granted by the Local Planning Authority, having regard to the Statutory requirements, to the provisions of the Development Order, and to any Directions given under the Order. A copy of the Wiltshire appeal documents should be sent direct to Council developmentmanagement@wiltshire.gov.uk.

2. Purchase Notices

If permission to develop land is refused, whether by the Local Planning Authority or the Secretary of State, and the owner of the land claims that the land has become incapable of reasonably beneficial use in its existing state, and cannot be rendered capable of reasonably beneficial use by the carrying out of any development which has been, or would be, permitted, he may serve on the District Council in which the land is situated a Purchase Notice requiring that Council to purchase his interest in the land in accordance with the provisions of Part VI of the Town and Country Planning Act, 1990.

3. Compensation

In certain circumstances a claim may be made against the Local Planning Authority for compensation, where permission is refused by the Secretary of State on appeal or on a reference of the application to him. The circumstances in which such compensation is payable are set out in Section 114 of the Town and Country Planning Act, 1990.

APPENDIX 5 – Outline Application 13/05188/OUT Delegated Report

CASE OFFICER'S REPORT

Application Reference:	13/05188/OUT
Date of Inspection:	05.11.2013 & 21.02.2014
Date site notice posted:	05.11.2013 & 21.02.2014
Date of press notice:	21.11.2013

POLICIES

Wiltshire Core Strategy:

- CP1 (Settlement Strategy) CP2 (Delivery Strategy) CP3 (Infrastructure Requirements) CP11 (Spatial Strategy: Corsham Community Area) CP34 (Additional Employment Land) CP41 (Sustainable Construction and Low-Carbon Energy) CP43 (Providing Affordable Homes) CP50 (Biodiversity and Geodiversity) CP51 (Landscape) CP57 (Ensuring High Quality Design and Place Shaping) CP58 (Ensuring the Conservation of the Historic Environment) CP61 (Transport and Development) North Wiltshire Local Plan 2011: C1 (Sustainability Core Policy) C2 (Community Infrastructure Core Policy) C2 (Development Control Core Policy)
 - C3 (Development Control Core Policy)
 - NE9 (Protection of Species)
 - NE14 (Trees, Site Features and the Control of New Development)
 - NE15 (The Landscape Character of the Countryside)
 - HE1 (Development in Conservation Areas)
 - T1 (Minimising the Need to Travel)
 - T4 (Cycling, Walking and Public Transport)
 - H4 (Residential Development in the Open Countryside)

National Planning Policy Framework:

Paragraphs 12, 14, 17, 34, 47, 49, 109, 112, 118, 121, 123, 128, 133, 144, 150, 196 and 216

ISSUES

The proposal relates to an outline scheme for up to 150no. dwellings and 1,394m² of B1 commercial space at land North of Bath Road, Corsham.

The site is located to the immediate North of the A4 Bath Road toward the western fringes of Corsham. At present, the site comprises a large arable field, with a smaller historic pasture inset, amounting to approximately 10ha. The surrounding development envelope includes the properties opposite and inset from Bath Road, the relatively recent Academy Drive estate to the immediate East and a series of modest historic properties along Guyers Lane, to the West. A public right of way traverses the site from southeast to northwest. linking Corsham Town to the listed Guyers House, which is located a short distance from the northern site boundary. This historic property, now a hotel and conference facility, has its own gardens and estate grounds, the latter of which are in evidence in immediate proximity to the northeastern fringes of the site in particular, where the boundary itself is marked by estate fencing as well as a mature hedgerow. The remaining site boundaries are largely of similarly high quality, especially along the southern boundary to the Bath Road and western edge with the historic Guyers Lane, where a traditional Cotswold rubble stone wall with cement coping remains largely intact. A less well conserved example is also evidenced to varying degrees around the smaller pasture field. At around the midpoint of its southern boundary, the regular shape of the site is interrupted by 3no. separate properties, the historic cottages forming nos. 53, 55 and 57 Pickwick, together with their gardens and, in the case of no.57 in particular, outbuildings that are seen clearly from the site. A number of mature trees of varying quality and health are dispersed through the site, contributing to the estate character and public amenity of the landscape. A concrete airshaft approximately 1.5m in height and 1.5m in width protrudes from the ground close to the southwest corner of the site, indicating the extent of underground mining operations to date. At present, the only vehicular access to the site is obtained via the steel five-bar gate onto Guyers Lane and this remains in active use. The site is located outside of the development framework boundary under the adopted Local Plan, which, at the time of writing, remains the substantive settlement envelope for the purposes of the emerging Wiltshire Core Strategy. The Corsham Conservation Area borders the site at its southeast corner and eastern side, covering in the immediate vicinity notable buildings including the Grade II-listed St Patrick's Church and The Coach House, together with the unlisted but historic no.51 Pickwick, to the immediate East.

Outline planning permission is sought in respect of the comprehensive development of the site to provide up to 150 new dwellings, together with 1,394m² of B1 commercial office space, together with associated access and landscaping. At this stage, all matters bar access are to be reserved, although an indicative layout, including SUDS and other landscaping features, has been submitted. This layout suggests a mixture of house types including modest terraces, semidetached pairs and larger detached units, laid out in a relatively suburban pattern of cul-de-sacs and private driveways. Dual access is proposed via a new roundabout at the existing Bradford Road junction and a right-turn lane from Bath Road at the eastern end of the southern boundary, with a link road between the two serving the various shared surface cul-de-sacs. A landscaped corridor is proposed loosely around the route of the existing public footpath, incorporating balancing ponds and an equipped play area. The employment space is to be situated at the southwest corner of the site, indicatively comprising two substantial units with associated parking. In general, the northern and western site boundaries are to be treated with substantial tree and hedgerow screening, with a progressively more open aspect to the southern boundary from West to East as the built fabric is positioned further back from the highway. The treatment to the eastern boundary appears much as existing, maintaining the trees that characterise this edge of Academy Drive.

REPRESENTATIONS

Corsham Town Council - objects, recommending:

"That the application be refused for the following reasons: that local people should be able to select sites as part of the localism agenda; the proposal is outside of the settlement boundary; the application is on a Greenfield site when Brownfield sites should be developed first; it would have a

detrimental effect on the setting of both the Pickwick Conservation Area and the Cotswold Area of Outstanding Natural Beauty; it would adversely affect the protected species of bats in the area; the transport study was flawed as Park Lane was closed when the survey took place; increased traffic on a busy 'A' Class road (A4) with roundabouts which are already overcapacity; increased pollution and noise; the proposal would constitute unnecessary development as the area is well on its way to meeting the housing need quota; the site should be preserved as Grade 2 agricultural land; the proposal is contrary to both the Core Strategy and the National Planning Policy Framework; it would make little contribution to the town and would exacerbate pressures on local facilities; it would have a detrimental impact on Listed Buildings in Pickwick; the site would create a strung-out development which would be difficult to integrate into the town; unacceptable levels of vibration and noise from the mining underneath and the road adjacent; the proposal would constitute unnecessary development as the area is well on its way to meeting the housing need quota; and the North Wiltshire Local Plan 2011 states that The Landscape Character of the Countryside (NE15) should be protected should be preserved as such."

And at the second round of consultation:

"the Town Council wish to strongly object to this proposal and feel that the application be refused for the following reasons: that local people should be able to select sites as part of the localism agenda; the proposal is outside of the settlement boundary; the application is on a Greenfield site when Brownfield sites should be developed first and which were available in the area; it would have a detrimental effect on the setting of both the Pickwick Conservation Area and the contrary to both the Core Strategy and the National Planning Policy Framework; it would make little contribution to the town and would exacerbate pressures on local facilities; it would have a detrimental impact on Listed Buildings in Pickwick; the site would create a strung-out development which would be difficult to integrate into the town; unacceptable levels of vibration and noise from the mining underneath and the road adjacent; the proposal would constitute unnecessary development as the area is well on its way to meeting the housing need quota; and the North Wiltshire Local Plan 2011 states that The Landscape Character of the Countryside (NE15) should be protected should be preserved as such."

Spatial Plans: recommend that the application is determined in accordance with the policies of the emerging Wiltshire Core Strategy and NPPF

Highways: no objection, subject to suitable off-site highway improvements and conditions

Landscape: concerns raised in respect of boundary landscaping and relationship to the wider area and AONB in particular, requiring a detailed landscaping scheme that may warrant substantial deviation from the indicative layout

Urban Design: concerns raised in respect of the makeup, layout and design of the indicative scheme in relation to local character, amenity and safety

Conservation: concerns raised in respect of the impact of the development on local designated and non-designated heritage assets, including the Pickwick Conservation Area

Environmental Health: No objection on contamination grounds. However, concerns are raised in respect of the potential conflict of use between the development and the consented quarrying operations beneath the site

Ecology: objections, specifically in relation to the impact of the development on the Bath and Bradford-on-Avon Bats Special Area of Conservation (SAC)

Archaeology: no objection, subject to conditions

Energy: objections, citing the submitted energy strategy as inadequate

Environment Agency: no objection, subject to conditions and informatives

Wessex Water: no objection, subject to conditions

215 letters of objection were received from members of the public, including those made on behalf of the Corsham Civic Society, Pickwick Association, Katherine Park Residents' Association, Beechfield Trustees, Guyers House Hotel and CPRE (North Wiltshire & Swindon Group) but not including repeat representations. The following planning issues were raised:

- Principle of development and land supply (194 references)
- Impact on the character and appearance of the site and its setting (158)
- Impact on the Conservation Area, listed buildings and historic fabric (96)
- Impact on the nearby Area of Outstanding Natural Beauty (89)
- Impact on highway safety (165)
- Impact on other local infrastructure (152)
- Impact on local availability of commercial space (117)
- Impact on ecology (33)
- Loss of agricultural land (19)

Other relevant points raised on a limited number of representations related to impacts of noise and additional pollution, as well as the relationship to underground quarrying activities consented and implemented in the vicinity of the site.

A petition with 84 signatories has also been received, objecting to the application on the grounds bulleted above.

One letter of support was received, citing the provision of new housing and office space, visual amenity of the proposal and contribution to local infrastructure.

Re-consultation was undertaken on a reduced turnaround between 17 February and 3 March 2014, following receipt of amended information relating to design and access. 64 further public objections were received.

Representations from internal consultees in respect of S278 and S106 agreements are set out below under the 'Access and Highways' and 'S106 Contributions' headings respectively.

ASSESSMENT:

Principle of Development

Under the adopted North Wiltshire Local Plan, Policy H4 remains a policy consideration in respect of the principle of development. However, due to the scale of the development and advanced stage in preparation of the emerging Wiltshire Core Strategy, it is considered that this can only be accorded limited weight in this instance. The policy adopts a rigid approach to the distribution of new residential development and it is unlikely that the current proposal would demonstrate suitable circumstances to overcome this consideration, nor is it understood to be the applicant's intention to do so. Although the development framework boundary is proposed to be retained for the purposes of its superseding policies, CP1 and 2, it is reasonable that the scheme should be assessed principally against these material considerations. Core Policy 2 requires the provision of at least 42,000 homes – revised from 37,000 in light of the Inspector's 10th procedural letter – between 2006 and 2026, distributed between Housing Market Areas (HMAs) comprised of Community Areas. The site is within the North and West Wiltshire HMA and the Corsham Community Area (CCA). CP2 states that within the limits of development defined on the Proposals Map, there is a presumption in favour of sustainable development at settlements identified in CP1. Development which does not accord with the delivery strategy is deemed unsustainable and will only be permitted in exceptional circumstances. Non-strategic development sites should be brought forward through either the proposed Site Allocations DPD or a Neighbourhood Plan, in line with CP1 and CP2, and the Core Strategy Inspector has indicated his support of this approach.

Having regard to the present lack of such a Neighbourhood Plan or Site Allocations DPD, therefore, the acceptability or otherwise of exceptional schemes such as this depends to an extent upon its general compliance with other relevant planning policies and specifically the vision for the area as set out under the relevant Community Area Strategy contained in the Core Strategy. Paragraph 5.59 of the Core Strategy is highly instructive in this regard, and can be considered to set out the criteria of what might be considered 'sustainable development' for the area. It is considered that this proposal does very little to demonstrate how it has addressed any of the local issues or considerations, as set out in emerging policy CP11, and simply relies upon the benefits brought about by housing and employment to justify its potential impact at this location. Crucially, therefore, the site is not considered to provide a scheme that can be considered sustainable development as it takes no account of the local context, and is unable to demonstrate the benefits that this proposal would bring to the CCA.

The Council's Senior Spatial Planning Officer has observed that the site is clearly a sensitive location, and while the wider benefits of housing and employment proposed are acknowledged, any decision about the site should include as material consideration the wider strategic context of Corsham. The SHLAA indicates that there are a number of other sites in the Corsham that are subject to either planning applications or, in case of redundant military sites, previously developed land at the early stages of planning but likely to deliver significant schemes in the near future. These sites appear to offer more suitable locations for major development without causing the same adverse impacts at a sensitive location. CP2 has specific targets for the delivery of previously developed land over the plan period and the emerging vision for the CCA includes specific reference to dealing with MoD sites as a priority. Given that unresolved issues or unknown impacts remain on this site, there appears to be better locations for this scale of major development.

While the employment element of the proposal is also affected by the same issues as the housing, as referenced above, there is some policy support for employment proposals outside settlement boundaries. In relation to the adopted plan the employment element of the site would be considered major development in the context of a rural area and therefore would not be acceptable under existing policy BD4. CP11 identifies that 6 ha of new employment land should be provided in the Corsham Community Area over the plan period, however an extension of 1.2ha to the Fiveways Industrial Estate has already been permitted to provide for the expansion of an established adjacent business, leaving a residual need for 4.8 ha of employment land. CP34 also identifies a number of key target sectors for the Wiltshire, of which bioscience and ICT and creative industries are of particular interest to Corsham. The application as it stands appears to have no specific end user, however, and the proposed scheme is for 1,395sqm of B1 office use, a town centre use as set out in the NPPF. In the absence of any specific users connected to target sectors prevalent at Corsham, or justification for a town centre use at this location, there appears to be no policy support in either emerging or existing plans and little or no justification for the large amount of office space being provided out of the town centre.

Paragraph 49 of the National Planning Policy Framework states that there shall be a presumption in favour of residential development and relevant local policies should not be considered up-todate where a local planning authority cannot demonstrate a 5-year supply of housing land. It has now become a substantive part of the applicant's case that the Council cannot show a deliverable supply in this regard, adding weight to the merits of the proposal. In responding, the Council's Senior Spatial Planning officer has confirmed that The Council has submitted a revised Housing Land Supply Statement (WCS Exam Document 91) to the Inspector as part of the current proposed modifications that confirms the Council is able to demonstrate a current 5 year land supply. It is expected that an updated land supply statement will be provided in August 2014 which is expected to continue to demonstrate that the Councils maintains a five year land supply.

Previously cited delivery figures for the Community Area take into account the 100 approved units at Copenacre, but not the 88 units delegated for approval at land South of Bradford Road/East of Fiveways Trading Estate, the application for which is at the draft S106 stage. Once this agreement is sealed, permission will be issued and the authority is in receipt of correspondence that confirms the site to be immediately deliverable. At the time of writing, a further application relates to 170 units at land South of Bradford Road, further East than the aforementioned site. Without prejudice to that application, it is reasonable to observe that, taken on the balance of factors, it is certainly a less complex site than that subject of the proposal considered here. There are no known mining operations, rights of way or bat roosting/concentrated migration points within the site itself or its immediate vicinity. Of course, the natural consideration in relation to the principle of development remains critical, and it is of course not the purpose of this report to speculate on the likelihood of success in that instance. Furthermore, those figures do not take account of the substantial areas of Ministry of Defence estate around the Rudloe/Westwells area anticipated to come forward for development during the plan period. Although timescales and potential development mix can only be speculated upon at present, the MoD has now begun to break up and dispose of parts of its estate, the redevelopment of which is explicitly supported under CP37 of the Core Strategy.

Impact on Landscape and the AONB

The site is located in countryside outside the existing settlement framework boundary and is typical in character of the 'rolling settled lowland type' identified in the Wiltshire Landscape Character Assessment. The site is included within 'Landscape Character Area 10 – Corsham Rolling Lowland' – and bears many of the characteristics of land within this designation, including gently sloping topography, mining infrastructure and high-quality local stone boundary treatments. The stated aims of the landscape management strategy for the area include an emphasis on restoring the rural character of urban fringe land, and the role of the Landscape Character Assessments is reinforced under Core Policy 51 of the Wiltshire Core Strategy. Such is the perceived quality of this swathe of land occupying the intervening space between the built envelope of Corsham and the Cotswolds AONB that it has been designated as the Corsham Special Landscape Area, within which the site falls.

