

TOWN AND COUNTRY PLANNING ACT 1990

PLANNING AND COMPULSORY PURCHASE ACT 2004

SECTION 78 APPEAL

BY

CICERO ESTATES

LAND NORTH OF CROWN ROAD, DT10 1LN

MARNHULL

DORSET

PRE-INQUIRY STATEMENT

ON BEHALF OF

DORSET COUNCIL

11 February 2022

PLANNING INSPECTORATE REFERENCE: APP/D1265/W/21/3289314

LOCAL PLANNING AUTHORITY REFERENCE: 2/2018/1124/OUT

Contents

1. INTRODUCTION	1
Context	1
Site and Surroundings	1
Reasons for Refusal contained in the Decision Notice	2
Rule 6 parties	3
2. THE DEVELOPMENT PLAN.....	3
North Dorset District Wide Local Plan (January 2003)	4
North Dorset Local Plan Part 1 (January 2016)	4
3. OTHER MATERIAL CONSIDERATIONS	5
National Planning Policy	5
Dorset Council Local Plan (emerging policy)	9
Housing Needs and Housing Land Supply	9
Recent Appeal Decisions	10
Relevant Legal Rulings	12
4. THE COUNCIL’S REASONS FOR REFUSAL - Responding to the Appellant’s Statement of Case.....	13
Reason for Refusal 1a – Heritage.....	13
Reason for Refusal 1b - Landscape Character and Visual Amenity	15
Reason for Refusal 1c - Spatial Strategy.....	17
Reason for Refusal 2 - Ecology	18
Reason for Refusal 3 - S106 legal agreement	19
The Application of the Tilted Balance	20
5. LIKELY TOPICS TO BE COVERED.....	22
6. DOCUMENTS TO BE REFERENCED / USED IN EVIDENCE	22
7. CONDITIONS	23

1. INTRODUCTION

Context

- 1.1 The appeal has been lodged by Cicero Estates (the 'Appellant') in respect of the refusal of its outline planning application (Reference 2/2018/1124/OUT for the following development:

“Develop land by the erection of 72 No. dwellings and new community facilities. (Outline application to determine access and layout).”

- 1.2 This is Dorset Council's Statement of Case.

Site and Surroundings

- 1.3 The application site lies on the eastern end of the village of Marnhull. To the west is a c20 housing estate (Ashley Road / Phillips Road), which backs onto the site. To the north lies Sodom Lane, with the Royal British Legion Club surrounded by open countryside to the north. To the north-east is Laburnam Cottage (Grade II Listed) and two other properties. Tanzey Lane runs to the east, with farmland beyond before a small area of further development around the junction with the B3092. To the south lies New Inn Farm which is surrounded by a mix of properties and countryside, including two Grade II listed buildings, Shaston View, and Rosedale Cottage.
- 1.4 The site itself extends to approximately 5.24ha and is a large agricultural field (although historically three separate fields, with the dividing boundaries still evident on the ground), and is currently used for grazing. It is broadly rectangular in shape, but missing the south-west quadrant which wraps around the property known as the Stone Barn. The land rises quite significantly to the South from Sodom Lane before falling again towards Crown Road. Footpaths N47/34 and N47/35 run through the site offering access between Ashley Road, Tanzey Lane, Sodom Lane and Crown Road. Due to its elevated position, views of the site are also possible from a number of nearby footpaths.

1.5 The village of Marnhull has a defined settlement boundary and is one of a number of larger villages identified in the adopted development plan. The village form is atypical, in that it is best described as a 'scattered village' – formed from a number of smaller scattered hamlets. As a consequence there is no single historic core or linear street that the village is centred around, but instead there are a number of historic hubs centred around the heart of the earlier hamlets. Marnhull consequently has two separate conservation areas, one reflecting the earlier hamlet of Burton and Pilwell to the north, clustered around the village shops and Blackmore Vale Inn, and another to the South reflecting the earlier hamlet of Kentleworth, centred around the Church, school and Crown Public House, but continuing in a linear form along New Street.

Reasons for Refusal contained in the Decision Notice

- 1.6 The decision to refuse the application was made on 18 June 2021. The reasons for refusal (RfR) as set out in the decision notice related to:
- Unacceptable harm to the historic environment, including 'less than substantial harm' to the conservation of the various heritage assets and to the safeguarding of their significance and setting [RfR 1a];
 - Unacceptable harm to the natural environment, the level of housing proposed being out of keeping with the prevailing landscape character of the countryside and failing to successfully integrate due to the extent of built form [RfR 1b];
 - The limited the opportunities for future residents to make sustainable choices through travel to access a wide range of services, further impacting upon the environment [RfR 1c];
 - Insufficient evidence to demonstrate that the proposed development would not have a significant impact upon biodiversity at the site, and in particular European Protected Species, including bats [RfR 2];

- Failure to provide a Section 106 legal agreement to secure affordable housing and other off-site contributions required to make the development acceptable in planning terms [RfR 3];
- The application of the tilted balance, insomuch as the adverse impacts of the development significantly and demonstrably outweigh the benefits of the scheme, including the public benefits; and that Local and National policies seeking to safeguard the natural and historic environment offer clear reasons for refusing the development plan [RfR 1d]

Reference is made in the decision notice to Policies 2, 4, 5, 8, 13, 14 and 15 of North Dorset Local Plan Part 1 and sections 9, 15 and 16 of the National Planning Policy Framework.

