



KenParke

PLANNING CONSULTANTS

Anniversary House, 23 Abbott Road, Bournemouth, BH9 1EU
Tel: (01202) 538800 Fax: (01202) 538808
E-mail: info@kppcltd.co.uk
www.kenparkeplanning.com



GROUNDS OF APPEAL STATEMENT

BY

Cicero Estates

AGAINST THE DECISION OF

Dorset Council

TO

Refuse to Grant Planning Permission

FOR

Development of Land Comprising the Erection of 72 No. Dwellinghouses with Associated Access and Public Highway Improvements, Open Space and New Community Facilities

AT

Land North of Crown Road, Marnhull DT10 1HW

PREPARED BY

ADAM BENNETT BA(HONS)

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December 2021

1.0 Introduction

- 1.1 My name is Adam Bennett. I hold a Bachelor of Arts degree in Architecture and Town Planning and I am a licentiate member of the Royal Town Planning Institute. I have 8 years of experience in development management in both urban and rural localities gained within Local Authority and Private Consultancy. I am a Town Planning Consultant with Ken Parke Planning Consultants Ltd. I am instructed to represent the Appellant in this appeal.
- 1.2 The following statement has been prepared in support of the grounds of appeal against the decision of Dorset Council to refuse an application for Outline Planning Permission for the development of land comprising the erection of 72 No. dwellinghouses with associated access and public highway improvements, public open space and new community facilities at land north of Crown Road, Marnhull.
- 1.3 The Appellant requests that the appeal be dealt with by way of Public Inquiry, having regard for the need for the Inspector to test the evidence by questioning to clarify matters and the evidence to be tested through formal questioning by an advocate and indeed given in oath. The submissions required in accordance with this procedure are set out in full in Appendix **AB1** to this statement.
- 1.4 This statement responds to the reasons for refusal and demonstrates that the appeal proposal accords with the Local Development Plan and National Planning Policy.
- 1.5 In my statement I make reference to the North Dorset District Local Plan Part 1 (2016) ("**the Local Plan**"), the Town and Country Planning Act 1990 ("**the Act**"), the National Planning Policy Framework 2021 ("**NPPF**"), and national planning guidance set out within the Planning Practice Guidance ("**PPG**"). I also append and make reference to:

AB1 Statement of Response to Annexe K of the Procedural Guidance for Planning Appeals (England)

AB2 Site Plan - 16080 SK010 Rev O

- AB3** KPPC to DC 02092020
- AB4** DC to KPPC 10092020
- AB5** KPPC to DC 11092020
- AB6** Marnhull S106 Contributions - updated 11092020
- AB7** KPPC to DC 28092020
- AB8** DC to KPPC 29092020
- AB9** DC to KPPC 30092020
- AB10** KPPC to Solicitor 30092020
- AB11** DC to KPPC 06102020
- AB12** KPPC to DC 06102020
- AB13** DC to KPPC Second Response 06102020
- AB14** S106 application Land North of Crown Rd revised 06102020
- AB15** KPPC to DC 07102020
- AB16** KPPC to DC 08102020
- AB17** DC to KPPC 09102020
- AB18** KPE to KPPC 14102020
- AB19** DC to KPPC 14102020
- AB20** KPPC to KPE 15102020
- AB21** KPPC to DC 15102020
- AB22** KPPC to DC 22102018
- AB23** KPE to KPPC 26102020
- AB24** KPPC to DC 27102020
- AB25** DC to KPPC 02112020
- AB26** KPPC to DC 03112020
- AB27** DC to KPPC 05112020
- AB28** KPPC to DC 10112020
- AB29** DC to KPPC 11112020
- AB30** KPPC to DC 11112020
- AB31** DC to KPPC 13112020
- AB32** DC to KPPC 16112020
- AB33** Landscape Officer Comments 23112020
- AB34** DC to KPPC 25112020
- AB35** KPPC to DC 25112020
- AB36** KPPC to DC 26112020
- AB37** DC to KPPC 01122020