Regard is also given to the setting of the Cotswolds AONB itself, the fringes of which extend to approximately 650m to the North and 1.1km to the West of the site. From these nearest edges of the AONB, the landscape slopes sharply away and is characterised by sporadic woodland and many of the agricultural and estate boundary types seen in the immediate vicinity of the site. Whilst the scheme includes a significant proportion of soft landscaping, particularly screening the northern edges and softening the relationship to the Bath Road, this bears little resemblance to the typical planting profile of the countryside approaching the designated landscape beyond. In order to be effective, the landscaping along the northern boundary and around the airshaft and commercial units, reads more as a pocket of structured woodland. Elsewhere on the site, there is little indication that local character is to be meaningfully pursued, with no serious measure to reinstate boundary walling or estate fencing. These locally-distinctive characteristics should

instead be reinforced where possible, as set out at the penultimate point of paragraph 5.59 of the Wiltshire Core Strategy core policy 11.

It is also worthy of note that the local footpath network, including CORM75 directly traversing the site, provides direct links to the AONB countryside and can be observed as being enjoyed much as an extension of that high-quality landscape. The recreational function of this linkage and the site as a whole is a relevant consideration beyond the land's basic visual amenity value. Although the indicative landscaping corridor and pockets of public open space following the footpath route do offer some softening effect, it is clear that the development will fundamentally alter the character of this public right of way, with a distinctly suburban feel to the development compounded by the reliance upon cul-de-sacs and enclosed amenity space. In this regard, the experience of the footpath user would be very different to that encountered through the traditional 'village'-type fabric elsewhere in the surrounding rural network.

It is the view of the Council's Landscape Architect that, owing to the above concerns, the scheme should be considered in relation to the availability of alternative previously-developed land in the locality as well as potentially more suitable Greenfield sites. Should the principle of development be accepted, however, it is considered essential that a suitable landscaping scheme is prepared to secure:

- Retention of important existing site trees, hedgerows and wooded areas;
- Retention, vegetation removal, repair, and ongoing maintenance provision of important existing perimeter stone walls fronting Bath Road and Guyers Lane;
- Re-use of existing stone from dry stone walls unable to be retained within new development;
- Use of additional new stone (to be used in appropriate ways to reinforce local character and distinctiveness in public areas, open spaces, key boundary frontage, junctions, turning corners and reinforcing entrances etc);
- Reinforcement of the northern perimeter hedge line by introducing a significant additional belt of woodland planting to help screen development from the sensitive north. To provide taller wooded backdrop to urban development viewed from the south and further barrier to help reduce light spill etc. i.e. mitigating urban fringe effects to high quality countryside beyond;
- Proposed street layout and development frontage to allow views and public amenity and appropriate maintenance of important retained landscape features and new structural landscaping elements;
- Appropriate building standoffs to Guyers House Hotel and entrance drive including Guyers Lane;
- SUD system layout to provide multifunctional use; i.e. surface water attenuation, public amenity, ecological value;
- Maintain the existing direct route and clearly defined and direct public footpath link through the proposed development site. To be well overlooked and well connected with new development etc. (back gardens should not border this route);
- Well integrated and well overlooked equipped areas of useable open space;
- Low level lighting schemes fronting countryside boundaries;
- Subdivision and separation of large development blocks and urban massing by use of strategically placed open space and tree planting;
- Very high quality, building design and building layout; and
- A limit of built development to 2-storey scale.

Consideration should also be given to the loss of good-quality agricultural land, as it is understood that 50-60% of the site is comprised of Grade 2 land and the remainder a mixture of 3a and 3b. Paragraph 112 of the NPPF requires that the 'economic and other benefits' of the best and most

versatile (Grades 1-3a) agricultural land are taken into account in the planning decision-making process. Whilst there is no probable economic disadvantage to the ongoing agricultural operation, nor is there any indication that the areas of lesser quality have been prioritised for development, in order to secure the long-term protection of some or all within Grades 1 and 2.

It is considered that, due to its conflict with Paragraph 109 of the NPPF and CP51 of the Wiltshire Core Strategy, the proposal would have a detrimental impact on a valued landscape of considerable character. There is also little to suggest any wider public interest to the scheme that should justify an exception in this regard, nor any instruction at Paragraph 47 of the NPPF that should warrant a relaxation of the Council's expectations in this instance.

As Paragraphs 115 and 116 of the NPPF relate specifically to land *in* designated landscape areas (National Parks, The Broads and Areas of Outstanding Natural Beauty), it is considered that these are not relevant in this instance. However, the wider setting of the AONB is recognised and given explicit and significant weight through Core Policy 51 of the Wiltshire Core Strategy. In this case it has not been adequately demonstrated that the development would not adversely affect the setting of the AONB and its recreational enjoyment - to which it is considered the site makes a significant contribution in both aesthetic and functional terms - contrary to this policy.

Impact on the surrounding area and Conservation Area

This part of Corsham is characterised by a mixture of built fabric, including commercial and community space, historic cottages and housing estates, with a distinct sense of being at the point of transition between the urban fringe and open countryside. In particular, the land to the North of the A4 at Corsham remains largely undeveloped, with the exception of Academy Drive and the neighbouring Woodlands, which are regeneration schemes. The comments set out below have been discussed and agreed with the Council's Conservation Officer.

The site borders the Pickwick Conservation Area along the entirety of its eastern boundary with Academy Drive, and for a small proportion of its southern boundary where the parcel of land thought to be associated with no.51 is inset. Whilst the adjacent fabric of Academy Drive, other than Beechfield House, its former stables and the gate piers, all of which are Grade II-listed, is less sensitive and screened by a mature tree boundary, the southern and south-eastern aspects are more open to view, such that the development will inevitably be seen in the context of the designated heritage asset. In particular, the site's proximity to the Grade II-listed St Patrick's Church and the Coach House at no.52 Pickwick, together with the iconic Grade II roundhouse to the southeast of no.51 is worthy of note. As with the stone boundary wall at the southern edge of the site itself, these individual buildings add considerable value to the street scene experience at this location.

Regard is also paid to the relationship to the Grade II-listed Guyers House and, critically, its estate setting, which borders the site with the remains of iron estate fencing typical of its time and location. The open aspect of Guyers House, with the closest buildings currently being, appropriately, Guyers Lodge and the collection of agricultural buildings at the property now known as 'Spindrift', to the West, reinforces this historic setting. Taken as a whole, the experience of accessing Guyers House via Guyers Lane, which itself continues to several further listed barns further northwest, is one of considerable historic merit. The established stone wall and narrow banked verges, together with the rubble stone of the traditional cottages at nos.3 and 5 all make a valid contribution to this historic integrity, to the sense of place and to public amenity generally. It is also integral to the setting of the listed building.

It is of some considerable concern, therefore, that the relatively intensive development of the site, albeit allowing for a landscaped buffer on its northern edge, would erode the inherent value and comprehension of this setting. Locally-distinctive elements such as the stone walls are likely to be

weakened significantly; either by their partial removal or simply their being dwarfed by nearby buildings. Furthermore, it seems from the design and access statement that there is no explicit intention to adopt such elements of the local vernacular into the final scheme.

Although something of the established 'fringe' arrangement is maintained at the southeast corner of the submitted masterplan through the inclusion of public open space, conversely the southwest corner is dominated by the commercial element of the scheme. For this to take the form of two substantial buildings of generous two-storey proportions is considered wholly inappropriate to its high-quality setting and it is considered would impact negatively upon the setting of Guyers Lane and dwelling nos. 3 and 5 in particular.

Despite its lack of site-specific designation, the site's setting is a relatively sensitive one, to which the current land use and surrounding structures and buildings make a significant contribution. It is considered that, in its indicative form, the proposal fails to protect, conserve or enhance the setting of designated and non-designated heritage assets in the immediate vicinity, or otherwise contribute to the built quality of the area. For this reason, it is considered that the application is contrary to policies in the NPPF (2012) and conflicts with CP51 of the Wiltshire Core Strategy.

Layout

The Council's Urban Design consultee has provided a comprehensive response to the submitted layout plan and Development Framework prepared in support of the application. Although mindful of the indicative nature of the layout plan, the Officer recognises that the scheme appears to respond positively to certain local considerations, including the provision of an engaging area of public open space, legible access and measures to reinforce the existing public right of way as a green corridor through the site. However, there are a number of areas where the masterplan fails to acknowledge critical local characteristics and constraints.

The employment buildings at the southwest corner of the site are currently shown as two squareplan blocks on the indicative layout, together with associated areas of car parking. In the context of the urban-rural fringe and main transport gateway into Corsham, these buildings would be extremely prominent and would dominate the street scene at this corner. In design terms, at the scale indicated, the pyramid roof over each block would also appear particularly out of character in this setting. Together with the extent of hard standing around these blocks and forming the entrance to the development, this will create an unduly urbanizing effect on the semi-rural character of this setting. This is heightened by the elevated position of the blocks being at the higher end of the site rising up the existing slope away from Bath Road, This will not 'reflect and enhance local character', as stated as a key objective in the D&AS and enshrined in local and national planning policies.

In general, the employment buildings are of a form, height and relatively close spacing that would create an uncharacteristic bulk and massing by comparison with the neighbouring buildings and open space lining Bath Road. The design intent shown in the Design and Access Statement suggests the Employment Area should instead be set back behind a landscape margin with Bath Road consistent with the depth of the margin across the residential area.

Although at the outline stage, the use of linked properties is referred in the D&AS as a key objective whereas the series of public open spaces are of a distinctly suburban estate character being weakly defined by detached properties, driveways and garages which does not create the sense of place and legibility that the substantial use of linked dwellings and more continuous and varied built frontage would realise. The dwellings conveyed on the Illustrative Masterplan and Illustrative streetscene sketches of the Character Areas conveys the universal application of standard house types and does not indicate that the intrinsic local character conveyed by the submitted photo references will be reflected to any significant extent.

Although the existing public right of way on the Illustrative Masterplan is to be itself reinforced, it appears nonetheless to be channelled between the high enclosed rear and side of plots, creating a poor experience which does not reflect the importance of this recreational route into the countryside from the town. The lack of active frontage leads to potential safety and security concerns for users and residents. Furthermore, there are a number of areas where the high enclosed back gardens front onto public open space and are the focus of views along it, which does not present an appealing backdrop to these public routes particularly where proprietary garden sheds, conservatories are likely to be seen. For example, at the entrance to the public right of way from the spine road and the side and rear of the plot at the SW corner unfortunately visible from Bath Road.

A strip of woodland around the nearby mineshaft is to provide something of a buffer between the employment and residential land uses and is likely to mitigate any immediate impacts of the commercial element on the residential amenity of future occupants. However, this landscaping element is atypical of the area and does not contribute significantly in respect of high-quality public open space. Although it is appreciated that this tree planting may mitigate to an extent the threat of development to the Bath and Bradford-on-Avon Bats SAC, the probable efficacy of this remains a matter of separate concern.

Access and Highways

The Council's Highways Officer is satisfied that the submitted details relating to a new four-way roundabout at the existing Bradford Road junction and right-turn lane arrangement further East represent an acceptable means of accessing the development. The former in particular is anticipated to alleviate existing transport pressures to a greater extent than the sum of the additional movements associated with the development. Other improvements set out by the Highways Officer include the provision of two bus stops with laybys and any and all costs associated with a reduction in speed limit on the A4 past the site from 40mph to 30mph. On this basis, it is therefore concluded that the highways implications of the scheme insofar as defined for the purposes of the outline scheme are acceptable in planning terms.

Whilst concerns have been raised in public objections relating to the existing level of traffic using the A4 Bath Road at peak hours, and the likely impact of the proposed development on local congestion, traffic noise, pollution and safety, it is the view of the Council that these additional movements can be accommodated by the local highway network. The A4 is a main route with known 'pinch points' such as the Hare and Hounds roundabout and, to a lesser extent, the B3109 Bradford Road junction but nonetheless handles a substantial volume of traffic to which the proposed development would supplement relatively little – around 4% for forecast year 2018. Other prospective long-term improvements include the installation of traffic lights at the Hare and Hounds, although this would be unconnected to the proposed development and may encounter other considerations such as the impact on the Pickwick Conservation Area.

As a matter of standard practice, in order to mitigate the direct impacts of the development, other agreed provision relating to highways improvements is included and comprises:

- 1. The construction of the site access roundabout for site Access A including associated street lighting alterations;
- 2. The construction of the ghost island right turning lane for site Access B including associated street lighting alterations and the construction of a pedestrian crossing island to assist pedestrians in crossing the A4;
- 3. Provision of 2 bus shelters and bus laybys including high access kerbs on the frontage of the site; and

4. All costs including implementation associated with a traffic order to lower the A4 speed limit past the site from 40 mph to 30 mph whether or not the order is approved.

It is considered that the above schedule, together with a suitable access layout within the site itself, will be adequate to ensure that the development does not result in the detrimental loss of highway safety and, in these terms, the proposal is acceptable.

Mining Operations and Residential Amenity

The Council has also had regard to the extant consent for mineral extraction beneath the application site in association with the Hartham Mine operation and relating potentially to almost its full extent. To date, the consented mineral workings have progressed in a south-westerly direction from the oldest part of the mine, away from the application site. However the consent runs until 2042 and, with the majority of its southwest portion now exploited, it is entirely probable that at some point within that time a substantial quantity of its northeast component will be worked.

Noise and vibration complaints have been received by the Council's Environmental Health team in relation to the active mining works in the area, with certain activities causing amenity issues for occupants of certain properties. These complaints have not, however, lead to the identification of a statutory nuisance under the terms of the Environmental Protection Act 1990. Subsequent to the Council's raising concern in respect of the paucity of information in relation to the likely impact of consented mineral works, the applicant has produced further information (Wardell Armstrong, February 2014) in relation to this point.

Having consulted the Council's spatial planning manager in relation to the issue, it is confirmed that the Council has no minerals safeguarding objections to the proposal. It is apparent from the reports submitted that due consideration has been given to the NPPG guidance on assessing stability issues (replacing former PPG14) and by extension the relationship between the former / current underground mining operations and the surface of the application site. The recommendations set out in the report in relation to the structural implications of mining activity beneath (or in the vicinity of) the proposed housing are of course circumspect; however, for obvious reasons, this is to be expected. From a purely geotechnical perspective, it is found that the submitted reports appear to provide sufficient information upon which to reconcile site stability with the principle of development, in accordance with paragraph 121 of the NPPF.

The subsequently submitted noise assessment builds upon the technical evidence prepared initially in support the application. The current mining operations are discussed and have been assessed, and it is reasonable to extrapolate from this information the potential implications of the full exploitation of minerals consent beneath the site for the residential amenity of occupiers above. Although it would appear that the predominant source of noise emanates from road users, it is clear that the operation of machinery underground does have a propensity to be heard at surface. In the view of the Council's Environmental Health Officer, this has the potential to pose a significant risk to the residential amenity of future occupiers and must be properly addressed.

The Officer has expressed the view that the amenity of those living or working in the new houses and offices may be adversely affected by existing authorised mining activity and has therefore recommended refusal of the application in its current form, given the lack of evidence to suggest that this is unfounded. Whilst this might, under different circumstances, be a matter that could be addressed by the appropriate phasing and/or location of development within the site – both in respect of surface construction and mineral workings – and agreed at the reserved matters stage, one is mindful that this is difficult for several reasons. Firstly, the mining rights are held legitimately under an extant permission, for a considerable period of time and relating to almost the full extent of the site, such that their progress is likely to take a logical route from the northeast end of the existing operation. To attempt to vary this either through phasing or physical location poses the risk of sterilising the mineral altogether. Secondly, the amount of development proposed at surface under the current application when combined with the other physical constraints of the site – access, the right of way, mine shaft, public open space and landscape buffer – is such as to preclude any meaningful variation in layout sufficient to avoid conflict with the minerals consent. As this impact appears unavoidable, therefore, an objection is raised on amenity grounds whilst the probable impacts of implemented mining operations on residential amenity are unknown.

From the assessments undertaken, it would appear the current and future mining operations do not lead to vibration being experienced at surface. However, from a minerals policy perspective, it is of some concern that the issue of safeguarding has not been fully addressed, or acknowledged, in the application details. One might reasonably expect the applicant to have provided a reasoned account of why the proposed housing development will not prejudice the legitimate rights of the mining company (Hanson Bath & Portland Stone Ltd) to implement their planning permission in the future. As discussed above, this may be unlikely, although the reverse impact is potentially significant to residential amenity. Although resolution of this matter may be technically achievable, at this time there is insufficient evidence to demonstrate the acceptability of the development in respect of Policies C3 and NE18 of the North Wiltshire Local Plan, CP57 of the Wiltshire Core Strategy and paragraph 123 of the NPPF.