Rule 6 parties

- 1.7 The Council is not aware of any potential 'Rule 6' parties that would wish to participate in the Inquiry.

2. THE DEVELOPMENT PLAN

- 2.1 The starting point for a determination of this appeal is Section 38(6) of the Planning and Compulsory Purchase Act 2004. The appeal should be determined in accordance with the development plan unless material considerations indicate otherwise. A two-stage process is therefore required starting with an assessment of whether the scheme is in accordance with the development plan as a whole and if not whether relevant material considerations justify a departure from the development plan.
- 2.2 The development plan policies which apply to this appeal are the 'saved' policies in the North Dorset District Wide Local Plan to 2011 (January 2003), and the North Dorset Local Plan Part 1 2011-2031 (January 2016) – hereon after referred to as NDLP1. The latter was produced in accordance with the NPPF (2012). While the NPPF has undergone two further iterations, the NDLP1 remains in conformity with the current version of the framework (July 2021).

North Dorset District Wide Local Plan (January 2003)

- 2.3 The Secretary of State issued a direction on in September 2007 which 'saved' certain policies in accordance with paragraph 1(3) of Schedule 8 of the Planning and Compulsory Purchase Act 2004.
- 2.4 Saved Policy 1.7 of the 2003 Plan defines settlement boundaries around the four main towns, Stalbridge and the eighteen larger villages. These boundaries were retained through the 2016 LP. The appeal site lies outside the settlement boundary for Marnhull.
- 2.5 In the context of not being able to demonstrate a 5 year housing land supply, Dorset Council accepts that less than full weight must be given to the settlement boundary. However, evidence will be produced to demonstrate that there is still a rationale for using these settlement boundaries.

North Dorset Local Plan Part 1 (January 2016)

- 2.6 Within the NDLP1 the following policies are identified as potentially relevant to this appeal:

	RfR1	RfR2	RfR3
– 1 – Presumption in favour of Sustainable Development			
– 2 – Core Spatial Strategy	✓		
– 3 – Climate Change			
– 4 – The Natural Environment	✓	✓	
– 5 – The Historic Environment	✓		
– 6 – Housing Distribution	(✓)		
– 7 – Delivering Homes	(✓)		
– 8 – Affordable Housing			✓
– 9 – Rural Exception Affordable Housing			
– 13 – Grey Infrastructure			✓
– 14 – Social Infrastructure			✓
– 15 – Green Infrastructure			✓

– 20 – The Countryside	(✓)		
– 24 – Design	(✓)		
– 25 – Amenity			

NB: whilst not directly specified in the reason for refusal, policies 6 and 20 are relevant in supporting the Core Spatial Strategy as it applies to Marnhull, and policies 7 and 24 are relevant in supporting policies 4 and 5 in relation to landscape and historic character.

The above policies that relate directly to the RfR are described in brief in the Appellant’s Statement of Case (paragraphs 6.15 – 6.26)

- 2.7 In reading the plan, Objectives 1, 2, 4, 5 and 6 are also relevant.
- 2.8 On the basis that the Council has not met the Housing Delivery Test (the latest published figure in January 2022 being 69%), Dorset Council accepts that the less than full weight must be given to these policies and that the ‘tilted balance’ exercise associated with the presumption in favour of sustainable development applies. Evidence will be produced to demonstrate that the development plan’s strategy remains broadly consistent with the Framework and is still of significance.

3. OTHER MATERIAL CONSIDERATIONS

National Planning Policy

- 3.1 An important material consideration is the National Planning Policy Framework (last updated July 2021). As paragraph 2 of the Framework confirms, it does not override the development plan or the approach mandated by s.38 of the Planning and Compulsory Purchase Act but the NPPF is clearly an important material consideration.

Sustainable Development

- 3.2 Paragraph 8 of the NPPF states that achieving sustainable development means that the planning system has three overarching objectives (economic, social and environmental), which are interdependent and need to be pursued in mutually supportive ways. However paragraph 9 makes clear that these objectives should be delivered through the preparation and implementation of plans and the application

of policies in the Framework, and are not criteria against which every decision can or should be judged. This reinforces the plan-led approach to development and the determination of applications and appeals and the paragraph emphasises that planning policies and decisions should play an active role in guiding development towards sustainable solutions, to reflect the character, the needs, and opportunities of each area.