- AB38** KPPC to Appellant 02122020
- AB39** Letter to LPA - Land north of Crown Road, Marnhull 07122020
- AB40** Marnhull ACLA response 14-12-20
- AB41** DC to KPPC 15122020
- AB42** DC to KPPC 10022021
- AB43** Letter to LPA 18 February 2021
- AB44** KPPC to DC 15052021
- AB45** Land North of Crown Road Marnhull (Ecology Addendum)_IW
10052021
- AB46** DC to KPPC 18052021
- AB47** KPPC to DC 19052021
- AB48** Dorset NET Response May 2021
- AB49** KPPC to DC 07062021
- AB50** DC to KPPC 07062021
- AB51** Policies Map for Marnhull

1.5 This statement sets out the following:

- Section 1 – Introduces the Agent and development subject of this appeal;
- Section 2 - Sets out the main issues in this appeal and evidence provided;
- Section 3 – Describes the site, surrounding area and provides an appraisal of heritage significance;
- Section 4 – Discusses the planning history of the site;
- Section 5 – Describes the proposed development;
- Section 6 – Discusses the Local Development Plan and identifies the relevant policies;
- Section 7 – Identifies relevant National Planning Policies and guidance set out within PPG;
- Section 8 – Discusses the application procedure, correspondence and chronology of events;
- Section 9 – Discusses and analyses the issues identified at Section 2 in detail against the relevant policies and other material considerations and sets out the Appellant’s case for why planning permission should have been granted; and,

- Section 10 – Concludes on the issues and asks that the Inspector allow the appeal.
- 1.6 The statement concludes that the Council should have granted outline planning permission and, accordingly, asks the Inspector to allow the appeal.
- 1.7 Appended to this statement at **AB1** is a supplementary statement providing justification for the Appellant’s request that this appeal be dealt with by way of Public Inquiry.

2.0 The Issues

2.1 The Council's grounds for refusing to grant planning permission were as follows:

1. *The proposed development, by reason of its exposed hillside location and its sensitive position within the setting of the historic countryside village, and that of various designated heritage assets including those of high status, would result in unacceptable harm to both the historic and natural environment. The development of the village's rural edge would have a moderate/substantial adverse impact upon valued local views, impacting the immediate views from within the site, as well as the longer views from the public rights of way to the North and the eastern Sodom Lane, where the development would lead to a prominent change across the ridgeline, to the detriment of the landscape qualities of the area and the setting of the high status Grade I landmark church tower. In turn the erosion of the rural landscape, forming the existing and historic setting of the Grade I listed St Gregory's Church, Grade II* listed Nash Court, Grade II Laburnum Cottage and Grade II Shaston View, results in the interruption of the interconnecting views between various heritage assets, as well as individual outward looking open views. Such erosion of setting impacts detrimentally on the manner in which the heritage assets can be experienced and contributes a negative impact on their significance, resulting in 'less than substantial harm'. By reason of the overly suburban and repetitive layout of the proposed housing, its elevation on the hillside and its proximity, the development would compromise the unspoilt rural pastoral field setting of these heritage assets, particularly the Grade II Listed Laburnum Cottage and Shaston View, so impacting on the aesthetic, historical and evidential value of the historic environment. As such, the development fails to give great weight to the conservation of the various heritage assets and to the safeguarding of their significance and setting, resulting in 'less than substantial harm'. In addition, the village's rural location would limit the opportunities for future residents to make sustainable choices through travel to access a wide range of services, further impacting upon the environment. In this case, the adverse impacts of the development would*

significantly and demonstrably outweigh the benefits of the scheme, including the public benefits; and Local and National policies seeking to safeguard the natural and historic environment offer clear reasons for refusing the development proposed. As such the proposed development would be contrary to policies 2, 4 and 5 of the North Dorset Local Plan (2016), and section 9, 15 and 16 of the National Planning Policy Framework (2019).