Ecology

In response to the initial comments of the County Ecologist, the applicant has submitted amendments and further supporting information with regard to the issues raised. The critical matters to which the Ecologist's original comments relate are as follows:

- Potential impacts upon bats; particularly potential impacts upon Bechstein's bats associated with the Bath and Bradford Bats SAC which may be swarming at the air shaft in autumn
- Impacts upon great crested newts (GCN) which may occur on the site in their terrestrial phase
- Impacts upon parkland habitat features of interest, particularly veteran trees and associated fungi and fauna, particularly saproxylic beetles

The additional/revised information submitted includes an illustrative masterplan and landscape framework plan (submitted 07.02.14). The applicant has also recently submitted (on 30 May 2014) further ecological survey information including bat and GCN surveys. Having initially raised concerns similar to those of the County Ecologist and requesting further survey information 'in order to establish the species of *Myotis* bats roosting within the airshaft/mine and swarming at the site', querying the size of a proposed buffer around the air shaft and raising concerns about the proximity of the employment land and a proposed road, Natural England has also made a further response in light of that additional ecological information (dated 22 May 2014).

Of particular concern is the impact of development on *Myotis* bats; all of which exhibit 'swarming' behaviour tending to occur at underground sites such as caves and mines during the late summer / autumn period (mid-August – mid-November) as bats travel long distances to visit them and gather in large numbers, principally to mate and facilitate genetic exchange between otherwise isolated populations. However, this behaviour is still not well understood. Previous surveys at this site have recorded *Myotis* sp. bats swarming at the shaft entrance. However it was not possible to identify which species were present, and importantly whether or not Bechstein's bats swarm at the

shaft. Further bat surveys have been carried out over three nights in March 2014, which involved catching some of the bats around the mine entrance after dark in order to identify the species of *Myotis* bats emerging from / entering the shaft. It was not possible to physically access and inspect the underground quarries themselves. Although the weather conditions were suboptimal, four bats were trapped on a single night and identified as Daubenton's and Natterer's, while further *Myotis* bats were also recorded flying at the entrance but were not trapped. No Bechstein's bats were trapped. While the additional trapping data provides a useful indication of bat activity at the shaft in March, it does not provide any further evidence to indicate which species use the site during the swarming season. Natural England has reviewed the bat survey report and concludes that *'the survey effort to date cannot rule out the use of the site by Bechstein's*' and strongly recommend further survey work during the swarming period to reduce this uncertainty.

A landscape framework plan has been submitted and the accompanying bat report suggests that the site would be enhanced for bats as a result of the development, including the landscape proposals. However given that swarming is not well understood there is currently no clear guidance or best practice available for mitigation for bat swarming sites, other than that they should be protected. Of the swarming sites which have been studied, few if any are understood to be located in urban areas which suggests that urban development may not be compatible with this behaviour, and indeed no evidence has been presented with the application to demonstrate that the proposed mitigation measures would be likely to be effective in the current circumstances. Natural England has also expressed concerns and highlighted the need to 'develop a suitable mitigation strategy due to the specialist habitat requirements of Bechstein's'. At this stage there is therefore still a significant degree of uncertainty over the effectiveness of any mitigation scheme in the context of a comprehensive development of the site.

Natural England has suggested that the application will require a Habitats Regulations Assessment (HRA), due to potential impacts of the development upon the Bath and Bradford Bats SAC. It is the legal responsibility of the LPA to undertake the HRA under Regulation 61 of the Habitats Regulations, which has been completed in accordance with the requirements of the Regulations, having regard to relevant guidance and case law. From the limited evidence presented, the Council has been unable to conclude that the proposed development would not have an adverse effect upon the integrity of the Bath and Bradford Bats SAC, largely due to the uncertainty over the potential use of the site by Bechstein's bats from the SAC, and effectiveness of the proposed mitigation measures. The Habitats Directive requires a precautionary approach to such assessments and where reasonable doubt remains over the potential impacts of a proposal on the integrity of an SAC, permission should not normally be granted unless there are imperative reasons of overriding public interest to justify the proposals and there are no alternative solutions which might avoid the impact. In the current case, it is considered there are no overriding reasons to justify the proposals, given the policy position set out above. The application therefore fails to meet the requirements of Regulation 61 (as set out in detail within the HRA) such that the LPA may not legally permit the development.

Although the development has the potential to impact upon GCN populations, which have been identified at two ponds within 125m of the northern site boundary, through habitat loss and mortality, a mitigation strategy is included within the survey report which demonstrates how such impacts would be reduced. A significant population of the common toad was identified within 20m of the same boundary and, although not legally protected, it is worthy of note that this is identified as a priority species under the NERC Act and falls to be protected under Policy NE11 of the adopted Local Plan. Where impacts upon a European Protected Species are anticipated as a result of a development proposal, however, the LPA is required to consider whether the proposals are licensable by Natural England (in order to legally permit certain offences which are necessary to allow the development to proceed), having particular regard to the 'three tests' applied to such applications. Having reviewed available evidence and the current proposals, and having had regard to these tests, the Council is satisfied that the scheme could obtain a derogation licence

from Natural England in respect of the impact on Great Crested Newt, allowing the development to legally proceed. The same mitigation strategy would also address potential impacts upon common toad.

Despite previous indication of this consideration by the LPA, no further evidence or other submissions have been produced with regard to parkland habitat, under which the site could reasonably be defined under the accepted Joint Nature Conservation Committee (JNCC) definition and protected under Policies NE10 and NE11 of the Local Plan and Circular 06/2005 (Para.84). The County Ecologist initially raised concerns in respect of the loss of mature open-grown trees, including sessile oak, larch and ash, which typify the parkland landscape of the site and are known to support extensive deadwood and fungal growth. Due to the need to protect residential amenity and public safety, many if not most retained trees are also likely to require extensive removal of deadwood in the course of development, resulting in the loss of this important habitat. These elements are likely to support are likely to support significant fungi and fauna, and in particular saproxylic beetles. However, the prospective impacts of development in these respects have not been assessed.

For the reasons set out above, the proposal fails to satisfy the requirements of Regulation 61 and conflicts with Policies NE10 and NE11 of the adopted North Wiltshire Local Plan, CP50 of the emerging Wiltshire Core Strategy and paragraph 118 of the NPPF. As such, it is recommended that the planning application should be refused on ecology grounds.

Archaeology

In the view of the County Archaeologist, it is not considered that the site presents and reasonably likelihood of yielding significant archaeological finds. A geophysical survey undertaken in the early part of 2014 indicated only minor extents of typical features such as former ditches/ponds and nothing of immediate archaeological interest. For this reason, it is considered that an appropriately-worded condition, covering any instance in which new finds are discovered during the course of development, is adequate. This approach is considered to be consistent with Paragraph 128 of the NPPF specifically.

S106 Contributions

Notwithstanding the recent draft revisions to the emerging Core Strategy in relation to levels of affordable housing provision, it has been confirmed that the proposal remains on the basis of 40% affordable provision, comprising:

- 58% 2-bed units
- 38% 3-bed units
- 3% 4-bed units

On a 65% affordable rented, 35% intermediate basis.

In the view of the Council's Housing Officer, this profile does not meet the established local need for affordable housing, and should instead make provision for a minimum of 10% 4-bed units, 10% 1-bed and 40% 2-bed. The proposed level of 3-bed provision is acceptable.

Despite efforts to renegotiate this provision, progress has stalled with the profile originally set out in the submission remaining unchanged. For this reason, it is considered that although the overall proportion of affordable housing weighs in favour of the proposal, the distribution of those units does not accurately reflect local need. Although the applicant has suggested that the exact profile of affordable housing could be dealt with by condition, it is felt in this instance that - as the

affordable housing element is a material consideration in favour of the scheme rather than simply a standard requirement of an otherwise acceptable development - it is important to secure this in detail in the first instance, however.

It is the applicant's intention to provide public open space on-site as part of the general landscaping works. In terms of S106 contributions, the standard of adoptable public open space required equates to an area of 10,044m², either to be offered for adoption or to be maintained by a suitable management company. Of this area, 924m² should be play provision.

In the absence of on-site sports pitch provision, an off-site contribution of £33,595 is sought in this regard, securing $3,540m^2$ of space. An off-site contribution is also sought in respect of local cemetery provision, to secure improvements at the nearby Corsham Cemetery to the value of £8,330.

These on and off-site contributions are now agreed and are considered to be fully CIL-compliant.

The application also generates a requirement for the provision of 29 secondary school places, with a projection that the Corsham School will be at capacity by 2018. At the current cost multiplier of £19,155 per place, this equates to a total education contribution of £555,495. The catchment primary school, Regis Academy, however indicates sufficient capacity to accommodate the increase in numbers associated with the development. As such, no contribution should be sought in this regard.

A contribution of £49,182 toward the provision of local public art and public realm improvements is also sought by the relevant consultee, whilst Wiltshire Fire & Rescue have identified a total contribution level of £12,088.62, both based on the mixture of dwellings and commercial floorspace proposed. Having reviewed the justification for the contributions, despite some policy support in respect of the former, it is considered that neither complies with the requirements of the relevant CIL regulations and therefore cannot be secured in this instance.

It is the case that, at the time of determination, there remains aspects of the S106 that are yet to be agreed with the applicant. These include the evidence base for the education contribution and CIL compliance of this and the public open space contributions. However, there is little to suggest that it should not be possible to reach a suitable agreement in respect of all matters but affordable housing provision through traditional negotiation.

Other Matters

It is the Council's view that the submitted Waste Audit and Management Strategy (WAMS) broadly accords with the requirements set out at WCS6 of the Waste Core Strategy. Nonetheless, at this stage, the general principles set out require substantial refinement prior to any commencement of development and therefore a detailed Site Waste Management Plan (SWMP) would be required at the reserved matters stage in this regard.

Core Policy 41 of the emerging Wiltshire Core Strategy requires that major development proposals are supported by an energy strategy. Despite the relative paucity of equivalent guidance within the adopted Local Plan, it is considered that given its advanced stage of production and prevalence in relation to other matters discussed, the Core Strategy should be given significant weight in this regard. At the outline stage, the applicant has committed to providing compliance with, at least, BREEAM 'Very Good' standards for the employment buildings and Level 4 of the Code for Sustainable Homes ratings for all residential units, representing the minimum requirements of new major development under CP41. As detailed design matters are reserved at this stage, it is submitted that to provide a detailed strategy at this time would be speculative and premature. It is the view of the applicant, and agreed in principle, that a full energy assessment and sustainability scheme could be secured by condition.

The Council's Energy Policy Officer has been consulted in respect of the proposal, and has reviewed the submitted energy strategy in respect of the development. Although recognising the outline nature of the application and supporting the stated objectives of the strategy, the Officer has expressed serious concerns at the methodology used in the production of the document. Domestic energy consumption appears to be substantially underestimated and therefore a stated aim of providing a 10% reduction in CO₂ emissions across the site is considered to be relatively trivial as an absolute figure. Moreover, this casts doubt on the capacity of the applicant/developer to deliver a meaningful element of sustainable energy in practice, despite Corsham's relatively progressive position in terms of innovation in renewable energy schemes.

Conclusions

The proposal is not supported in principle under the adopted or emerging development framework and, owing to its location, size, scale and indicative layout, would adversely affect the semi-rural setting of the site and the wider designations of the Cotswolds AONB, Corsham Special Landscape Area and Pickwick Conservation Area. Furthermore, the indicative scheme itself is likely to impact negatively on the visual quality and enjoyment of the immediate area, which is considered a composite of the factors outlined above. Insufficient evidence has been provided to suggest that the development would adequately protect site ecology, and specifically an internationally-important Special Area of Conservation. Additionally, a holding objection is retained while the heads of terms of a S106 agreement are yet to be settled. It is considered, however, that it should be possible to resolve this matter by negotiation should for any reason these outstanding objections fall away. Further serious concerns are noted at this stage in respect of the protection of residential amenity, the low-carbon credentials of the scheme and questionable likelihood of full compliance with policy in the emerging Core Strategy in these respects.

RECOMMENDATION:

That planning permission is REFUSED, for the following reasons:

- 1 The proposal is prejudicial to the Council's plan-led approach to sustainable development and the phasing of future growth. In accordance with the NPPF there is a deliverable 5 year supply of land for housing in place and there are no other material considerations that outweigh this position in favour of the proposal. On the balance of considerations, therefore, the proposal is unacceptable when having regard to the principles of polices CP2 and CP11 of the Wiltshire Core Strategy and paragraphs 12, 14, 17, 47, 49, 150, 196 and 216 of the National Planning Policy Framework.
- Insufficient evidence and mitigation has been provided to demonstrate that the proposal would not affect the integrity of the Bath and Bradford Bats SAC in order to satisfy the requirements of Regulation 61 of the Habitats Regulations, and in this and other respects the proposal fails to make adequate provision to avoid, mitigate or compensate for significant adverse effects upon protected species and priority habitats. The proposal is therefore contrary to Policies NE10 and NE11 of the adopted North Wiltshire Local Plan, CP50 of the emerging Wiltshire Core Strategy and Paragraph 118 of the National Planning Policy Framework.
- 3 The proposal, although at outline stage, would adversely affect the landscape qualities of both the site itself and its setting in the context of the Pickwick Conservation Area, Corsham Special Landscape Area and Cotswolds AONB. The proposal is therefore contrary to Policies C3, NE4, NE15, HE1 and H3 of the adopted North Wiltshire Local

Plan, CP51 and 58 of the emerging Wiltshire Core Strategy and Paragraphs 109 and 133 of the National Planning Policy Framework.

- 4 Insufficient evidence has been provided to demonstrate that, on the balance of probabilities, the development by reason of its amount and siting would not give rise to the unacceptable loss of residential amenity to future occupiers as a result of the consented mineral workings beneath the land. The proposal therefore fails to satisfy Policies C3 and NE18 of the adopted North Wiltshire Local Plan 2011, CP57 of the emerging Wiltshire Core Strategy or paragraph 123 of the National Planning Policy Framework.
- 5 In the absence of an appropriate legal agreement, the proposal fails to make adequate provision for affordable housing, public open space and play equipment, all of which should be provided on site. Additionally, the proposal fails to secure contributions towards education provision in the locality, contributions towards public transport, contributions towards leisure provision, contributions towards improving cemetery capacity, contributions towards waste collection as well as the lack of a scheme or contribution to secure the on-going maintenance of open space and play equipment on the site, all of which should take the form of an off-site financial contribution in lieu of on-site provision. The application is therefore contrary to Policies C2, H5 and CF3 of the adopted North Wiltshire Local Plan 2011 and CP3 of the emerging Wiltshire Core Strategy.

APPENDIX 6 – Inquiry Document GDL/LPA/05 SoCG - Noise (unsigned)

LAND NORTH OF BATH ROAD, CORSHAM

13/05188/OUT - ERECTION OF UP TO 150 DWELLINGS, UP TO 1394 SQM B1 OFFICES, ACCESS, PARKING, PUBLIC OPEN SPACE WITH PLAY FACILITIES AND LANDSCAPING

Statement of Common Ground

.

Wiltshire Council have considered the report submitted by Wardell Armstrong "Gladman Developments Ltd" Land off Bath Road Corsham, Supplementary Noise Assessment Report April 2014 and expressed concerns that it failed to satisfy the potential for noise and vibration annoyance to any future residents and noise sensitive buildings on the proposed development from mining operations. In view of this discussions have taken place with Wardell Armstrong with a view to agreeing common ground in an attempt to address these issues.

Following discussions on the 26th January 2015 the following agreed planning condition has been proposed.

Planning Condition

1. Prior to the commencement of the development on any phase of the development hereby permitted, a Foundation Investigation Plan shall be submitted to and approved in writing by the Local Planning Authority.

The Foundation Investigation Plan shall include provision for:

- (i) A foundation zoning plan (which will identify the type and depth of the foundation across the site);
- (ii) Vibration testing, which shall take place during a trial mining test at an appropriate locations to replicate both a typical case and worst case of future mining both within the mine and at foundation level and bedrock level. The results of the test are then to be used by the foundation design engineer to ensure that the noise and vibration levels of the foundations which are constructed on each of the dwellings and noise sensitive buildings are at or below the criteria specified in condition 2.

The scheme of vibration testing shall be agreed in writing by the local planning authority prior to being undertaken and the results provided in writing to the local planning authority.

(iii) The results of the vibration monitoring investigations shall be used to design the foundation of each proposed dwelling and noise sensitive building. This shall incorporate vibration and sound isolation measures for each property (where required).

The foundation design detail and design justification for each dwelling and noise sensitive building foundation shall be submitted to and approved in writing by the local planning authority.

The development shall be completed in accordance with the approved scheme.

Noise/vibration criteria condition

 The foundation structure shall be designed to ensure that noise and vibration from underground mining activity shall not give rise to a noise level within any dwelling or noise sensitive building in excess of that equivalent to Noise Rating Curve 25. Vibration levels shall not exceed 0.1 to 0.2 ms^{-1.75} in accordance with the methodology in BS 6472-1-2008.

Providing the above conditions are contained within the planning permission which may be granted; Wiltshire Council have no further objections on the grounds of noise and vibration from future mining activities.