The Presumption in Favour of Sustainable Development

3.3 Paragraph 11 sets out the presumption in favour of sustainable development. For decision taking this means:

c) approving development proposals that accord with an up-to-date development plan without delay; or

d) where there are no relevant development plan policies, or the policies which are most important for determining the application are out-of-date⁷, granting permission unless:

i. the application of policies in this Framework that protect areas or assets of particular importance provides a clear reason for refusing the development proposed; or

ii. any adverse impacts of doing so would significantly and demonstrably outweigh the benefits, when assessed against the policies in this Framework taken as a whole.

3.4 Footnote 7 advises that this includes situations where the local planning authority cannot demonstrate a five-year supply of deliverable housing sites or where the Housing Delivery test indicates that the delivery of housing was substantially below (less than 75% of) the housing requirement over the previous three years.

Plan-led System

3.5 Section 3 of the NPPF refers to plan making and stresses that the planning system should be genuinely plan-led. Section 4 covers the decision-making process, including pre-application engagement, the use of planning conditions and obligations, and the weight to be given to potentially relevant policies in emerging plans.

- 3.6 Linked to this, Annex 1 paragraph 219 confirms that policies should not be considered out-of-date simply because they were adopted or made prior to the publication of the Framework. Due weight should be given to them, according to their degree of consistency with the Framework.

Delivering a Sufficient Supply of Homes

- 3.7 Section 5 refers to the delivery of a sufficient supply of homes. It outlines the Government's objective of significantly boosting the supply of homes and the importance of having a sufficient amount and variety of land that can come forward where it is needed, that the needs of groups with specific housing requirements are addressed and that land with permission is developed without unnecessary delay.
- 3.8 It refers to the requirement for Local Planning Authorities to identify and update annually a supply of specific deliverable sites sufficient to provide a minimum of five years' worth of housing against their housing requirement, either set out in adopted strategic policies, or against their local housing need where the strategic policies are more than five years old.
- 3.9 It also confirms that in rural areas, planning policies and decisions should be responsive to local circumstances and support housing developments that reflect local needs. Following on from this, planning policies should identify opportunities for villages to grow and thrive, especially where this will support local services. Where there are groups of smaller settlements, development in one village may support services in a village nearby. Rural exception sites are supported where this meets identified local needs.

Promoting sustainable transport

- 3.10 Section 9 sets out the Government's objective in terms of promoting sustainable transport, and makes clear that the planning system should actively manage patterns of growth in support of these objectives.
- 3.11 It states that significant development should be focused on locations which are or can be made sustainable, through limiting the need to travel and offering a genuine choice of transport modes. It recognises that opportunities to maximise sustainable transport solutions will vary between urban and rural areas, and that in assessing

planning applications, decision makers should ensure that appropriate opportunities to promote sustainable transport modes can be taken up, given the type of development and its location.

- 3.12 It also confirms that, where developments will generate significant amounts of movements, any application should be supported by a Transport Assessment to enable the impacts of the development to be assessed, and will need to be supported by a Travel Plan.

Making Effective Use of Land and Achieving Well-designed Places

- 3.13 Sections 11 and 12 of the Framework supports planning policies and decisions that make effective use of land while safeguarding and improving the environment. It includes reference to the importance of development being sympathetic to local character and history, including the surrounding built environment and landscape setting.

Conserving and enhancing the natural environment

- 3.14 Section 15 states that planning decisions should contribute to and enhance the natural and local environment by protecting and enhancing valued landscapes, and by recognising the intrinsic character and beauty of the countryside.

Conserving and enhancing the historic environment

- 3.15 Section 16 explains how decision makers should determine applications which affect heritage assets. It makes clear that, when considering the impact of a proposed development on the significance of a designated heritage asset, great weight should be given to the asset's conservation (and the more important the asset, the greater the weight should be), irrespective of whether any potential harm amounts to substantial harm, total loss or less than substantial harm to its significance. Where a development proposal will lead to less than substantial harm to the significance of a designated heritage asset, this harm should be weighed against the public benefits of the proposal.

Dorset Council Local Plan (emerging policy)

- 3.16 The Council published the first (options) draft of the Dorset Council Local Plan in January 2021. It is anticipated that the next iteration of the draft local plan will be published for consultation in May 2022. It is hoped that the new Local Plan will be adopted in Winter 2023, and will cover the period to 2038.
- 3.17 At this stage on the process towards adoption the Council contends that the emerging policy can be given only limited weight, and that its evidence base is also incomplete.
- 3.18 The emerging plan does not identify any sites for development in Marnhull, which is listed as a potential 'Tier 3' settlement (and would therefore retain its settlement boundary, within which windfall and infilling could take place).