2. *Insufficient evidence has been provided 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. In particular the lack of Phase 2 survey work removes the ability to fully assess the impacts, together with the acceptability of any mitigation proposed, in respect of minimising impacts on, and providing measurable net gains for, biodiversity. As such the proposed development would be contrary to policy 4 of the North Dorset Local Plan (2016), and section 15 of the National Planning Policy Framework (2019).*

3. *In the absence of any formally agreed mechanism to secure affordable housing, the proposed development would fail to provide an appropriate level of affordable housing on site, contrary to the provisions of Policy 8 of the North Dorset Local Plan (2016). Furthermore, with no formal mechanism in place to secure planning obligation contributions to mitigate the impacts of the development, the proposed development would place an unacceptable level of pressure on green, grey and social infrastructure. The proposed development thus fails to comply with policies 13, 14 and 15 of the North Dorset Local Plan (2016).*

- 2.2 Copies of the Decision Notice, and all relevant documentation which was submitted to the Council by the Appellant are submitted with this appeal. Discussions took place between the Council and Appellant during the course of the determination process; all relevant correspondence will be provided to for the Inspector's attention.

2.3 In accordance with the Council's reasons for refusal, this appeal raises the following as principal issues:

- (1) ***Whether the Council's policies for the delivery of housing are considered out of date*** – having regard for the Council's absence of a 5-year housing land supply and persistent shortfall in housing delivery as demonstrated by the Housing Delivery Test, and thus the application of the presumption in favour of sustainable development set out at Paragraph 11 of the Framework.
- (2) ***Whether the site comprises a sustainable location for housing development*** – having regard for the suitability of Marnhull settlement to support new development, the availability of services, facilities and public transport opportunities and their accessibility.
- (3) ***Whether the development proposed will result in an unacceptable impact and harm to landscape character*** – having regard for the existing character and sensitivity of the landscape to change and whether the change in that character resulting from the proposed development can be appropriately mitigated.
- (4) ***Whether the development proposed will result in an unacceptable impact and harm to the significance of designated heritage assets*** – having regard for the contribution of the site to the significance of the designated heritage assets, if any, and the impact of the development upon that significance, if any.
- (5) ***Whether the development will result in unacceptable ecological impacts*** – considering the additional ecological survey work undertaken and the discussions had with the Council's Officers at and pursuant to the determination of the application
- (6) ***Other Matters; the requirement for a s106 legal agreement*** – having regard for the fact that the Appellant has agreed to enter into a s106 agreement, as they had at the time for the application, and that an appropriate legal agreement will be submitted in support of the appeal.

The main issues identified are expanded upon within this statement.

Evidence Provided in Support of the Appeal

- 2.4 The Appellant has provided at *Section 3* of this statement full details of the site and its context; including an appraisal of the character of the Conservation Area.
- 2.5 The Appellant has, at *Section 4* and *Section 8* of this statement provided full details of the planning history and their involvement with the site; including the sequence of events in the determination of the application subject of this appeal
- 2.6 In responding to the matters contested the Appellant will:
- Demonstrate that the Council cannot demonstrate a 5-year housing land supply and the at the Council has critically under delivered on its housing needs and thus the appeal should be determined in accordance with the presumption in favour of sustainable development and the tilted balance.
 - Demonstrate that the development as proposed is sustainably located and will represent sustainable development.
 - Explore those factors which contribute towards the local landscape character and how the appeal site sits within this landscape and evidence how through the careful arrangement of the proposed development and appropriate mitigation and enhancement the development will not harm landscape character.
 - Explore what contributes towards the heritage significance of the designated heritage assets identified within this statement and evidence the manner in which the development proposed would impact upon this significance having regard for the heritage balance to conclude that there is no harm which outweighs the public benefits of the development.
 - Demonstrate that following the carrying out of additional ecological survey work requested by the Council and further to discussions with Officers, the development will not give rise to harm to ecological interest.