Informative

The council has agreed this condition but it does not indemnify the developer or mine operator against any future action under the Environmental Protection Act 1990, other legislative provision or civil law.

Signed:

M. Walton Technical Director Of Wardell Armstrong LLP

On behalf of Gladman Developments Ltd

Richard Francis

Senior Environmental Health Officer

On behalf of

Wiltshire Council

APPENDIX 7 – Inquiry Document GDL/LPA/09 SoCG - Amenity (Noise and Vibration)

Town and Country Planning Acts 1990 As Amended

Appeal by Gladman Developments Limited

Land North of Bath Road, Corsham

Agreed position relating to amenity (Noise and vibration)

Following the exchange of evidence, discussions have taken place between Malcolm Walton (Wardell Armstrong LLP on behalf of Gladman Developments Ltd) and Richard Francis of Wiltshire Council and their appointed noise consultant. Wardell Armstrong described the involvement of Total Vibration Solutions Ltd (TVS), a specialist in noise and vibration control who will provide foundation isolation designs for the development.

It was agreed that further noise/vibration measurement at the site is necessary in order to fully quantify the potential for future noise/vibration transmission through the ground under the site. This would then inform the detailed design of foundations which will incorporate anti-vibration material to prevent the transfer of vibration which could re-radiate as noise within buildings.

Details of the further testing to be carried out as described in a letter from TVS dated 4th February 2015 and the noise/vibration criteria to be achieved was discussed with Wiltshire Council and is specified in the planning conditions contained within the agreed Statement of Common Ground.

M Walton

Wardell Armstrong LLP

APPENDIX 8 – Inquiry Document GDL/LPA/10 Letter from TVS dated 4th February 2015



SURVEYS • CONSULTANCY • MATERIALS • INSTALLATION

Total Vibration Solutions Ltd. Low Bay, Commerce Street Carrs Industrial Estate Haslingden, Rossendale Lancashire, BB4 5JT Tel: +44(0)1706 260 220 Fax: +44(0)1706 260 240 www.totalvibrationsolutions.com

4th February 2015

Mr Malcolm Walton – Technical Director Wardell Armstrong LLP 2 The Avenue Leigh Greater Manchester WN7 1ES

Phone - 01942 260 101

Bath Road Corsham – Vibration Isolation

Dear Mr Walton,

Please accept this letter report with recommendations on how to ensure your clients proposed development of residential housing on the above site and situated above shallow mining activities can ensure that there is no noise disturbance to future residents.

Experience

Total Vibration Solutions Ltd are experts in noise and vibration isolation and represent some of the World's best noise and vibration control manufacturers and engineers. Our company is the UK agent for companies such as Getzner from Austria who produce Sylomer high performance isolation materials used to isolate sensitive railways, tramways, subways and builds around the globe. We also represent GERB from Germany who are manufacturers of spring systems, again used to isolate track-bed, buildings, bridges and machine foundations. It was a GERB spring damper system that was used to isolate the Millennium Bridge in London, following problems when it opened in 2000 and was found to vibrate when crowds of people walked across.

Planning conditions

TVS have been advised that Wiltshire County Council have reservations about passing the development for planning approval because the site is located near shallow mining activities or on land that could possibility be mined in the future.

These concerns may be valid and it is true that the vibration generated in the mining operation has the potential to cause re-radiated noise within the proposed properties, however it is also true to say that a well designed and installed isolation system for

the residential properties and their foundations would isolate any problem vibration and make the properties perfectly habitable with no impact on future amenity.

As noise and vibration specialists, TVS would be capable of completing a suitable foundation isolation design following more detailed vibration monitoring of the mining activity in order to fully identify the frequency of the source, which needs to be isolated. This is common with all building isolation projects and is easily solved by conducting on-site vibration tests and in cooperation with the mining company.

It is therefore our recommendation that Wiltshire County Council consider the adoption of an appropriate planning condition to ensure that the proposed development is designed and constructed to incorporate precautionary noise/vibration mitigation measures. We understand that Wardell Armstrong and Wiltshire Council have agreed appropriate condition(s).

Vibration monitoring and foundation design

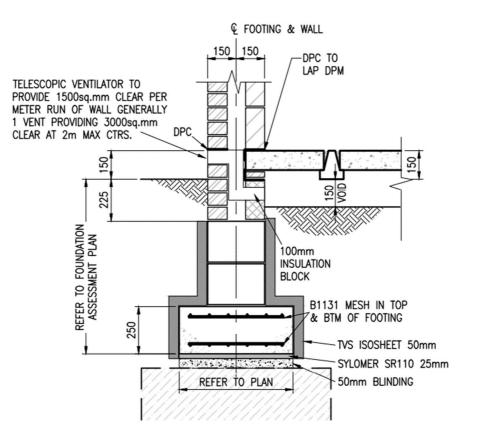
The current development is for B1 offices and up to 150 residential properties, which we understand are to be constructed off traditional strip foundations. These strip footings are usually excavated to a depth of between 0.5 and over 1.5 metres depending on ground conditions. Therefore in accordance with the proposed planning condition, we would dig test holes at the proposed foundation depth across the site and in locations of proposed houses before pouring concrete to create test slabs. These test slabs mimic footing foundations and allow our vibration monitoring equipment to be mounted securely when recording the mining activities. It is also proposed that measurements are taken simultaneously at rock head and within the mine for data gathering purposes.

The tests should be carried out by TVS engineers in conjunction with Wardell Armstrong and ideally, in co-operation with the mining company. It will be necessary to operate the equipment known to cause the vibration at a time when we are monitoring.

The results will be documented in a report and will highlight the vibration frequency and amplitude of the ground borne vibration so that TVS engineers can detail design an isolation system suitable to give isolation to the buildings and resulting in internal noise levels which will achieve the agreed acoustic guidelines. This report and design will be passed to the Council for consideration and approval before any further work is carried out.

Regards costs for isolated foundations, it is our experience that the material costs are relatively inexpensive compared to the standard cost of the foundation construction but can allow properties to be placed on land previously not considered for development due to vibration from railways, tramways, roads and industrial machinery. The cost of the foundation design with the integrated noise/vibration control system for a residential dwelling foundation are estimated by Total Vibration Solutions to be in a range of £2,500 to £4,750. We would anticipate that following any negotiations on a volume basis, is likely to result in the total cost being at the lower end of the range.

The below sketch shows a similar foundation design for residential houses using strip footings when situated near a busy railway.



TYPICAL EXTERNAL DETAIL WHERE HOUSING IS AFFECTED BY VIBRATION FROM NEARBY RAILWAY

I trust the above report will assist in the consideration of the proposed development and is provided without prejudice.

Should you have any questions or concerns about my report please do not hesitate to contact myself.

Yours sincerely

Paul habore

Paul Lafone – Managing Director

Tel: +44(0) 1706 260 220 Fax: +44(0) 1706 260 240 Mobile: +44(0) 7976 801 735 E-mail: pl@totalvibrationsolutions.com

APPENDIX 9 – Application to Discharge Condition 22 Decision Notice date 28th January 2017

28 February 2017

Development Services – North Monkton Park Chippenham Wiltshire SN15 1ER

Gladman Developments Limited Gladman House Congleton Business Park Alexandria Way Congleton CW12 1LB

Tel: 0300 456 0114 Email: <u>developmentmanagement@wiltshire.gov.uk</u> www.wiltshire.gov.uk

Dear Sir/Madam,

Discharge of Condition

Application No: 13/05188/OUT

- Proposal:Outline planning application for erection of up to 150 dwellings, up to 1,394sqm B1
offices, access, parking, public open space with play facilities and landscaping.Site Address:Land North of Bath Road, Corsham, SN13 0QL
- On Behalf of: Gladman Developments Ltd

I write following receipt of your recent letter, regarding the discharging of a condition.

The details submitted do not satisfy the following condition of the above planning application as these have failed to properly reflect typical or worst case conditions and demonstrate the facility to achieve the noise reduction criteria specified in Condition 23 to the outline permission. Accordingly, the foundation measures proposed would fail to provide sufficient mitigation to ensure an adequate standard of residential amenity to future occupiers and therefore pose a risk to the safeguarding of existing mineral workings beneath the site.

22. No development shall take place until a Foundation Investigation Plan has been submitted to and approved in writing by the local planning authority. The Foundation Investigation Plan shall include:

i)

A foundation zoning plan which will identify the type and depth of foundations across the site.

ii)

Vibration testing which shall take place during a trial mining test at appropriate locations to replicate both a typical case and a worst case of future mining both within the mine and at foundation level and bedrock level. The results of the test are then to be used by the foundation design engineer to ensure that noise and vibration levels of the foundations are at or below the criteria specified in condition 23. The vibration testing shall be carried out in accordance with a method statement which shall first have been submitted to and approved in writing by the local planning authority.

iii)

The results of the vibration testing shall be provided to the local planning authority and shall be used to design vibration and sound isolation measures (where required) at each dwelling and noise sensitive building. The foundation design for each dwelling and noise sensitive building shall be submitted to and approved in writing by the local planning authority.

Development shall be carried out in accordance with the approved Foundation Investigation Plan.

Accordingly, the discharge of the above condition is REFUSED. Any revised information in respect of the details and measures required should be submitted as a new discharge of condition application.

Yours faithfully

Mike Wilmott Head of Development Management

APPENDIX 10 – Wiltshire Council letters confirming discharge of conditions 5,6,15,16,18,19 (i and 11) 20 and 21 pursuant to outline permission 13/05188/OUT

21 February 2017

Planning Prospects Limited 4 Mill Pool Nash Lane Belbroughton Worcestershire DY9 9AF Development Services – North Monkton Park Chippenham Wiltshire SN15 1ER

Where everybody matters

Wiltshire Council

Tel: 0300 456 0114 Email: <u>developmentmanagement@wiltshire.gov.uk</u> www.wiltshire.gov.uk

Dear Sir/Madam,

Discharge of Condition

Application No: 13/05188/OUT

- Proposal:Outline planning application for erection of up to 150 dwellings, up to 1,394sqm B1
offices, access, parking, public open space with play facilities and landscaping.Site Address:Land North of Bath Road, Corsham, SN13 0QL
- On Behalf of: Planning Prospects

I write following receipt of your recent letter, regarding the discharging of conditions.

I can confirm that the details submitted satisfy the following conditions of the above planning application and that these have been found to be acceptable.

- 5) No development shall take place until a Landscape and Ecological Management Plan (LEMP) has been submitted to and approved in writing by the local planning authority. The LEMP shall include long term design objectives, management arrangements and maintenance schedules for all landscape and open space areas. The LEMP shall include measures to provide and maintain a suitable habitat for bats and other wildlife species and shall be generally in accordance with the recommendations set out in section 4 of the Ecological Appraisal by FPCR dated 14 October 2013. Development shall be carried out in accordance with the approved LEMP and shall thereafter be permanently retained as such.
- 6) No development shall take place until details of the phasing of the development have been submitted to and approved in writing by the local planning authority. The details shall include the phasing of market and affordable housing units, public open spaces and equipped play areas. Development shall be carried out in accordance with the approved phasing details.

9) No building hereby approved shall be occupied before a travel plan has been submitted to and approved in writing by the local planning authority. The travel plan shall be generally in accordance with the framework travel plan (Stirling Maynard July 2013). The travel plan shall be implemented as approved and permanently maintained in operation thereafter.

Wiltshire Council

Where everybody matters

- 15) No development shall take place until a written programme of archaeological investigation has been submitted to and approved in writing by the local planning authority. The programme shall include on-site work and off-site work such as the analysis, publishing and archiving of the results. The programme shall be implemented as approved before the commencement of the development.
- 18) No development shall take place, including any works of demolition, until a Construction Method Statement has been submitted to, and approved in writing by, the local planning authority. The approved Statement shall be adhered to throughout the construction period. The Statement shall provide for:

i) the parking of vehicles of site operatives and visitors

- ii) loading and unloading of plant and materials
- iii) storage of plant and materials used in constructing the development

iv) the erection and maintenance of security hoarding including decorative displays and facilities for public viewing, where appropriate

- v) wheel washing facilities
- vi) measures to control the emission of dust and dirt during construction

vii) a scheme for recycling/disposing of waste resulting from demolition and construction works

viii) measures to avoid the risk of noise and vibration impacting upon bats roosting within underground workings

- 19) No development shall take place until an investigation of the history and current condition of the site to determine the likelihood of the existence of contamination arising from previous uses has been carried out and all of the following steps have been complied with:
- i) A written report has been submitted to and approved in writing by the local planning authority which shall include details of the previous uses of the site and any adjacent sites for at least the last 100 years and a description of the current condition of the site with regard to any activities that may have caused contamination. The report shall confirm whether or not it is likely that contamination may be present on the site and the potential impact of any adjacent sites.
- ii) If the above report indicates that contamination may be present on, under or potentially affecting the site from adjacent land a more detailed site investigation and risk assessment shall be carried out in accordance with DEFRA and the Environment Agency's 'Model Procedures for the Management of Land Contamination CLR11'. A report detailing the site investigation shall be submitted to and approved in writing by the local planning authority.



Please note that part-condition 19(iii) remains outstanding and that submission of further information will be required in order that these conditions are discharged fully.

For completeness, whole conditions whose pre-commencement discharge remains outstanding at the time of writing comprise Conditions 13, 14, 16, 21 and 22.

Yours faithfully

Mike Wilmott Head of Development Management

Wiltshire Council

09 January 2018

Planning Prospects Limited 4 Mill Pool Nash Lane Belbroughton Worcestershire DY9 9AF Development Services – North Monkton Park Chippenham Wiltshire SN15 1ER

Tel: 0300 456 0114 Email: <u>developmentmanagement@wiltshire.gov.uk</u> www.wiltshire.gov.uk

Dear Sir/Madam,

Discharge of Condition

Application No: 13/05188/OUT

- Proposal:Outline planning application for erection of up to 150 dwellings, up to 1,394sqm B1
offices, access, parking, public open space with play facilities and landscaping.Site Address:Land North of Bath Road, Corsham, SN13 0QL
- On Behalf of: Planning Prospects

I write following receipt of your recent letter, regarding the discharging of a condition.

I can confirm that the details submitted satisfy the following condition of the above planning application and that these have been found to be acceptable.

16) No development shall take place until full details of both hard and soft landscape works, including a programme for implementation, have been submitted to and approved in writing by the local planning authority. These details shall include proposed finished levels or contours, means of enclosure, car parking layouts, other vehicle and pedestrian access and circulation areas, hard surfacing materials and minor artefacts and structures such as street furniture, refuse or other storage units. The details shall also include the location, size and condition of existing trees and hedgerows, shall identify those to be retained together with measures for their protection during construction and shall show details of new planting areas, tree and plant species, numbers and planting sizes. The works shall be carried out as approved in accordance with the approved programme.

Yours faithfully

Mike Wilmott Head of Development Management

13 September 2017

Planning Prospects Limited 4 Mill Pool Nash Lane Belbroughton Worcestershire DY9 9AF Development Services – North Monkton Park Chippenham Wiltshire SN15 1ER

Where everybody matters

Wiltshire Council

Tel: 0300 456 0114 Email: <u>developmentmanagement@wiltshire.gov.uk</u> www.wiltshire.gov.uk

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Discharge of Condition

Application No: 13/05188/OUT

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offices, access, parking, public open space with play facilities and landscaping.Site Address:Land North of Bath Road, Corsham, SN13 0QL
- On Behalf of: Planning Prospects

I write following receipt of your recent letter, regarding the discharging of conditions.

I can confirm that the details submitted satisfy the following conditions of the above planning application and that these have been found to be acceptable.

8) No building hereby approved shall be occupied before the access arrangements shown on drawing No 4746/01/01 hereby approved have been implemented in accordance with that drawing and in accordance with further details of surface treatment, lighting and drainage which shall first have been submitted to and approved in writing by the local planning authority.

20) No development shall take place until an external lighting scheme has been submitted to and approved in writing by the local planning authority. The scheme shall include lighting columns, light fittings, measures to reduce light spill and illuminance plots. Development shall be carried out in accordance with the approved details and thereafter permanently retained as such.

Yours faithfully

Mike Wilmott Head of Development Management

Wiltshire Council

28 March 2018

Planning Prospects Limited 4 Mill Pool Nash Lane Belbroughton Worcestershire DY9 9AF Development Services – North Monkton Park Chippenham Wiltshire SN15 1ER

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offices, access, parking, public open space with play facilities and landscaping.Site Address:Land North of Bath Road, Corsham, SN13 0QL
- On Behalf of: Planning Prospects

I write following receipt of your recent letter, regarding the discharging of a condition.

I can confirm that the details submitted satisfy the following condition of the above planning application and that these have been found to be acceptable.

21) No development shall take place until details of public art to be incorporated within the scheme have been submitted to and approved in writing by the local planning authority. Development shall be carried out in accordance with the approved details.