Housing Needs and Housing Land Supply

- 3.19 At the time of the decision, the latest published housing land supply situation was the Authority Monitoring Report for the period 1 April 2019 to 31 March 2020 (published February 2021). This demonstrated a deliverable housing supply of 3.3 years as of 1 April 2020.
- 3.20 This was based on an annualised target of 534 dwellings per annum (dpa) that was derived from the Local plan target (285dpa) and took into account the deficit and a 20% buffer. Against this target the anticipated supply within the 5 year period was 1,779 homes (3.3 years). In relation to the Housing Delivery Test, the latest published figures for North Dorset at that time, which were for the period 2017-20, showed this as 59%.
- 3.21 The Council have now collated and published the data for 2021-22, and the Government have published updated Housing Delivery Test results. This shows that the Housing Land Supply position has have improved substantially, and the Council considers that it can demonstrate a Housing Land Supply in excess of the 5.0 year requirement. It is anticipated that this claim will be considered through an Inquiry for the Stalbridge area scheduled to sit in February 2022. However as the Housing

Delivery Test remains below 75% (at 69%) it is accepted that the presumption in para 11d of the NPPF will continue to apply to the North Dorset area.

- 3.22 In terms of Affordable Housing Need, the Affordable Housing Register is in the process of being refreshed, having been an amalgamation of the various registers previously held by the individual Councils prior to re-organisation. The latest evidence on Affordable Housing Need, as drawn from the refreshed register in January 2022, indicated a local need of 19 households arising from Marnhull Parish.
- 3.23 In terms of Local Supply within Marnhull Parish, the Housing Land Supply report (January 2022) records a deliverable supply of 32 homes (from minor permissions), and outline permission was granted for up to 61 dwellings on Land off Burton Street, Marnhull on 16 September 2020 (ref 2/2018/1808/OUT) which included a S106 agreement to secure not less than 40% of the dwellings as affordable housing units (and therefore it is anticipated that at least 24 affordable housing units will be provided).

Recent Appeal Decisions

- 3.24 Of particular relevance to this appeal are recent decisions in relation to Stalbridge and the 18 'larger villages' within the North Dorset area, for those settlements which did not have an up-to-date Neighbourhood Plan, in the period following the Council's inability to demonstrate a 5 year housing land supply. The most recent decisions are shown first.

Appeal / outcome	Location	Relevant factors in decision
3279462 Dismissed 12/21 Inspector: M Bale (Hearing)	Land off Lower Common Road, Child Okeford	Attaches limited weight to the settlement boundaries, but full weight to the conflict with the Spatial Strategy (Policy 2) A significant number of new residents would be reliant upon the car. Significant harm to the character and appearance of the area by virtue of the awkward relationship to the established form of the settlement and its rural character (Policy 24)

Appeal / outcome	Location	Relevant factors in decision
		<p>Less than substantial harm to the significance of the conservation area, outweighed by public benefits.</p> <p>Substantial weight applied to the delivery of housing, including the delivery of SBCH and affordable housing</p> <p>Tilted balance applied.</p>
<p>3265743 Allowed 11/21 Inspector: Richard Aston (Inquiry)</p>	<p>Land South of Lower Road, Stalbridge</p>	<p>Notes the emerging Local Plan evidence base indicates Stalbridge will be classified as a 'Town and other main settlement' with 'modest' expansion. The range of services and facilities would be satisfactory.</p> <p>Moderate environmental harms in terms of reliance on the private car, character and appearance - conflict with the development plan, as a whole, given moderate weight.</p> <p>Significant weight given to both the provision of open market housing and affordable housing</p> <p>Tilted balance applied.</p>
<p>3275130 Dismissed 09/21 Inspector: S Edwards (Written Reps)</p>	<p>Land at Kingston Lane / Frizzel's Hill, Hazelbury Bryan</p>	<p>Conflict with the spatial strategy that seeks to focus development in the most sustainable and accessible locations, whilst respecting and enhancing the landscape character of the countryside.</p> <p>The appeal scheme would not meet a local need which could be met elsewhere in the area.</p> <p>For the majority of journeys, people would rely on the private car.</p> <p>The undeveloped nature of the site, together with its topography and prominence in distant views, make an important contribution to the rural</p>