- Submit a s106 legal agreement to secure the necessary financial contributions required to render the development acceptable in planning terms and secure the affordable housing which would be delivered.
- Explore the reasonableness of the Council's approach bearing in mind the application of the presumption in favour of sustainable development and the weighting of the various matters disputed in the tilted balance and demonstrate that the significant benefits of the development are neither significantly nor demonstrably outweighed by any harm.
- Demonstrate that planning permission should have been granted.
- Explain their view that planning permission has unreasonably been withheld.
- Respond to the Councils evidence under questioning and cross examination.

3.0 The Site, Surrounding Area and Heritage Appraisal

- 3.1 Marnhull is a village settlement located towards the northern end of North Dorset District between the larger settlements of Gillingham, Shaftesbury and Sturminster Newton. The village is predominantly concentrated on the northern side of the B3092 Crown Road, and spreads to the north-west around a series of rural roads.
- 3.2 The main village centre is located at the western end of the settlement; however there are local services and facilities interspersed throughout the area. The development to the west of Church Hill is predominantly residential. The existing residential area is however divided by two parcels of Greenfield land; one of which is the identified land parcel. The settlement boundary relating to Marnhull is as a result divided into two parts.
- 3.3 The village provides a range of local services and facilities and is considered by the Council to be one of the 18 More Sustainable Villages (MSVs) within the District which are capable of sustaining additional housing development.
- 3.4 Crown Road is an adopted highway running east-west along the southern edge of settlement. The B3092 Crown Road runs from Sturminster Newton at its southern end to Gillingham at its northern end. Sturminster Newton is located approximately 4km away and Gillingham slightly further at 7.5km to the north. Both settlements offer a wide range of services and facilities and job opportunities and are within a more than reasonable commuting distance of Marnhull.
- 3.5 The settlement boundary relating to Marnhull is unusual in that it is split in to two distinct parts, the main settlement area to the west and a small defined area to the east. The subject land lies between the two parts of the settlement boundary and would provide the opportunity to conjoin them. The development of this land parcel would therefore complete the settlement boundary and not result in the projection of a new finger of development out into the designated countryside.

- 3.6 This is the logical location for additional housing development where such development will not further congest the narrow roads of the village and require the demolition of existing frontage buildings in order to develop upon the Greenfield land beyond.
- 3.7 The appeal site is located at the eastern end of the settlement of Marnhull, approximately 1km from the services and facilities within the main village centre. The site is bounded by suburban residential development to the west and the public highways Sodom Lane, Tanzey Lane and Crown Road at its northern, eastern and southern limits respectively. To the south of the site lies further residential development and further to the north and east undeveloped Greenfield land, with the exception of the Royal British Legion which sits just north of the site on the opposite side of Sodom Lane. Beyond the Greenfield land to the east lays a defined group of residential properties which are as a result of a modern development. These are sited within an additional defined settlement boundary which is dissociated from the main body of the settlement.
- 3.8 The land has been used in the past for the grazing of livestock and other minor agricultural purposes; the land is however not now required for such purposes.
- 3.9 The land is currently within an area which, for planning purposes, would be regarded as open countryside, that is, outside any identified settlement boundary. The land is however contiguous to the existing pattern of residential development at the eastern end of the settlement and intrinsically related to it.
- 3.10 There is a designated Public Open Space (POS) to the north-west of the site which provides for the recreational needs of the village. The proposed development includes the provision of a new green infrastructure including improvements to public footpaths and new open space which will supplement the existing POS provision and help support the various recreational needs of local residents.
- 3.11 There are two established footpaths which run across the site. The first adjoins Crown Road at its southern end and runs along the site boundary and emerges on Ashley Road to the west within the established residential area, the second

runs from Ashely Road to the west across the site to its north-east corner. From there on the footpath joins the wider network spanning out in to the open countryside. There is also a direct footpath link to the established public open space.