Yours faithfully

Mike Wilmott Head of Development Management

APPENDIX 11 – Wiltshire Council letters confirming discharge of conditions 7,8,9,10,11,12,13,14 and 19 (iii) pursuant to outline permission 13/05188/OUT

21 February 2017

Planning Prospects Limited 4 Mill Pool Nash Lane Belbroughton Worcestershire DY9 9AF Development Services – North Monkton Park Chippenham Wiltshire SN15 1ER

Where everybody matters

Wiltshire Council

Tel: 0300 456 0114 Email: <u>developmentmanagement@wiltshire.gov.uk</u> www.wiltshire.gov.uk

Dear Sir/Madam,

Discharge of Condition

Application No: 13/05188/OUT

- Proposal:Outline planning application for erection of up to 150 dwellings, up to 1,394sqm B1
offices, access, parking, public open space with play facilities and landscaping.Site Address:Land North of Bath Road, Corsham, SN13 0QL
- On Behalf of: Planning Prospects

I write following receipt of your recent letter, regarding the discharging of conditions.

I can confirm that the details submitted satisfy the following conditions of the above planning application and that these have been found to be acceptable.

- 5) No development shall take place until a Landscape and Ecological Management Plan (LEMP) has been submitted to and approved in writing by the local planning authority. The LEMP shall include long term design objectives, management arrangements and maintenance schedules for all landscape and open space areas. The LEMP shall include measures to provide and maintain a suitable habitat for bats and other wildlife species and shall be generally in accordance with the recommendations set out in section 4 of the Ecological Appraisal by FPCR dated 14 October 2013. Development shall be carried out in accordance with the approved LEMP and shall thereafter be permanently retained as such.
- 6) No development shall take place until details of the phasing of the development have been submitted to and approved in writing by the local planning authority. The details shall include the phasing of market and affordable housing units, public open spaces and equipped play areas. Development shall be carried out in accordance with the approved phasing details.

9) No building hereby approved shall be occupied before a travel plan has been submitted to and approved in writing by the local planning authority. The travel plan shall be generally in accordance with the framework travel plan (Stirling Maynard July 2013). The travel plan shall be implemented as approved and permanently maintained in operation thereafter.

Wiltshire Council

Where everybody matters

- 15) No development shall take place until a written programme of archaeological investigation has been submitted to and approved in writing by the local planning authority. The programme shall include on-site work and off-site work such as the analysis, publishing and archiving of the results. The programme shall be implemented as approved before the commencement of the development.
- 18) No development shall take place, including any works of demolition, until a Construction Method Statement has been submitted to, and approved in writing by, the local planning authority. The approved Statement shall be adhered to throughout the construction period. The Statement shall provide for:

i) the parking of vehicles of site operatives and visitors

- ii) loading and unloading of plant and materials
- iii) storage of plant and materials used in constructing the development

iv) the erection and maintenance of security hoarding including decorative displays and facilities for public viewing, where appropriate

- v) wheel washing facilities
- vi) measures to control the emission of dust and dirt during construction

vii) a scheme for recycling/disposing of waste resulting from demolition and construction works

viii) measures to avoid the risk of noise and vibration impacting upon bats roosting within underground workings

- 19) No development shall take place until an investigation of the history and current condition of the site to determine the likelihood of the existence of contamination arising from previous uses has been carried out and all of the following steps have been complied with:
- i) A written report has been submitted to and approved in writing by the local planning authority which shall include details of the previous uses of the site and any adjacent sites for at least the last 100 years and a description of the current condition of the site with regard to any activities that may have caused contamination. The report shall confirm whether or not it is likely that contamination may be present on the site and the potential impact of any adjacent sites.
- ii) If the above report indicates that contamination may be present on, under or potentially affecting the site from adjacent land a more detailed site investigation and risk assessment shall be carried out in accordance with DEFRA and the Environment Agency's 'Model Procedures for the Management of Land Contamination CLR11'. A report detailing the site investigation shall be submitted to and approved in writing by the local planning authority.



Please note that part-condition 19(iii) remains outstanding and that submission of further information will be required in order that these conditions are discharged fully.

For completeness, whole conditions whose pre-commencement discharge remains outstanding at the time of writing comprise Conditions 13, 14, 16, 21 and 22.

Yours faithfully

Mike Wilmott Head of Development Management

11 August 2016

Gladman Developments Ltd Gladman House Congleton Business Park Alexandria Way Congleton Cheshire CW12 1LB Development Services – North Monkton Park Chippenham Wiltshire SN15 1ER

Where everybody matters

Wiltshire Council

Tel: 0300 456 0114 Email: <u>developmentmanagement@wiltshire.gov.uk</u> www.wiltshire.gov.uk

Dear Sir/Madam,

Discharge of Condition

Application No: 13/05188/OUT

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offices, access, parking, public open space with play facilities and landscaping.Site Address:Land North of Bath Road, Corsham, SN13 0QL
- On Behalf of: Planning Prospects

I write following receipt of your recent letter, regarding the discharging of a condition.

I can confirm that the details submitted satisfy the following condition of the above planning application and that these have been found to be acceptable.

7. The reserved matters submitted pursuant to Condition 1 shall be accompanied by a Land Stability Risk Assessment which shall be submitted to and approved in writing by the local planning authority. The Land Stability Risk Assessment shall include details of intrusive site investigations, an assessment of land stability risks and mitigation measures to protect any underground workings from damage during the construction and operational phases of the development hereby approved.

Yours faithfully

Mike Wilmott Head of Development Management

13 September 2017

Planning Prospects Limited 4 Mill Pool Nash Lane Belbroughton Worcestershire DY9 9AF Development Services – North Monkton Park Chippenham Wiltshire SN15 1ER

Where everybody matters

Wiltshire Council

Tel: 0300 456 0114 Email: <u>developmentmanagement@wiltshire.gov.uk</u> www.wiltshire.gov.uk

Dear Sir/Madam,

Discharge of Condition

Application No: 13/05188/OUT

- Proposal:Outline planning application for erection of up to 150 dwellings, up to 1,394sqm B1
offices, access, parking, public open space with play facilities and landscaping.Site Address:Land North of Bath Road, Corsham, SN13 0QL
- On Behalf of: Planning Prospects

I write following receipt of your recent letter, regarding the discharging of conditions.

I can confirm that the details submitted satisfy the following conditions of the above planning application and that these have been found to be acceptable.

8) No building hereby approved shall be occupied before the access arrangements shown on drawing No 4746/01/01 hereby approved have been implemented in accordance with that drawing and in accordance with further details of surface treatment, lighting and drainage which shall first have been submitted to and approved in writing by the local planning authority.

20) No development shall take place until an external lighting scheme has been submitted to and approved in writing by the local planning authority. The scheme shall include lighting columns, light fittings, measures to reduce light spill and illuminance plots. Development shall be carried out in accordance with the approved details and thereafter permanently retained as such.

Yours faithfully

Mike Wilmott Head of Development Management

17 October 2017

Planning Prospects Limited 4 Mill Pool Nash Lane Belbroughton Worcestershire DY9 9AF Development Services – North Monkton Park Chippenham Wiltshire SN15 1ER

Where everybody matters

Wiltshire Council

Tel: 0300 456 0114 Email: <u>developmentmanagement@wiltshire.gov.uk</u> www.wiltshire.gov.uk

Dear Sir/Madam,

Discharge of Condition

Application No: 13/05188/OUT

- Proposal:Outline planning application for erection of up to 150 dwellings, up to 1,394sqm B1
offices, access, parking, public open space with play facilities and landscaping.Site Address:Land North of Bath Road, Corsham, SN13 0QL
- On Behalf of: Planning Prospects

I write following receipt of your recent letter, regarding the discharging of conditions.

I can confirm that the details submitted satisfy the following conditions of the above planning application and that these have been found to be acceptable.

10) No building hereby approved shall be occupied before a minor improvement scheme for the Hare and Hounds roundabout has been implemented in accordance with details which shall first have been submitted to and approved in writing by the local planning authority. The scheme shall include adjustments to road markings and traffic islands.

11) No building hereby approved shall be occupied before a scheme for the widening to 2m of the southern footway of the A4 Bath Road between No 5 Bath Road and the Bath Road/Academy Drive roundabout has been implemented in accordance with details which shall first have been submitted to and approved in writing by the local planning authority. The scheme shall make provision for the relocation of any lighting columns and electricity or telephone poles within the footway.

12) No building hereby approved shall be occupied before the field gate access to the site from Guyers Lane has been permanently stopped up in accordance with details which shall first have been submitted to and approved in writing by the local planning authority.

Yours faithfully

Mike Wilmott Head of Development Management

28 November 2017

Planning Prospects Limited 4 Mill Pool Nash Lane Belbroughton Worcestershire DY9 9AF Development Services – North Monkton Park Chippenham Wiltshire SN15 1ER

Where everybody matters

Wiltshire Council

Tel: 0300 456 0114 Email: <u>developmentmanagement@wiltshire.gov.uk</u> www.wiltshire.gov.uk

Dear Sir/Madam,

Discharge of Condition

Application No: 13/05188/OUT

- Proposal:Outline planning application for erection of up to 150 dwellings, up to 1,394sqm B1
offices, access, parking, public open space with play facilities and landscaping.Site Address:Land North of Bath Road, Corsham, SN13 0QL
- **On Behalf of:** Planning Prospects

I write following receipt of your recent letter, regarding the discharging of conditions.

I can confirm that the details submitted satisfy the following conditions of the above planning application and that these have been found to be acceptable.

13) No building hereby approved shall be occupied before works for the disposal of sewage from the development have been carried out in accordance with details which shall first have been submitted to and approved in writing by the local planning authority.

14) No building hereby approved shall be occupied before surface water drainage works have been implemented in accordance with details which shall first have been submitted to and approved in writing by the local planning authority. Before these details are submitted an assessment shall be carried out of the potential for disposing of surface water by means of a sustainable drainage system and the results of the assessment shall be provided to the local planning authority. Where a sustainable drainage system is to be provided, the submitted details shall:

 provide information about the design storm period and intensity, the method employed to delay and control the surface water discharged from the site and the measures taken to prevent pollution of receiving groundwater and/or surface waters;

- ii) include a timetable for implementation; and
- iii) provide a management and maintenance plan for the lifetime of the development which shall include the arrangements for adoption by any public authority or statutory undertaker and any other arrangements to secure the operation of the scheme throughout its lifetime.

The applicant is reminded of the need to comply with these conditions and requested to note that this decision relates solely to the approval of pre-occupation technical details.

Yours faithfully

Mike Wilmott Head of Development Management

21 February 2018

Planning Prospects Limited 4 Mill Pool Nash Lane Belbroughton Worcestershire DY9 9AF Development Services – North Monkton Park Chippenham Wiltshire SN15 1ER

Tel: 0300 456 0114 Email: <u>developmentmanagement@wiltshire.gov.uk</u> www.wiltshire.gov.uk

Dear Sir/Madam,

Discharge of Condition

Application No: 13/05188/OUT

- Proposal: Outline planning application for erection of up to 150 dwellings, up to 1,394sqm B1 offices, access, parking, public open space with play facilities and landscaping.
 Site Address: Land North of Bath Road. Corsham. SN13 0QL
- On Behalf of: Planning Prospects

I write following receipt of your recent letter, regarding the discharging of a condition.

I can confirm that the details submitted satisfy the following condition of the above planning application and that these have been found to be acceptable.

19) No development shall take place until an investigation of the history and current condition of the site to determine the likelihood of the existence of contamination arising from previous uses has been carried out and all of the following steps have been complied with:

iii) If the report submitted pursuant to step (i) or (ii) indicates that remedial works are required, full details must be submitted to and approved in writing by the local planning authority.

The applicant should be aware that, notwithstanding the approval of the proposed timetable for the carrying out of remedial works, the 'compliance' element of Condition 19(iii), namely:

"The remedial works shall be carried out as approved prior to the commencement of development or in accordance with a timetable that has been agreed in writing by the local planning authority. On completion of the remedial works the applicant shall provide written confirmation to the local planning authority that the works have been completed in accordance with the approved details."

remains outstanding for the time being and must be complied with.

Yours faithfully

Mike Wilmott Head of Development Management

APPENDIX 12 – Wiltshire Council letters confirming discharge of condition 2 and 7 pursuant to Reserved matters approval 16/03721/REM and conditon 2

13 December 2017

Redrow Homes South West Redrow House West Point Great Park Road Bradlev Stoke Bristol **BS32 4QG**

Development Services – North Monkton Park Chippenham Wiltshire **SN15 1ER**

Where everybody matters

Wiltshire Council

Tel: 0300 456 0114 Email: developmentmanagement@wiltshire.gov.uk www.wiltshire.gov.uk

Dear Sir/Madam,

Discharge of Condition

Application No: 16/03721/REM

- Proposal: Reserved Matters Application Relating to Appearance, Landscaping, Layout & Scale (following outline application 13/05188/OUT) Residential Development for 150 Units Together with Associated Highways, Drainage and Other Infrastructure Works, Landscaping and Play Area. Site Address:
- Land North of Bath Road, Corsham, Wiltshire, SN13 0QL
- On Behalf of: Redrow Homes South West

I write following receipt of your recent letter, regarding the discharging of a condition.

I can confirm that the details submitted satisfy the following condition of the above planning application and that these have been found to be acceptable.

2 No development shall commence on site until the exact details and samples of the materials to be used for the external walls and roofs have been submitted to and approved in writing by the Local Planning Authority. Development shall be carried out in accordance with the approved details.

REASON: The application contained insufficient information to enable this matter to be considered prior to granting planning permission and the matter is required to be agreed with the Local Planning Authority before development commences in order that the development is undertaken in an acceptable manner, in the interests of visual amenity and the character and appearance of the area.

Yours faithfully

Mike Wilmott Head of Development Management

Wiltshire Council

06 February 2018

Redrow Homes South West Redrow House West Point Great Park Road Bradley Stoke Bristol BS32 4QG Development Services – North Monkton Park Chippenham Wiltshire SN15 1ER

Tel: 0300 456 0114 Email: <u>developmentmanagement@wiltshire.gov.uk</u> <u>www.wiltshire.gov.uk</u>

Dear Sir/Madam,

Discharge of Condition

Application No: 16/03721/REM

- Proposal:
 Reserved Matters Application Relating to Appearance, Landscaping, Layout & Scale (following outline application 13/05188/OUT) Residential Development for 150 Units Together with Associated Highways, Drainage and Other Infrastructure Works, Landscaping and Play Area.

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 Norther Development of D
- Site Address: Land North of Bath Road, Corsham, Wiltshire, SN13 0QL
- On Behalf of: Redrow Homes South West

I write following receipt of your recent letter, regarding the discharging of a condition.

I can confirm that the details submitted satisfy the following condition of the above planning application and that these have been found to be acceptable.

7 No development shall commence on site until a scheme of compensatory tree planting, including details of specie(s), planted size, location and future maintenance regime, has been submitted to and approved in writing by the Local Planning Authority. The said planting shall have been carried out within the first planting season following the first occupation of the development in full accordance with the approved scheme, in accordance with which the tree(s) shall be maintained at all times thereafter.

REASON: To mitigate the loss of tree T15

Yours faithfully

Mike Wilmott Head of Development Management

Officer's Name: Chris Marsh Officer's Title: Senior Planning Officer Direct Line: 01249 706657 Email: chris.marsh@wiltshire.gov.uk

Wiltshire Council

19 January 2018

Trevor Wright Thrive Architects Suite 11 Kestral Court Harbour Road Portishead BS20 7AN Development Services – North Monkton Park Chippenham Wiltshire SN15 1ER

Tel: 0300 456 0114 Email: <u>developmentmanagement@wiltshire.gov.uk</u> www.wiltshire.gov.uk

Dear Sir/Madam,

Discharge of Condition

Application No: 16/04544/REM

Proposal:Reserved Matters Application for Access, Appearance, Layout & Scale (Following
Outline Application 13/05188/OUT) Proposed B1 Employment Units on Land to the
West of Bath Road Development Corsham
Land North Of, Bath Road, Corsham, Wiltshire

On Behalf of: Redrow Homes Ltd.

I write following receipt of your recent letter, regarding the discharging of condition.

I can confirm that the details submitted satisfy the following condition of the above planning application and that these have been found to be acceptable.

2 No development shall commence on site until the exact details and samples of the materials to be used for the external walls and roofs have been submitted to and approved in writing by the Local Planning Authority. Development shall be carried out in accordance with the approved details.

REASON: The application contained insufficient information to enable this matter to be considered prior to granting planning permission and the matter is required to be agreed with the Local Planning Authority before development commences in order that the development is undertaken in an acceptable manner, in the interests of visual amenity and the character and appearance of the area.

For completeness, and the avoidance of doubt, the cladding hereby approved is NORclad European Redwood in profile 'NWC2 FACE FIX'.