Appeal / outcome	Location	Relevant factors in decision
		character of the hamlet and its wider setting. Tilted balance not applied – most important policies not out-of-date.
3262267 Dismissed 03/21 Inspector: Benjamin Webb (Written Reps)	Land west of Waterlake, Stalbridge	Heritage (less than substantial harm) Landscape character (valued landscape) Cumulative level of development No certainty of jobs being generated Likely need to travel in order to fully satisfy needs including (but not limited to) for employment. Dismissed emerging Plan (allocation) Tilted balance not applied – on the basis that the public benefits did not outweigh the harm to the Conservation Area.
3254594 Dismissed 03/21 Inspector: J Wilson (Hearing)	Land West of Bournemouth Road, Charlton Marshall	Harm to the general character and appearance – rural setting and distinction of Charlton Hill. Heritage (less than substantial harm) – scheme would materially and negatively alter appearance of the Conservation Area Tilted balance not applied – on the basis that the public benefits did not outweigh the harm to the Conservation Area

Relevant Legal Rulings

- 3.25 Of particular relevance to this appeal are a number of legal rulings:
- 3.26 The Court of Appeal in Gladman vs Daventry [2016] EWCA Civ 1146 judgement reinforced the importance of plan-led decision making and the priority given to the development plan, that “significant weight should be given to the general public interest in having plan-led decisions, even if particular policies in the development plan are old”.
- 3.27 The Suffolk Coastal D.C. v Hopkins Homes ruling in the Court of Appeal [2016] EWCA Civ 168 confirms that whether or not a plan is up-to-date is a significant

material consideration, but the simple fact of being out-of-date or not fully up-to-date does not negate or render irrelevant a development plan or policy within it; rather the appropriate weight is a matter to be considered by the decision maker, in the context of the plan-led system that is the statutory basis for decision taking; and the overall intentions of the Framework in respect of sustainable development.

3.28 The High Court judgement in *Gladman Developments Ltd v SSHCLG & Corby BC & Uttlesford DC* [2021] EWCA Civ 104, in terms of the key points this makes in relation to applying tilted balance approach, ie:

- it is appropriate to have regard to development plan policies when dealing with the tilted balance question;
- the exercise of assessing a development’s compliance with the policies in the NPPF can properly include consideration of related policies in the development plan;
- this in turn also means that such the policies of the development plan will often inform the balancing exercise required under paragraph 11(d)(ii);
- the decision-maker must keep in mind the statutory primacy of the development plan and must make the decision, as s38(6) requires, in accordance with the development plan unless material considerations indicate otherwise – so that the integrity of the section 38(6) assessment can be assured.

4. THE COUNCIL’S REASONS FOR REFUSAL - Responding to the Appellant’s Statement of Case

Reason for Refusal 1a – Heritage

Referred to in the Appellant’s Statement of Case paragraphs 9.105 – 9.145

4.1 Objective 2 of the NDLP1 states it is to conserve and enhance the Historic and Natural Environment by ensuring that North Dorset’s wildlife, landscape and cultural

heritage are protected and well managed, encouraging design that maintains the quality of the district's built and natural environment.

- 4.2 Policy 5 of the NDLPP1 seeks to protect the historic landscape by assessing and providing justification of potential impacts upon heritage assets within the surroundings. Dorset's historic environment needs to be conserved and enhanced for future generations. The local environment includes assets which contribute to identity and local distinctiveness, meriting consideration in planning decisions. The harmful 'creep' of built form into the open countryside, contributes to a gradual erosion of punctuating open space that characterises villages such as Marnhull, as dispersed rural settlements.
- 4.3 The appeal raises issues, including that of whether the development proposed will result in unacceptable impact and harm to the significance and setting of designated heritage assets (Grade I St. Gregory's Church, and Grade II buildings Laburnham Cottage, Shaston View and Rosedale Cottage) The potential erosion to the rural setting of Grade II Nash Court will also be considered. Analysis and assessment of impact and harm in accordance with the NPPF Section 16, NDDC Local Plan policies and Historic England GPA3 and Conservation Principles will be applied in order to provide balanced justification as to the significance of the buildings, their setting and contextual contribution to the historic landscape.
- 4.4 NPPF Section 12, Achieving Well Designed Places states that designs are sympathetic to local character and history. Analysis of the designs will confirm whether the development meets NPPF criteria and will not result in irreversible and cumulative harm to the general character and rural setting of the area.
- 4.5 Historic England's Good Practice Advice Note 2: Management of Significance in Decision Taking, and Conservation Principles, Policies and Guidance, advise on the importance of sustainable, transparent and quality of decision-making in order to achieve well informed and successful outcomes, which protect the historic environment.
- 4.6 The Council's Senior Conservation & Design Officer assessed the proposals, with the latest comments made on Revision L, which is broadly similar to the latest iteration.

In particular their assessment highlighted that the development proposed will cause less-than-substantial harm to the significance and setting of heritage assets, which is not the same as acceptable harm, and has not successfully responded to the setting. The over domestication of the site fails to take reference from the historic fabric and character of the village, in that it appears to be out of context, and overly intrusive within the pastoral field setting of the listed building.

- 4.7 It is the Council's case that the development scheme would not preserve or enhance the setting of St. Gregory's Church, Laburnham Cottage, Shaston View, Nash Court and is considered to constitute less-than-substantial harm to the setting of these heritage assets. Despite some public benefit it is considered that alternative schemes have potential to offer less impact, and as such, in this specific instance the harm is not sufficiently outweighed or justified.

Reason for Refusal 1b - Landscape Character and Visual Amenity

Referred to in the Appellant's Statement of Case paragraphs 9.67 – 9.104

- 4.8 Objective 2 of the NDLP1 states is to conserve and enhance the environment by ensuring that North Dorset's wildlife, landscape and cultural heritage are protected and well managed.
- 4.9 Policy 4 seeks to protect the landscape character of the District through retention of the features that characterise the area. The supporting text makes clear that the landscape provides an important setting for settlements and contributes to local distinctiveness and a sense of place. This is echoed in Policies 7 and 24, both of which reinforce the need for development to respect the character and distinctiveness of the locality, and to improve the character and quality of the area within which it is located. This reflects national policy which identify good design as a key aspect of sustainable development.
- 4.10 Section 15 of the NPPF states that planning decisions should contribute to and enhance the natural and local environment by protecting and enhancing valued landscapes, and by recognising the intrinsic character and beauty of the countryside. The national design guide emphasises the importance of views inwards and

outwards, and the need for well-designed new development to be integrated into its surroundings, physically, socially and visually. It also emphasises the importance of responding to local character and identity, and notes that character starts to be determined firstly by the siting of the development in the wider landscape, and only subsequently by the layout.

4.11 The Council's Senior Landscape Architect assessed the proposals and concluded that the development would adversely affect inward and outward views, would have a substantial, adverse and unacceptable impact on the character of the existing Rights of Way that cross the application site, and would harm the characteristic extensive views out to the open countryside and towards the landmark tower of the Grade I Listed Church of St Gregory. Furthermore, the prominent position of the site, uncharacteristic development pattern and suburban character of the development would result in a moderate/substantial adverse impact on the character of the site and the local landscape. Intensification of use, incidental noise and disturbance associated with residential use and potential light pollution from domestic and street lighting would also negatively impact on the characteristic tranquillity of the location. This advice in turn refers the Appellant's LVIA and also to:

- National Character Area Profile (NCA) - Blackmore Vale and Vale of Wardour
- North Dorset Landscape Character Assessment (NDLCA) - North Dorset Limestone Ridges Landscape Character Area and North Dorset Limestone Hills
- Strategic Landscape and Heritage Study for North Dorset - Assessment of Land Surrounding the Larger Villages

4.12 It is the Council's view that the development would result in unacceptable adverse landscape and visual effects, including some at the 'substantial' and 'moderate to substantial' level, and that the level of housing proposed on this edge of settlement location would result in a form of development which would be out of keeping with the prevailing landscape character of the countryside and would fail to successfully integrate due to the extent of built form.

Reason for Refusal 1c - Spatial Strategy

Referred to in the Appellant's Statement of Case paragraphs 9.20 – 9.63

- 4.13 The NDLP1 identifies a number of key issues and challenges facing the District, including the need to address the causes of climate change and to deliver sustainable patterns of development, and policies to address them. Objective 4 refers to supporting sustainable rural communities, and states that this is to enable a network of sustainable smaller rural communities where local services and employment opportunities enable day-to-day needs to be met locally, and goes on to explain how this is achieved, by:
- adopting a general policy of restraint outside the District's four main towns, whilst also enabling essential rural needs to be met
 - focusing on meeting local (rather than strategic) needs in Stalbridge and the District's villages,
 - enabling individual rural communities to plan to meet their own local needs,
 - especially through neighbourhood planning, and
 - securing the retention, enhancement and future viability of local community facilities and local services..
- 4.14 Policy 2 establishes a core spatial strategy which seeks to guide the pattern of growth in North Dorset in a sustainable manner by concentrating strategic growth at the District's main towns where homes, jobs and facilities are easily accessible and where existing and future residents benefit from the best range of sustainable transport options and the greatest potential for further sustainable transport improvements. It explicitly recognises the importance of carefully managing development at Stalbridge and the other villages and the countryside, as in the past housing development had significantly exceeded planned rates, yet did not always enable rural facilities to be retained or enhanced. In preparing its Local Plan, the Council was clear that it did "not want to see this unsustainable spatial distribution of development repeated". The spatial strategy in Policy 2 of the Local Plan therefore directs development to the four Main Towns of Blandford, Gillingham, Shaftesbury and Sturminster which are to be the main focus for the vast majority of housing.