Yours faithfully

Mike Wilmott Head of Development Management

Officer's Name: Chris Marsh Officer's Title: Senior Planning Officer Direct Line: 01249 706657 Email: chris.marsh@wiltshire.gov.uk

APPENDIX 13 – Schedule of Suggested Conditions (reflecting all technical approvals to date)

Schedule of Suggested Conditions

- 1. Details of the appearance, landscaping, layout, and scale, (hereinafter called "the reserved matters") shall be implemented in accordance with 6/03721/REM (as approved by the Local Planning Authority on 8 September 2017) and 16/04544/REM (as approved by the Local Planning Authority on 6 September 2017).
- 2. [CONDITION 2 SUPERSEDED BY RESERVED MATTERS APPROVALS REFERRED TO IN CONDITION 1]
- 3. The development hereby approved shall begin not later than one year from 8 September 2017, that being the date the last of the reserved matters was approved by the Local Planning Authority.
- 4. The reserved matters submitted pursuant to Condition 1 shall accord with the principles for the development of the site as shown on the FPCR Ecological Parameters Plan 5468-E-08 Rev H and implemented thereafter in accordance with details approved under 16/03721/REM and supplementary details shown on Cole Easdon Lighting Plans P16084-02 Rev D and P16084-03 Rev D, as approved by the Local Planning Authority by letter dated 13 September 2017.
- 5. The development hereby approved shall be implemented in accordance with the Landscape and Ecological Management Plan (LEMP) dated August 2016 (ref: 715_LEMP_01) as approved by the Local Planning Authority by letter dated 21 February 2017. Development shall be carried out in accordance with the approved LEMP and shall thereafter be permanently retained as such.
- 6. The development hereby approved shall be implemented in accordance with the Redrow Phasing Plan dated 6 June 2016 Revision A as approved by the Local Planning Authority by letter dated 21 February 2017.
- The development hereby approved shall be implemented in accordance with the Land Stability Risk Assessment J-D1078.00_L11_PT_Revision 2 as approved by the Local Planning Authority by letter dated 11 August 2016.
- No building hereby approved shall be occupied before the access arrangements shown on drawing No 4746/01/01 have been implemented in accordance with Cole Easedon drawing no's. 5064/1100 Rev A, 5064/101 Rev A, 5064/102 Rev A, 5064/103, 5064/104, 5064/105, 5064/106, 5064/107, 5064/108, 5064/110 Rev A, 5064/150 Rev A, 5064/151 Rev A, 5064/152 Rev A, 5064/153, 5064/154, 5064/155, 5064/156 Rev A and 5064/157, as approved by the Local Planning Authority by letter dated 13 September 2017.
- The development hereby approved shall be implemented in accordance with the Travel Plan (dated June 2016) approved by the Local Planning Authority by letter dated on 21 February 2017 which shall be permanently maintained in operation thereafter.

- No building hereby approved shall be occupied before a minor improvement scheme for the Hare and Hounds roundabout has been implemented in accordance with drawing ref:1000/03/65, as approved by the Local Planning Authority by letter dated 17 October 2017.
- 11. No building hereby approved shall be occupied before a scheme for the widening to 2m of the southern footway of the A4 Bath Road between No 5 Bath Road and the Bath Road/Academy Drive roundabout has been implemented in accordance with drawing No. 4746/01/02 as approved by the Local Planning Authority by letter dated 17 October 2017.
- 12. No building hereby approved shall be occupied before the field gate access to the site from Guyers Lane has been permanently stopped up in accordance with the scope of works set out by Redrow letter dated 21 June 2016, as approved by the Local Planning Authority on 17 October 2017.
- 13. No building hereby approved shall be occupied before works for the disposal of sewage from the development have been carried out in accordance with the details shown on drawings no. 5064/21 and 5064/21 revision C as approved by the Council on 28 November 2011.
- No building hereby approved shall be occupied before surface water drainage works have been implemented in accordance with details shown on drawing no. 5064/SK05, 5064/05/01 and 5064/05/02 as approved by the Local Planning Authority on 28 November 2017.
- 15. The development hereby approved shall be implemented in accordance with the CgMS Written Scheme of Archaeological Investigation (dated August 2015) as approved by the Local Planning Authority on 21 February 2017.
- 16. The development hereby approved shall be implemented in accordance with the hard and soft landscaping works, including the programme for implementation, as detailed on Planting Plans 1-7, Landscape Masterplan 1794 01 0, LEAP Plan 1794 09 revision A and Planting Plans 1794 02 and 1794 03, approved by the Local Planning Authority by letter dated 9th January 2018.
- 17. If within a period of 5 years from the date of the planting of any tree that tree, or any tree planted in replacement for it, is removed, dies, or becomes seriously damaged or defective, another tree of the same species and size as that originally planted shall be planted at the same place within the next planting season unless the local planning authority gives its written approval to any variation.
- The development hereby approved shall be implemented in accordance with Construction Method Statement Rev A 01/06/16, as approved by the Local Planning Authority on 21 February 2017. The approved Statement shall be adhered to throughout the construction period.
- 19. The development hereby approved shall be implemented in accordance with the Ground Investigation report, ref: R/151878/001, as approved by the Local Planning Authority on 21 February 2017.

- 20. The development hereby approved shall be implemented in accordance with details as shown on Street Lighting Plans 5064/17/01 and 5064/17/02 and thereafter permanently retained as such, as approved by the Local Planning Authority by letter dated 13 September 2017.
- 21. The development hereby approved shall be implemented in accordance with the public art works as shown on the Redrow drawing entitled *Public Art Concept Proposals*, received by the Local Planning Authority on 27 March 2018 and approved by letter dated 28 March 2018.
- 22. Prior to the commencement of any dwellings or noise sensitive buildings on site, a Foundation Investigation Plan has been submitted to and approved in writing by the local planning authority. The Foundation Investigation Plan shall include:
 - i. A foundation zoning plan which will identify the type and depth of foundations across the site.
 - Vibration testing which shall take place during a trial mining test at appropriate locations to replicate both a typical case and a worst case of future mining both within the mine and at foundation level and bedrock level. The results of the test are then to be used by the foundation design engineer to ensure that noise and vibration levels of the foundations are at or below the criteria specified in condition 23. The vibration testing shall be carried out in accordance with a method statement which shall first have been submitted to and approved in writing by the local planning authority.
 - iii. The results of the vibration testing shall be provided to the local planning authority and shall be used to design vibration and sound isolation measures (where required) at each dwelling and noise sensitive building. The foundation design for each dwelling and noise sensitive building shall be submitted to and approved in writing by the local planning authority.

Development shall be carried out in accordance with the approved Foundation Investigation Plan.

23. The foundations shall be designed to ensure that noise and vibration from underground mining activity shall not give rise to a noise level within any dwelling or noise sensitive building in excess of that equivalent to Noise Rating Curve 25 and vibration levels shall not exceed 0.1 to 0.2 ms-1.75 in accordance with the methodology in BS 6472-1-2008.

APPENDIX 14 – Relevant extracts from Wiltshire Core Strategy 2015



Wiltshire Core Strategy Adopted January 2015



Delivering infrastructure requirements to support development

- 4.35 An appropriate and balanced mix of new development is essential for the long term prosperity of Wiltshire. The Core Strategy shapes where new development should be located and also manages the pressure relating to speculative proposals through policy. It will provide new homes, jobs, services and thereby support social, economic and environmental objectives. The impact of development on local communities and the fabric of the existing built and natural environment is an important consideration. Managing this impact involves protecting existing infrastructure and securing the timely investment of new infrastructure.
- 4.36 The council will work in partnership with internal and external infrastructure providers, neighbouring authorities and the Local Enterprise Partnership to ensure that new or improved infrastructure, including that listed in the Infrastructure Delivery Plan and Schedule, is delivered prior to, or in conjunction with, new development.
- 4.37 The timely delivery of new infrastructure to support development proposals must be secured. In order to achieve this aim, the council will work with developers to prepare robust infrastructure delivery plans to support the overall masterplanning of strategic sites within the Core Strategy and/or planning application process. The delivery plan will need to be in place prior to the commencement of development and should be agreed by the council, other relevant infrastructure providers and developers. The scope of such plans will cover among other things: funding, phasing, accessibility and impact on the surrounding area.
- 4.38 In addition to managing the provision of the new infrastructure requirements of development proposals, the individual investment plans of infrastructure providers should be recognised and fully considered. It will be important that all new development proposals build safeguards into schemes to protect and enhance appropriate services and facilities, including: bus corridors, telecommunications equipment (particularly high speed broadband infrastructure), electricity power lines, high pressure gas mains, educational facilities, health facilities, flood protection measures, water treatment infrastructure, waste water treatment works and waste collection and management services. Developers proposing to connect to a waste water treatment works will need to check with the utilities provider that there is adequate capacity. Development in areas with no mains foul system will need to ensure that there are suitable options available for sewage disposal.

4.39 Existing community services and facilities will be protected in line with Core Policy 49 and existing green infrastructure will be protected in line with Core Policy 52. To encourage the most effective use of existing and new infrastructure, co-location and multi-functional use of land and buildings for services and facilities will be supported in accordance with other policies of the Core Strategy. The provision of new or improved infrastructure will be positively supported, particularly where opportunities arise through redevelopment or regeneration in sustainable locations, provided that this has no detrimental impact on the environment and contributes towards mitigation and adaptation to climate change.

Securing the delivery of infrastructure

4.40 Where new development proposals require the delivery of infrastructure, priorities will be set to manage competing demands. The broad categories of prioritisation (i.e. essential infrastructure will be afforded the highest priority) are set out below, but the indicative list of infrastructure typologies should not be viewed as exhaustive, nor as being conveyed in a particular order of preference.

Infrastructure priority theme 1:

- 4.41 Essential infrastructure including but not limited to:
 - sustainable transport measures
 - water, sewerage and electrical utilities and connecting services, including lowcarbon and renewable energy
 - flood alleviation and sustainable urban drainage schemes
 - telecommunications facilities, including fibre-optic superfast broadband connectivity services, to serve local communities and the business community
 - education
 - healthcare facilities
 - emergency services
 - waste management services such as recycling and collection facilities
 - specific projects needed to ensure compliance with the Habitats Regulations.

- 4.42 Place-shaping infrastructure including but not limited to:
 - community safety in the public realm
 - maintenance and improvement of Wiltshire's heritage assets, including the storage of archaeological remains
 - leisure and recreation provision
 - open space and green infrastructure
 - town centre management schemes
 - employer engagement and training schemes
 - cultural and community facilities
 - libraries
 - public art and streetscape features
 - cemetery provision.



- 4.43 The broad prioritisation of infrastructure provision has been designed to ensure that development proposals present solutions to address essential requirements first and then place shaping items next. This should not be taken to imply that place shaping infrastructure is of lesser importance, rather that the precise timing of providing it is not critical to the phasing of development. It may also be the case that a particular infrastructure project might deliver multiple benefits. For example, a new landscaped pedestrian footpath or cycleway could deliver sustainable transport, green infrastructure and recreation improvements. Infrastructure requirements are identified through working with providers and listed within the Infrastructure Delivery Plan, which will be updated over the plan period. Infrastructure requirements may therefore change. The council will be flexible and responsive to any changes.
- 4.44 Every proposal will be dealt with on its merits and influenced by the detail presented in the council's Infrastructure Delivery Plan and Schedule. These requirements will be sought in addition to other costs associated with development, such as affordable housing, on-site utilities infrastructure and transport access requirements.
- 4.45 The council will seek to ensure that the cost of providing necessary infrastructure will be met through the appropriate use of planning obligations and, once finalised and adopted, the Community Infrastructure Levy (CIL). All such financial contributions will be registered and monitored to ensure that developers and local communities can see when and how money is spent in relation to infrastructure provision. Agreement between the council, other relevant infrastructure providers, the community and developers over the extent and amount of developer contributions will be sought through the planning application process.
- 4.46 The council intends to charge CIL and will consult with local communities, infrastructure providers, developers and other key stakeholders to prepare a CIL Charging Schedule, which will set out the rate(s) of CIL to be charged on new development. Whereas section 106 agreements will, upon adoption of a CIL Charging Schedule, be restricted to funding mainly site-specific infrastructure and affordable housing, CIL will be used to pool contributions towards local and strategic infrastructure that will benefit a wider area than any one development in particular.
- 4.47 The council will also aim to secure funding from other streams. For example, the New Homes Bonus, which commenced in April 2011, is the match funding by central government of the additional council tax raised on new homes and empty properties brought back into use, with an additional amount for affordable homes, for the

following six years. Money raised through the New Homes Bonus scheme could be utilised by the council to offset the cost of delivering public services and amenities with the overall aim of mitigating against the impact from increasing housing development and/or population growth.

Core Policy 3

Infrastructure requirements

All new development will be required to provide for the necessary on-site and, where appropriate, off-site infrastructure requirements arising from the proposal. Infrastructure requirements will be delivered directly by the developer and/or through an appropriate financial contribution prior to, or in conjunction with, new development. In ensuring the timely delivery of infrastructure, development proposals must demonstrate that full regard has been paid to the council's Infrastructure Delivery Plan and Schedule and all other relevant policies of this plan. Joint working with adjoining authorities will be encouraged to ensure that wider strategic infrastructure requirements are appropriately addressed.

In the event of competing demands for infrastructure provision, developer contributions will be sought in the following order of priority:

- 1. Essential infrastructure
- 2. Place-shaping infrastructure

A viability assessment, undertaken by an independent third party but on terms agreed by the council and funded by the developer, will be required in the event of concerns that infrastructure requirements may render the development unviable. This will involve an 'open book' approach. If the viability assessment adequately demonstrates that development proposals are unable to fund the full range of infrastructure requirements, then the council will:

- i. prioritise seeking developer contributions in the order set out above
- ii. use an appropriate mechanism to defer part of the developer contributions requirement to a later date, as agreed by all parties.

Delivery responsibility

This policy will be delivered by:

- iii. the direct provision of facilities and services by the council and its public and private sector partners, reflected in the Infrastructure Delivery Plan
- iv. the development management process. Planning conditions and planning obligations (largely through section 106 agreements) will be sought to mitigate the direct impact(s) of development, secure its implementation, control phasing where necessary, and to secure and contribute to the delivery of infrastructure made necessary by the development. The council will prepare a supplementary planning document that will provide more detail about its approach to securing developer contributions
- v. utilising developer contributions to provide enhancements to local facilities and services
- vi. liaison through the area boards with town and parish councils and appropriate local stakeholders to identify community infrastructure requirements help establish local priorities as well as develop/implement mechanisms for administering monies collected through Community Infrastructure Levy (CIL) and planning obligations in accordance with national and council policies
- vii. partnership work with infrastructure providers, neighbouring authorities and other stakeholders, to identify requirements for and to facilitate appropriate community infrastructure development
- viii. upon adoption of the CIL Charging Schedule, CIL will be used to pool developer contributions towards a wide range of new and improved infrastructure necessary to deliver new development.



Core Policy 43: Providing affordable homes

- 6.42 Core Policy 43 sets out when affordable housing provision will be required and indicates the proportions which will be sought from open market housing development. Both housing and planning policies will be used to promote the delivery of new affordable homes. This policy intends to provide a clear and robust planning policy framework for all those involved in the delivery of affordable housing. It is anticipated that this strategy will deliver approximately 13,000 affordable homes within the plan period.
- 6.43 Appropriate tenure and affordability are key to meeting housing needs and to developing mixed, balanced and inclusive communities. The provision of affordable housing linked to open market housing development must be realistic, with regard to economic viability, but flexible to variations between sites and changes in market conditions over the plan period. The need for and type of affordable housing will be reviewed regularly throughout the plan period in line with good practice, and revised targets will be determined depending on the prevailing housing need and market conditions at the time, following a public consultation period. If appropriate, detailed guidance will be produced by the council in relation to the delivery of affordable housing including the appropriate assessment of viability and appropriate development standards where appropriate.
- 6.44 A broad assessment of viability across the plan area⁸⁹ clearly indicates that there are geographic disparities in terms of residual land values that warrant different affordable housing requirements. Core Policy 43 therefore contains two separate affordable housing zones (30% and 40%) as presented on the policies map.

40% affordable housing zone Marlborough and surrounding area, Pewsey,Bradford on Avon, Salisbury, rural villages of southSalisbury, Wilton and Chippenham

30% affordable housing zone Corsham, Amesbury, Devizes and surrounding villages, Melksham, Trowbridge, Westbury, Dilton Marsh, Calne, Warminster, Tisbury and Mere.

- 6.45 In adopting a two-zone approach, the objective of delivering an appropriate and sustainable rate of affordable housing to offset strategic and local needs is not compromised. The approach set out in Core Policy 43 will provide both certainty to the market and sufficient flexibility to allow development proposals to accommodate variations in scheme costs whilst still meeting the policy requirements of the plan.
- 6.46 The policy has regard to the practicalities of provision on small sites. While developments of five units and above will be expected to make provision on-site, on sites of four dwellings or fewer no affordable housing contribution will be sought. Where the policy generates a requirement which does not equate to a whole unit, the calculation will be rounded to the nearest whole affordable housing unit.

Core Policy 43

Providing affordable homes

Provision

On sites of five or more dwellings, affordable housing provision of at least 30% (net) will be provided within the 30% affordable housing zone and at least 40% (net) will be provided on sites within the 40% affordable housing zone. Only in exceptional circumstances, where it can be proven that on-site delivery is not possible, will a commuted sum be considered.

The provision of affordable housing may vary on a site-by-site basis taking into account evidence of local need, mix of affordable housing proposed and, where appropriate, the viability of the development. All affordable housing will be subject to an appropriate legal agreement with the council.

This level of provision should be delivered with nil public subsidy, unless otherwise agreed by the council.

Tenure

Tenure will be negotiated on a site-by-site basis to reflect the nature of the development and local needs as set out in Core Policy 45 (Meeting Wiltshire's housing needs).

On site distribution and standards

Affordable housing units will be dispersed throughout a development and designed to a high quality, so as to be indistinguishable from other development. In determining the level of integration that can be achieved, consideration will be given to the practicalities of management and maintenance associated with the proposal whilst still ensuring affordability, particularly in developments of flats.

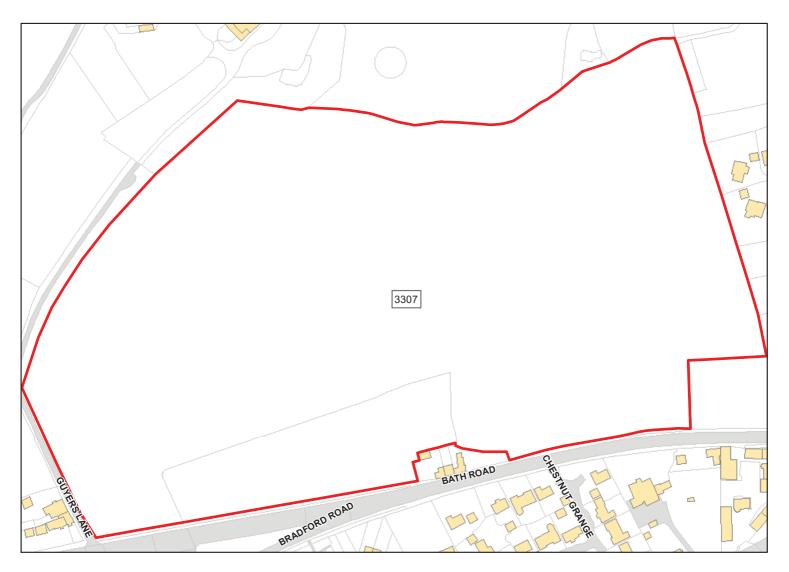
Core Policy 44: Rural exceptions sites

- 6.47 Core Policy 44 allows for the allocation of, or granting of planning permission for, small sites comprising affordable housing only as an exception to normal policies. The policy sets out the criteria against which such proposals will be evaluated and under what circumstances schemes solely for affordable housing may be permitted.
- 6.48 In doing so, the Core Strategy recognises the particular difficulties in securing an adequate supply of affordable housing for local needs in rural areas. As an exception to normal policy therefore, and where it can be demonstrated that a



proposed development will meet a particular locally generated need that cannot be accommodated in any other way, the council may permit small scale residential development (10 dwellings or fewer) outside but adjoining the development limits of Local Service Centres and Large Villages, or adjacent to the existing built area of Small Villages.

APPENDIX 15 – SHELAA 2017 Extract



Site Address: Land north of Bath Road

Total Area:	10.0086ha	HMA:	North & West Wiltshire							
Suitable Area:	10.0086ha (100.0%)	Previous Use:	Greenfield							
Suitablity Constraints*:	N/A									
All Constraints*:	SAC_5km, SSSI_2km, CP58, MSA, SPZ, ALCG1									
Suitable:	Yes. No suitability constraints.	Available:	Yes							
Achievable:	Yes (Residential)	Deliverable:	Yes							
Capacity:	306	Developable:	In short-term							

*Note: Constraint abbreviations can be found in the SHELAA Methodology Report in Appendices 1 and 2 on pages 14 and 16.

APPENDIX 16 – Relevant extract from Wiltshire Council Housing Land Supply Statements



Housing Land Supply Statement Base date: April 2017

Published: March 2018



Site Address	Site ref	Committed dwellings outstanding at April 2017	2017/18	2018/19	2019/20	2020/21	2021/22	2022/23	2023/24	2024/25	2025/26	СА	Town / Remainder
Land at The Forty Cricklade Wiltshire	N13.7132	70	0	8	40	22	0	0	0	0	0	Royal Wootton Bassett & Cricklade	Remainder
Land At The Mead, Trowbridge Road	W14.10977	124	60	60	4	0	0	0	0	0	0	Westbury	Westbury
Land at Westbury Sailing Lake, Station Road	W15.12551	300	0	0	20	35	35	35	35	35	35	Westbury	Westbury
Land east of Oxford Rd (Site B) Calne Wiltshire	N15.11230	42	0	32	12	0	0	0	0	0	0	Calne	Calne
Land East Of Semington Road Melksham Wiltshire	W16.0497	150	0	10	40	40	40	20	0	0	0	Melksham	Melksham
Land East of Spa Road Melksham Wiltshire	N14.10461	450	0	0	80	80	80	80	80	50	0	Melksham	Melksham
Land North of Bath Road Corsham	N13.5188	150	0	0	20	30	30	30	30	10	0	Corsham	Corsham
Land North of Bitham Park Trowbridge Road Westbury	W14.9262	300	0	0	60	60	60	60	60	0	0	Westbury	Westbury
Land North of Green Lane	W07.3864	16	0	0	0	0	0	0	0	0	0	Trowbridge	Trowbridge
Land north of Holt Road and Cemetery Lane Bradford on Avon	W14.7689	60	0	0	12	46	0	0	0	0	0	Bradford on Avon	Bradford on Avon
Land off Abberd Lane Calne	N15.5254	84	47	37	0	0	0	0	0	0	0	Calne	Calne
Land off Sandpit Road Calne Wiltshire	N16.7531	21	0	0	15	6	0	0	0	0	0	Calne	Calne



Housing Land Supply Statement (Update) Base date: April 2016

Published: March 2017



Site Address	Site ref	Dwellings outstanding at April 2016	2016/17	2017/18	2018/19	2019/20	2020/21	2021/22	2022/23	2023/24	2024/25	2025/26	Town	СА
Land at Sandpit Road Calne Wiltshire	N15.7282	12	0	0	11	1	0	0	0	0	0	0	Remainder	Calne
Land at Silver Street & White Horse Way, Calne	N13.6774	72	0	24	24	24	0	0	0	0	0	0	Calne	Calne
Land at Slag Lane and Hawkeridge Road	W10.3406	11	11	0	0	0	0	0	0	0	0	0	Westbury	Westbury
Land at Southview Farm	W08.0896	64	32	32	0	0	0	0	0	0	0	0	Trowbridge	Trowbridge
Land at Station Road	W14.3371	13	0	13	0	0	0	0	0	0	0	0	Westbury	Westbury
Land At The Mead, Trowbridge Road	W14.10977	210	45	45	45	45	30		0	0	0	0	Westbury	Westbury
Land east of Oxford Rd (Site B) Calne Wiltshire	N15.11230	42	0	0	0	26	15	1	0	0	0	0	Calne	Calne
Land East of Spa Road Melksham Wiltshire	W14.10461	450	0	0	0	50	100	100	100	100	0	0	Melksham	Melksham
Land North East of Green Lane Farm, Green Lane (The Pastures)	W11.1932	39	25	14	0	0	0	0	0	0	0	0	Trowbridge	Trowbridge
Land North of Bath Road Corsham	N13.5188	150	0	56	53	28	12	1	0	0	0	0	Corsham	Corsham
Land North of Cranesbill Road	W14.0211	1	1	0	0	0	0	0	0	0	0	0	Melksham	Melksham
Land north of Holt Road and Cemetery Lane Bradford on Avon	W14.7689	60	0	0	25	32	3	0	0	0	0	0	Bradford on Avon	Bradford on Avon
Land off Abberd Lane Calne	N15.5254	124	42	41	41	0	0	0	0	0	0	0	Calne	Calne



Housing Land Supply Statement Base date: April 2016

Published: November 2016



Site Address	Site ref	Dwellings outstanding at April 2016	2016/17	2017/18	2018/19	2019/20	2020/21	2021/22	2022/23	2023/24	2024/25	2025/26	Town	СА
Land at Sandpit Road Calne Wiltshire	N15.7282	12	0	0	11	1	0	0	0	0	0	0	Remainder	Calne
Land at Silver Street & White Horse Way, Calne	N13.6774	72	0	24	24	24	0	0	0	0	0	0	Calne	Calne
Land at Slag Lane and Hawkeridge Road	W10.3406	11	11	0	0	0	0	0	0	0	0	0	Westbury	Westbury
Land at Southview Farm	W08.0896	64	32	32	0	0	0	0	0	0	0	0	Trowbridge	Trowbridge
Land at Station Road	W14.3371	13	0	13	0	0	0	0	0	0	0	0	Westbury	Westbury
Land At The Mead, Trowbridge Road	W14.10977	210	45	45	45	45	30		0	0	0	0	Westbury	Westbury
Land east of Oxford Rd (Site B) Calne Wiltshire	N15.11230	42	0	0	0	26	15	1	0	0	0	0	Remainder	Calne
Land East of Spa Road Melksham Wiltshire	W14.10461	450	0	0	0	50	100	100	100	100	0	0	Melksham	Melksham
Land North East of Green Lane Farm, Green Lane (The Pastures)	W11.1932	39	25	14	0	0	0	0	0	0	0	0	Trowbridge	Trowbridge
Land North of Bath Road Corsham	N13.5188	150	0	56	53	28	12	1	0	0	0	0	Corsham	Corsham
Land North of Cranesbill Road	W14.0211	1	1	0	0	0	0	0	0	0	0	0	Melksham	Melksham
Land north of Holt Road and Cemetery Lane Bradford on Avon	W14.7689	60	0	0	25	32	3	0	0	0	0	0	Bradford on Avon	Bradford on Avon
Land off Abberd Lane Calne	N15.5254	124	42	41	41	0	0	0	0	0	0	0	Calne	Calne

APPENDIX 17 – Email correspondance from the Case Officer (dated 24th April 2018)

From: Marsh, Chris [mailto:Chris.Marsh@wiltshire.gov.uk]
Sent: 24 April 2018 13:00
To: Adam Day <<u>A.Day@gladman.co.uk</u>>
Cc: Dave Hough <<u>D.Hough@gladman.co.uk</u>>
Subject: 18/02373/VAR - Land North of Bath Road, Corsham

Dear Mr Day,

Thanks for bearing with me while I find some time to work through the above application in detail. As you will appreciate, this has also involved consideration of a significant number of representations made locally.

Having reviewed the submission and present circumstances, I find little to alter the view given in respect of application 17/01539/VAR, as set out in the attached email. I still consider that the implications of Condition 22 transcend the limitations of residential amenity and minerals safeguarding and become fundamental to the deliverability of the site as a whole. It is noted that this deliverability was a determinative factor in the Inspector's allowing the appeal. Just as significantly, since the last application the Council has successfully defended a 5-year housing land supply position in a succession of appeals, such that were the original outline permission to be considered at this point in time, it may be unlikely to succeed. As such, I consider it inappropriate to accept in principle the 'banking' of a housing site that may prove technically or financially incapable of delivery within the next 24 years (the extent of the extant minerals consent).

I do not suggest that the considerable time elapsing since the condition was imposed indicates that the condition is *less* likely of being complied with. Notwithstanding, however, the information gathered within that time confirms (I think as a matter of common ground) that noise and vibration *is* a problem and that it will require an active and bespoke solution, with an associated cost to the developer. In respect of the reference to the recent DCLG/MHCLG publications, I would note that Gladman were in full agreement with the Condition's wording at the time of the Inquiry and, crucially, that this condition is in any case fundamental to the "delivery of development", to use the document's words, for the reasons above.

For the avoidance of doubt, given the minimal works theoretically necessary to protect the permission(s) if the application were successful, I do not object to the proposals on the grounds of potential abortive works being undertaken and any associated harm to the appearance of the site or unnecessary disruption to local residents. Taking a common-sense approach, it is not for the Local Planning Authority to anticipate an onerous worst-case, and frankly unrealistic, prospect in this regard. Neither is any weight given to the Pickwick Association's and others' persistent and misguided inability to distinguish between noise/vibration and future ground stability, the latter of which lies well beyond the scope of Condition 22/23.

However, in the light of the above, my current position on the application is that it should fail for much the same reasons as previously indicated; the Condition in effect carries more fundamental implications in respect of deliverability that cannot be overlooked or set aside. So far as I am aware, last Wednesday's testing will have yielded consistent, reliable data which may be used to model the performance of buildings and thus derive a suitable foundation solution for the LPA's review; with over four months remaining in order to complete this process before lawfully implementing the planning permission, I do not consider the current timescales are unreasonably restrictive.

I would be grateful for your instruction as to whether you wish to withdraw the application, or if you would prefer me to proceed to determination at this stage.

Kind regards,

Chris Marsh

Senior Planning Officer (North) | Wiltshire Council Economic Development and Planning Monkton Park, Chippenham SN15 1ER

Tel. 01249 706657 | Email. chris.marsh@wiltshire.gov.uk

Please note that I no longer work on Thursdays.

APPENDIX 18 – Statement by Mr Malcolm Walton Technical Director at Wardell Armstrong



Town and Country Planning Act 1990

Planning (Listed Buildings and Conservation Areas) Act 1990

Land North of Bath Road, Corsham, Wiltshire

Appeal Statement on Noise and Vibration Matters

Prepared by Malcolm Walton BSc, MCIEH

On behalf of the Appellants

Application Reference: 13/05188/OUT

30th May 2018



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- Appendix 2 Foundation Typical Section design drawing
- Appendix 3 Hartham Park: Proposed Mine Development drawing



1 QUALIFICATIONS AND EXPERIENCE

- 1.1 My name is Malcolm Thomas Walton. I hold a Bachelor of Science degree in Environmental Health and the Institute of Acoustics diploma in Noise and Vibration Control. I am a fully qualified Environmental Health Officer, now working in private consultancy.
- 1.2 I am a Member of the Chartered Institute of Environmental Health and an Associate Member of the Institute of Acoustics. I am a Technical Director and Principal Environmental Scientist with Wardell Armstrong with whom I have been employed for more than ten years.
- 1.3 I regularly assess the noise and air quality impacts of proposed and existing developments, and have given evidence at public inquiries and in court as a Consultant and as a Local Authority Officer.
- 1.4 I previously worked for nine years for Sefton Metropolitan Borough Council in the Pollution Control section with responsibilities for air quality investigation, assessment and enforcement.
- 1.5 The evidence which I have prepared and provide for this Appeal is true to the best of my knowledge and belief. I confirm that the opinions expressed are my true and complete professional opinions in the matters to which they refer.



2 INTRODUCTION/BACKGROUND

- 2.1 This evidence has been prepared on behalf of Gladman Developments Limited (GDL) to respond to the refusal to vary condition no.22 for outline planning permission for up to 150 dwellings, up to 1,394sqm B1 offices, access, parking, public open space with play facilities and landscaping at Land North of Bath Road, Corsham, (Application Reference 13/05188/OUT) by Wiltshire Council.
- 2.2 In 2013, Wardell Armstrong was appointed to provide consultancy advice to GDL in respect of noise and air quality matters for the proposed residential and commercial development at land north of Bath Road, Corsham (the application site). I have personally been involved in this commission from commencement to present day.
- 2.3 During the consultation period, on the original outline application, officers at Wiltshire Council raised concerns regarding possible future noise/vibration disturbance affecting the proposed dwellings when stone mining occurs beneath the site.
- 2.4 Whilst trying to address these concerns, detailed assessment was impossible because there was no mining activity taking place under the application site and no properties on the application site in which to carry out noise/vibration measurements.
- 2.5 Wiltshire Council refused the application and reason for refusal number 4 stated; "Insufficient evidence has been provided to demonstrate that, on the balance of probabilities, the development by reason of its amount and siting would not give rise to the unacceptable loss of residential amenity to future occupiers as a result of the consented mineral workings beneath the land. The proposal therefore fails to satisfy Policies C3 and NE18 of the adopted North Wiltshire Local Plan 2011, CP57 of the emerging Wiltshire Core Strategy or paragraph 123 of the National Planning Policy Framework".
- 2.6 Gladman then appealed the decision and during the Public Inquiry in January 2015 I attended meetings with Wiltshire Council's Senior Environmental Health Officer (Richard Francis) and their appointed specialist noise and vibration advisor (Steve Ellis of the Industrial Noise and Vibration Centre) to agree a way forward.
- 2.7 Planning Conditions within a Statement of Common Ground were subsequently agreed and provided to the Planning Inspector.
- 2.8 The Appeal was allowed in May 2015 (Appeal Reference: APP/Y3940/A/14/2222641) with Conditions 22 and 23 relating to the control of noise and vibration within noise sensitive buildings on the site.