Villages such as Marnhull are identified as the focus for growth to meet local needs, and retained their settlement boundaries when the NDLP1 was examined. Development outside the settlement boundary, such as the appeal scheme, is subject to countryside policies where development will be strictly controlled unless it is required to enable essential rural needs to be met. Where local needs justify additional development in the countryside, Policies 2, 9 (rural exception sites) and 20 provide a means for its delivery. The intention of the policy is for countryside locations, including Marnhull, to meet local - rather than strategic - needs. The extant planning permissions more than cater for evidenced local need for housing.

- 4.15 Policy 2 sets the context for Policy 6 (which related to housing numbers in these areas) and Policy 20 (which addresses development in the countryside). Policy 3 is also relevant inasmuch as climate change is a real and urgent issue, and the likelihood that there would also be some moderate environmental harm from resultant greenhouse gas emissions as a result of increased travel arising as a result of the less sustainable location of the development.
- 4.16 Section 5 of the NPPF confirms that in rural areas, planning policies and decisions should be responsive to local circumstances and support housing developments that reflect local needs.
- 4.17 The appeal site lies outside the settlement boundary for Marnhull, in an area which is defined as countryside, and the appeal scheme is not aimed at meeting local needs, but is essentially a strategic site. Many of the residents will be reliant on the private car to access a sufficient range of services, facilities, and employment. This policy conflict and the sustainability of Marnhull will be set out further in evidence.

Reason for Refusal 2 - Ecology

Referred to in the Appellant's Statement of Case paragraphs 9.146 – 9.154

- 4.18 At the time that the application was considered, the Appellant had failed to provide sufficient evidence to demonstrate that the proposed development would not have a significant impact upon biodiversity at the site, and in particular potential harm to bats – a European Protected Species. The Appellant was advised to undertake a

Phase 2 Survey prior to completing the Biodiversity Mitigation and Enhancement Plan (BMEP). In the absence of such information it was not possible to accurately assess the likely impacts upon these protected species, particularly given that the layout and lighting could impinge on potential foraging routes, and whether the mitigation measures put in place would be sufficient in this case to mitigate potential the harm.

- 4.19 Since the application was refused, the Appellant has submitted detailed reports following bat and dormice surveys that confirm that:
- dormice are likely absent from the site;
 - the site is of Regional value for foraging and commuting bats due to the presence of rare (Serotine, Myotis spp, Noctule and Leisler’s) and rarest (Barbastelle and Greater Horseshoe) bats, with areas of significant importance for Serotine identified in the SE corner.
- 4.20 The two parties are working together to establish whether adequate mitigation can be provided based on the proposed layout in relation to the impact on the various bat species, and the compensatory measures that need to be agreed at this stage, including for the residual loss of local interest grassland. This should be presented as a single, comprehensive Biodiversity Mitigation Plan. Until such time as these issues can be satisfactorily resolved, the potential harm to protected species raises a conflict with Policy 4: The Natural Environment of the adopted North Dorset Local Plan Part 1 (January 2016) and section 15 of the National Planning Policy Framework (2021).
- 4.21 Whilst both parties are looking to resolve this issue, until agreement on the mitigation and compensation measures has been reached, the Council’s position is reserved.

Reason for Refusal 3 - S106 legal agreement

Referred to in the Appellant’s Statement of Case paragraphs 9.5

- 4.22 At the time of making a decision on the submitted planning application, the appellant had not submitted a Section 106 legal agreement to secure affordable housing or other off-site contributions required to make the development acceptable in planning

terms. Since that time a draft S106 has been submitted which is subject to ongoing discussion and is not yet agreed. As such, the absence of a suitably worded agreement that conforms with the Community Infrastructure Levy Regulations 2010 raises a conflict with Policies 1, 8 (affordable housing), 13, 14, and 15 (grey, social and green infrastructure) of the adopted North Dorset Local Plan Part 1 (January 2016).

- 4.23 We anticipate that this RfR can be resolved by a suitably worded legal agreement, but this is not yet concluded and as such at the present point in time the Council's position is reserved.