2.9 Planning Condition 22 states:

"No development shall take place until a Foundation Investigation Plan has been submitted to and approved in writing by the local planning authority. The Foundation Investigation Plan shall include:

- i) A foundation zoning plan which will identify the type and depth of foundations across the site.
- ii) Vibration testing which shall take place during a trial mining test at appropriate locations to replicate both a typical case and a worst case of future mining both within the mine and at foundation level and bedrock level. The results of the test are then to be used by the foundation design engineer to ensure that noise and vibration levels of the foundations are at or below the criteria specified in Condition 23. The vibration testing shall be carried out in accordance with a method statement which shall first have been submitted to and approved in writing by the local planning authority.
- iii) The results of the vibration testing shall be provided to the local planning authority and shall be used to design vibration and sound isolation measures (where required) at each dwelling and noise sensitive building. The foundation design for each dwelling and noise sensitive building shall be submitted to and approved in writing by the local planning authority.

Development shall be carried out in accordance with the approved Foundation Investigation Plan."

2.10 Planning Condition 23 states:

"The foundations shall be designed to ensure that noise and vibration from underground mining activity shall not give rise to a noise level within any dwelling or noise sensitive building in excess of that equivalent to Noise Rating Curve 25 and vibration levels shall not exceed 0.1 to 0.2 ms-1.75 in accordance with the methodology in BS 6472-1-2008."



3 CHRONOLOGY OF EVENTS

- 3.1 Condition 22 part (ii) requires that a test takes place to monitor noise and vibration at appropriate locations above the mining activity so that the results could be used to inform any mitigation design within the foundation structure. However, no mining activity was taking place, or imminently planned, for extraction of the mineral reserve under the application site. The only evidence of mining under the application site in 2015 was a tunnel excavated by hand between 1900 and 1902. This tunnel together with the main mine area to the west of the application site can be seen on the drawing; Extent of mining at Hartham Park 2015 (Appendix 1).
- 3.2 Following extensive consultation with Hanson who at that time held the lease to extract stone from Hartham Park Mine, it became apparent in July 2015 that technically it would not be possible to carry out a test or simulated mining activity under the application site, but that such a test could take place above the mining activity to the west of (but not under) the application site.
- 3.3 This information was provided to Wiltshire Council by email on 16th July 2015 i.e. within two months of outline permission being allowed at appeal.
- 3.4 On the 20th August 2015, Chris Marsh (Senior Planning Officer) at Wiltshire Council replied stating "I am unable to agree as a matter of principle that 'appropriate locations' can extend as far as locations beyond the application site. I consider such an approach would prejudice the integrity of the condition such that it would become unsound and furthermore is not in the spirit of the condition or the manner in which its wording was originally agreed. Should you obtain legal advice to the contrary, I would be interested to review this, however".
- 3.5 In order to identify a way forward, GDL requested an Opinion from leading Counsel which was provided to Chris Marsh on 22nd September 2015. Counsel Opinion was that testing is not restricted by the condition to locations underneath the site.
- 3.6 On the 16th October, Chris Marsh advises by email that the Council is satisfied in principle, that testing can take place off-site (subject to identifying suitable locations with appropriate supporting documentation).
- 3.7 I sent a Vibration Test Method Statement to Wiltshire Council on 11th December 2015 by email. Unfortunately due to access issues for the mine operator - Hanson, the test would have to take place before Christmas 2015. I did however pass on an offer for



GDL to pay the reasonable costs of an independent specialist consultant (such as the advisor used by the Council during the Public Inquiry) to again assist the Council.

- 3.8 Due to the limited time available to review the Method Statement, Chris Marsh advised in an email dated 15th December 2015 that the Council would not be able to carry out a full assessment of the proposals before the planned date for testing.
- 3.9 On the 16th December 2015, the mining vibration test took place with measurement results and associated prediction of re-radiated noise and vibration described by Total Vibration Solutions (TVS) in their Vibration Survey and Assessment Report dated 24th August 2016. This report, along with the geological comparison of test site and application site, Foundation Zonation Plan and Foundation Design Typical Section drawings were provided to Wiltshire Council on 26th August 2016. Within this report, TVS confirm that with the recommended mitigation measures in place, both internal re-radiated noise and tactile vibration levels in the future housing on the site will be significantly below the criteria specified in condition 23. Implementation of the proposed design across the site will therefore ensure compliance with conditions 22 and 23 and enable discharge of the conditions. The mitigation measures comprise a foundation design which incorporates a vibration isolation material. A Foundation Typical Section design drawing which incorporates the isolation material is attached as Appendix 2.
- 3.10 We were provided a technical response to the August submission by Rupert Taylor, the new noise and vibration specialist acting for Wiltshire Council dated 5th October 2016. This raised several technical issues to be addressed before resubmission of the report.
- 3.11 On the 3rd November 2016 we provided an updated Vibration Survey and Assessment Report (by RBA Acoustics – a specialist sub-consultant to TVS) dated 28th October 2016.
- 3.12 In order to clarify the technical requirements to discharge condition 22, we met with Wiltshire Council and their advisor on 14th November 2016. At the meeting, Mr Taylor suggested that computer modelling utilizing Finite Element Analysis should be carried out in place of the empirical calculation done to date. FEA is a complex numerical method used to model complete buildings in order to predict the noise and vibration within the proposed dwellings originating from the mining activity.
- 3.13 In response to the issues raised by Mr Taylor, I provided a Supplementary Submission dated 22nd December 2016 accompanied by a technical report prepared by RBA



Acoustics dated 20th December 2016. I conclude "We consider the testing and analysis of data to have been carried out to represent a reasonable worst case and RBA have shown that even allowing for substantial uncertainty in the prediction process, compliance with the planning condition would be achieved following installation of the proposed vibration mitigation measures. Furthermore, with the installation of the proposed mitigation, the risk of significant noise impact to residents in individual dwellings is low, particularly when the transient and short term nature of the scaling element of the mining activity is taken into consideration".

- 3.14 Mr Marsh responded to this submission by email dated 6th January 2017 advising that the information as currently submitted does not provide the reassurance required to satisfy condition 22 and refused to discharge the condition by letter dated 28th February 2017.
- 3.15 In January 2017, GDL appointed a further specialist, ACCON UK to arrange for the detailed Finite Element Analysis modelling and analysis to be carried out. ACCON subcontracted this specialist work to D2S International located in Belgium. The model utilized the detailed building designs provided by the future house builder proposed for the site Redrow Homes. The results of this exercise were reported in the ACCON report dated 12th May 2017. ACCON conclude; "Based on a detailed finite element model of the entire building which is considered to be representative of all building types proposed for the site, including the foundation, an assessment has been carried out of the expected groundborne noise and vibration levels due to potential future mining activities below the approved residential development site to the north of Bath Road, Corsham. It is concluded that both groundborne noise levels and vibration levels will remain below the set criteria, utilising the identified mitigation measures, and therefore Planning Condition 23 can be discharged."
- 3.16 Chris Marsh provides My Taylor's comments in his email of 16th June 2017 requesting further details of the method of modelling adopted.
- 3.17 Following these latest comments, the modelling was refined to include the specific characteristics of two possible isolation materials available for use within the foundation design. A further submission was made within the ACCON Addendum report dated 17th August 2017. Again ACCON conclude; "The calculations, based on a detailed finite element model of the building and foundation, in line with the requirements of the Council's Noise Consultant, identify that with the proposed isolation solution, vibration levels inside the buildings will remain well below the



imposed limits. Groundborne noise levels would be below the imposed NR 25 limit and therefore it can be concluded that the use of either of the isolation materials will discharge the requirements of planning conditions Nos. 22 & 23".

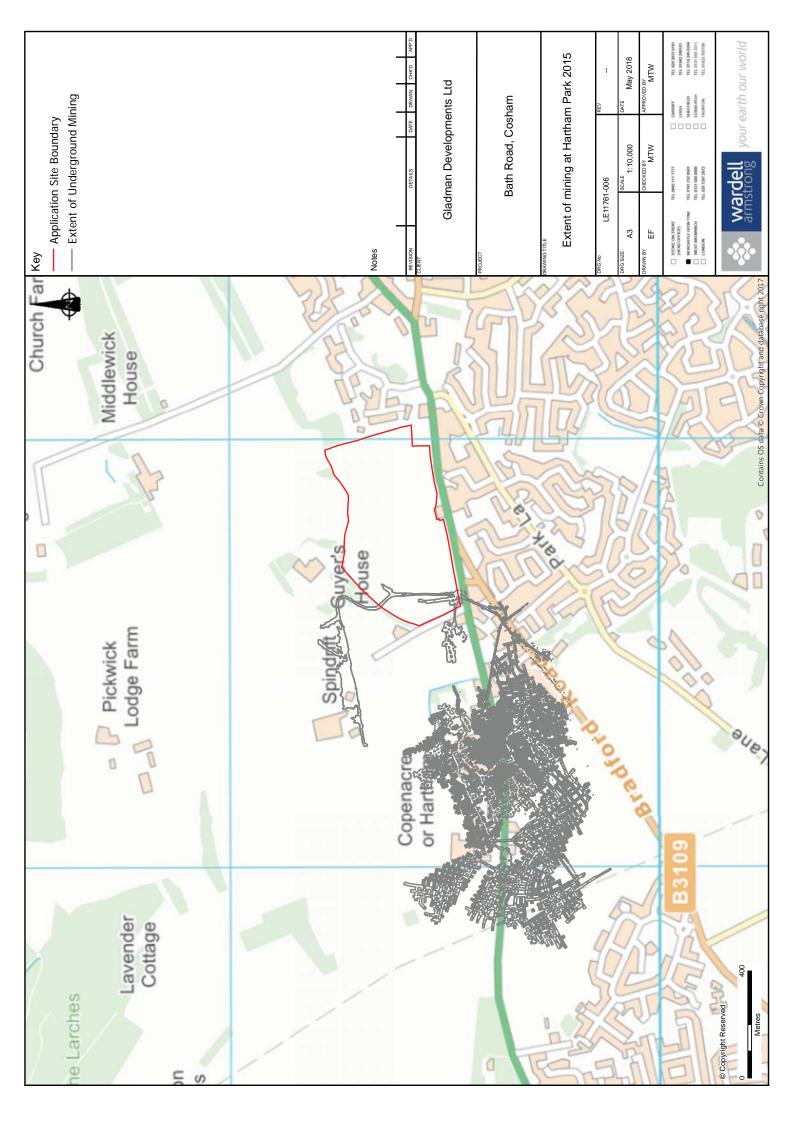
- 3.18 Mr Taylor provides his further comments in a letter dated 31st August 2017. Chris Marsh summarises the Council's position and advises that Condition 22 cannot be discharged due to insufficient certainty to 'ensure' compliance with the condition(s) due to variables arising from:
 - a) Changing working practices within the mine since time of original survey testing;
 - Restrictions of original testing, including transducer spec and lack of roof testing; and
 - c) Lack of robust lab-testing of specified foundation isolation product.
- 3.19 A further meeting was held with Wiltshire Council and their advisors on 25th September 2017 to discuss outstanding technical issues and I produced a technical note dated 16th November 2017 to try to answer these issues.
- 3.20 In Chris Marsh's email response dated 6th December 2017, he advises that the Council and its consultant do not agree with the assumptions made within our assessment and reiterated their suggestion to provide new data from a re-test exercise carried out under the application site.
- 3.21 I provided a further submission dated 20th December 2017 to address Mr Marsh's comments and a Vibration Monitoring Methodology Report was prepared by ACCON dated 18th December 2017.
- 3.22 In order to agree the technical and procedural details in carrying out a new test on site, we held discussions with Wiltshire Council, their advisor Mr Taylor and the new mine operator, (Lovell Stone Group who took over the lease to extract stone and were now working under the site), at a meeting on 11th January 2018. This was the first opportunity to assess the noise/vibration impacts of mining below the actual development site since the inception of the project because there was no mining activity under the site until new works commenced in 2017. Below the application site, mining works had commenced in the area marked Phase 1 on the Lovell Stone Group, Hartham Park: Proposed Mine Development drawing (Appendix 3).
- 3.23 Following the meeting, ACCON prepared a revised Vibration Monitoring Methodology for submission to Wiltshire Council dated 24th January 2018. This was subsequently agreed by the Council in an email from Chris Marsh dated 29th January 2018.



- 3.24 The vibration monitoring exercise was carried out by ACCON and Wardell Armstrong on 22nd March 2018 under the observation of the Wiltshire Council officers and their technical advisor. Due to a technical problem with the monitoring equipment insufficient data was captured and the exercise was repeated on 18th April 2018.
- 3.25 On the 14th May 2018 we submitted a Technical Note presenting the vibration monitoring results prepared by ACCON (dated 11th May 2018) which concludes that the predicted levels of groundborne noise from the results of the 18th April 2018 monitoring are below the NR25 curve and therefore in compliance with planning conditions 22 and 23.
- 3.26 However, due to considerable time elapsed since Inspectors decision, in which it has not been possible to agree with the LPA, GDL submitted an application to vary condition 22 to retain the certainty of protection it offers future residents but whilst allowing non sensitive development to commence.
- 3.27 As can been seen from the data provided above, Gladman and the consultant team has worked in a proactive manner to discharge condition 22 and have reacted to all requests in a timely manner, further time, therefore, is requested to mitigate the proposal.

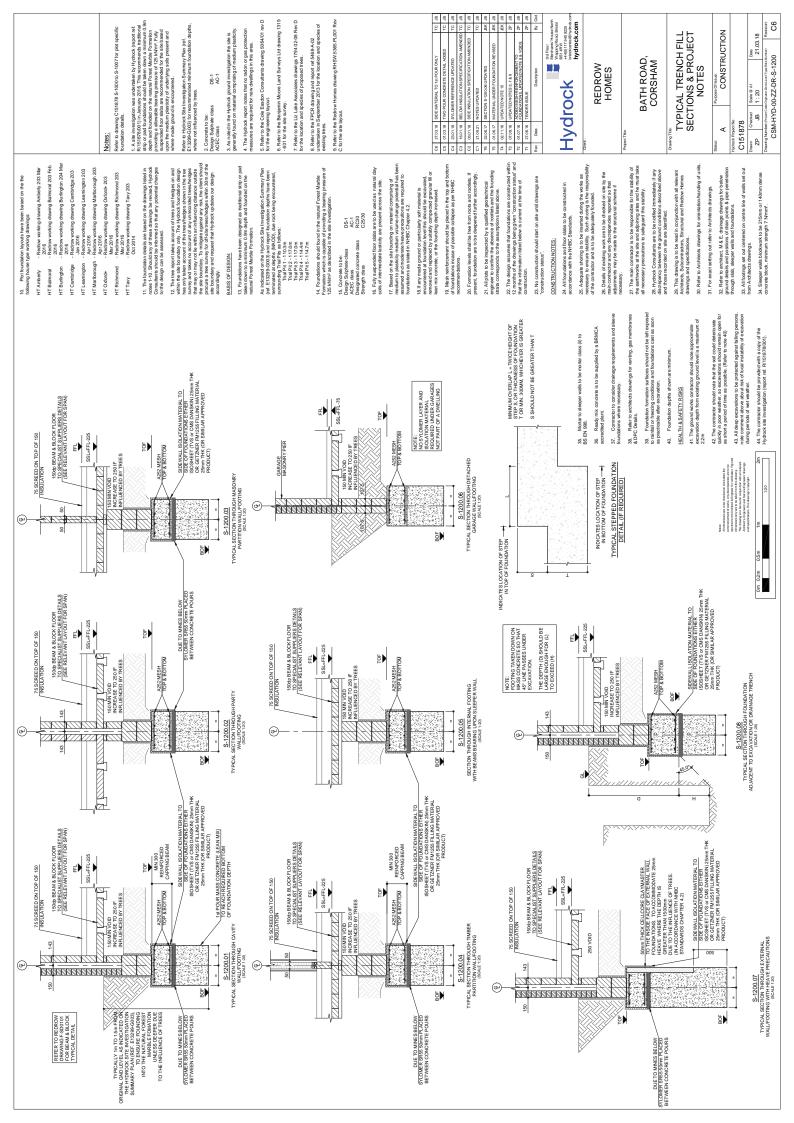
Appendix 1

Extent of mining at Hartham Park 2015



Appendix 2

Foundation Typical Section design drawing



Appendix 3

Hartham Park: Proposed Mine Development drawing