The Application of the Tilted Balance

Referred to in the Appellant's Statement of Case paragraphs 9.64 – 9.66

- 4.24 Dorset Council will set out in its proof of evidence the matters to be considered in the Planning Balance, and suggested weight that the decision-maker may accord to these elements.
- 4.25 The starting point is whether the proposal consistent with policies relating to the countryside (as defined by the Local Plan), and the spatial strategy, and the Council contend that there is a clear conflict (a conclusion which is consistent with previous appeal decisions as explored in the most recent appeal decision referenced in section 3).
- 4.26 Given the published Housing Delivery Test results, and no conflict with the specific matters referenced in the NPPF, the Council accepts that the tilted balance is engaged. This means that permission should be granted unless any adverse impacts of doing so would significantly and demonstrably outweigh the benefits, when assessed against the policies in the Framework taken as a whole. The conflict with the development plan policies are also part of the balancing exercise, with the weight accorded to this conflict a matter of planning judgement.
- 4.27 The evidence will consider:

Harm

- 4.28 The adverse impacts of the proposed development, on the special character of Marnhull and its designated heritage assets and landscape character.
- 4.29 How the spatial strategy that underpins the current plan is a robust one that focuses development on the main towns, as the most sustainable locations, with development outside of these towns taking place as a lower level to reflect local (rather than strategic) needs. The Council will demonstrate how situation in North Dorset is improving, and what actions it is taking to encourage development at an appropriate scale and location throughout the area. Linked to this, the Council will highlight the implications of the lack of local need for this development, in terms of social integration and likely increase car-borne journeys for work and social needs (or increased isolation for those without access to a car), which in turn would adversely impact on climate change.

Likely benefits

- 4.30 The plan will deliver both open market and affordable housing in the context of a clear strategic need for this development. However in the context of the lack of local need and improving strategic supply, this weight should be moderated.
- 4.31 The scheme also proposes a new pre-school and community workshop/hall facility which will supplement and enhance the availability of such facilities locally.
- 4.32 There are other possible benefits such as the provision of open space, net gain in biodiversity, contributions towards improvement infrastructure that are commensurate to the scale of development, temporary construction jobs and increased spending power that could be spent locally. Many of these are directly related to mitigating the impact of the development and those related to the provision on infrastructure are dependent on the acceptance of the S106 agreement.

Conclusion

- 4.33 The Council's case will demonstrate why, cumulatively, the conflict with the spatial strategy, and the harm to the historic and landscape character and appearance of the area significantly and demonstrably outweighs the benefits.

5. LIKELY TOPICS TO BE COVERED

- 5.1 The following are suggested as the main topics relevant to this appeal, which broadly align with the principal issues identified in the Appellant's Statement of Case (para 2.3):
- The effect of the proposal on heritage assets.
 - The effect of the proposal on the landscape character and appearance of the area.
 - The conflict with the local plan policies and spatial strategy that seeks to achieve a sustainable pattern of development
 - The local and strategic housing need and land supply position
 - The tilted planning balance
 - S106 / conditions.

6. DOCUMENTS TO BE REFERENCED / USED IN EVIDENCE

The Appellant's Statement of Case does not appear to include a list of the documents to which the Appellant intends to refer or rely.

- 6.1 The Council has identified the following documents at this juncture:
- Appeal decision APP/D1265/W/20/3254594, Land West of Bournemouth Road, Charlton Marshall, March 2021
 - Appeal decision APP/D1265/W/20/3262267, Land west of Waterlake, Stalbridge, March 2021
 - Appeal decision APP/D1265/W/20/3265743, Land South of Lower Road, Stalbridge, Dorset, October 2021
 - Appeal decision APP/D1265/W/20/3279462, Land off Lower Common Road, Child Okeford, December 2021
 - Appeal decision APP/D1265/W/21/3275130, Land at Kingston Lane / Frizzel's Hill, Hazelbury Bryan, September 2021
 - DCLP Settlement Hierarchy Background Paper, Dorset Council, January 2021

- Dorset Council Bus Service Improvement Plan (BSIP), Dorset Council, October 2021
- Dorset Local Plan Options Consultation - Volume 1, Dorset Council, January 2021
- Housing Delivery Test: 2021 measurement, DLUHC, January 2022
- Housing Land Supply for the former district area of North Dorset for 1 April 2021, Dorset Council, January 2022
- National Character Area Profile (NCA) - Blackmore Vale and Vale of Wardour, Natural England, March 2014
- North Dorset Assessment of Settlements - Issues and Options Paper, May 2007
- North Dorset District Council Sport and Leisure Facilities Needs Assessment, Knight, Kavanagh & Page Ltd, April 2017
- North Dorset Landscape Character Assessment (NDLCA) - North Dorset Limestone Ridges Landscape Character Area and North Dorset Limestone Hills, North Dorset District Council, March 2008 and July 2008 Addendum
- North Dorset Local Plan Part 1, North Dorset District Council, January 2016
- Strategic Landscape and Heritage Study for North Dorset - Assessment of Land Surrounding the Larger Villages, LUC, October 2019
- Western Dorset Economic Growth Strategy, Dorset Councils and Dorset LEP, May 2017

7. CONDITIONS

- 7.1 A list of proposed conditions and any areas of disagreement on these is to be provided in the Statement of Common Ground.