- 3.12 There are no issues of flooding or contamination on the site. The land is located within the blanket designation Flood Zone 1 and, as such, is subject to a less than 0.1% chance of flooding occurring each calendar year. The underlying geology of the site is comprised of Todber Freestone Member and Calvellata Formation sedimentary bedrock formed in the Jurassic period as British Geological Survey (BGS) data confirms. There are no superficial deposits recorded. The ground conditions are relatively free draining being lime rich and of moderate fertility. The soils are however only suitable for grassland due to low moisture content which results in low crop yields; hence the land is not amongst the best or most versatile agricultural land, being of Grade 3B. The proposed land is not amongst the highest quality agricultural land which should be preserved for the purposes of use as arable farmland.
- 3.13 The land is very sparsely timbered with only a few isolated trees across the entirety of the site. The site is however bordered along much of its northern and eastern edges by an established hedgerow of mixed native species which substantially screen the site from the public highways. The defined boundaries of the site will be maintained and enhanced as part of the proposals.
- 3.14 None of the trees on or adjoining the site are protected by way of Tree Preservation Order (TPO). Any development would however seek to retain the existing trees wherever possible.
- 3.15 The land parcel measures approximately 5.24ha. There is a general topographical slope across the site sloping downwards from south to north with Sodom Lane at the northern end of the site being set at a substantially lower level than Crown Road to the south. The gradient across the land is relatively constant. This is consistent with the topography in the wider surrounding area. The village of Marnhull effectively sits on the side of a topographical ridge which divides the clay lowlands of the Blackmore Vale with the southern end of the

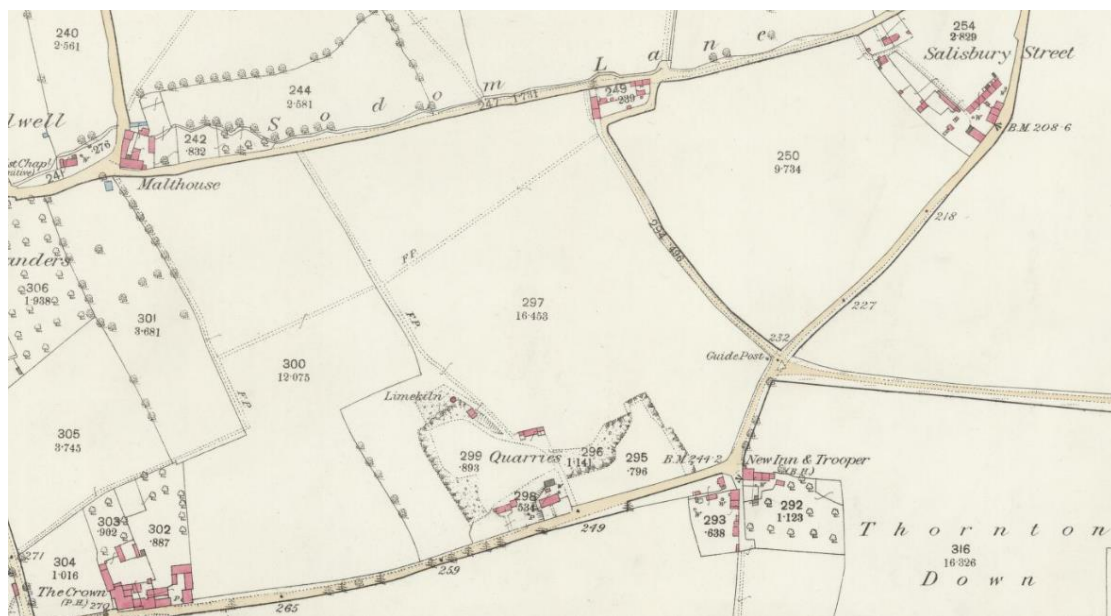
settlement being the highest point and the rest of the village set at varied levels into the undulating landscape.

- 3.16 There is substantial undulation in the topography within the wider surrounding area with the appeal site sitting in part on a slope towards the bottom of a valley. The appeal site sits down into the landscape alongside the established built area of the settlement and does not appear prominent within wider views. The landscape surrounding the site is characterised by suburban residential development to the west and undulating fields to the north, east and south with interspersed settlements and farmsteads.

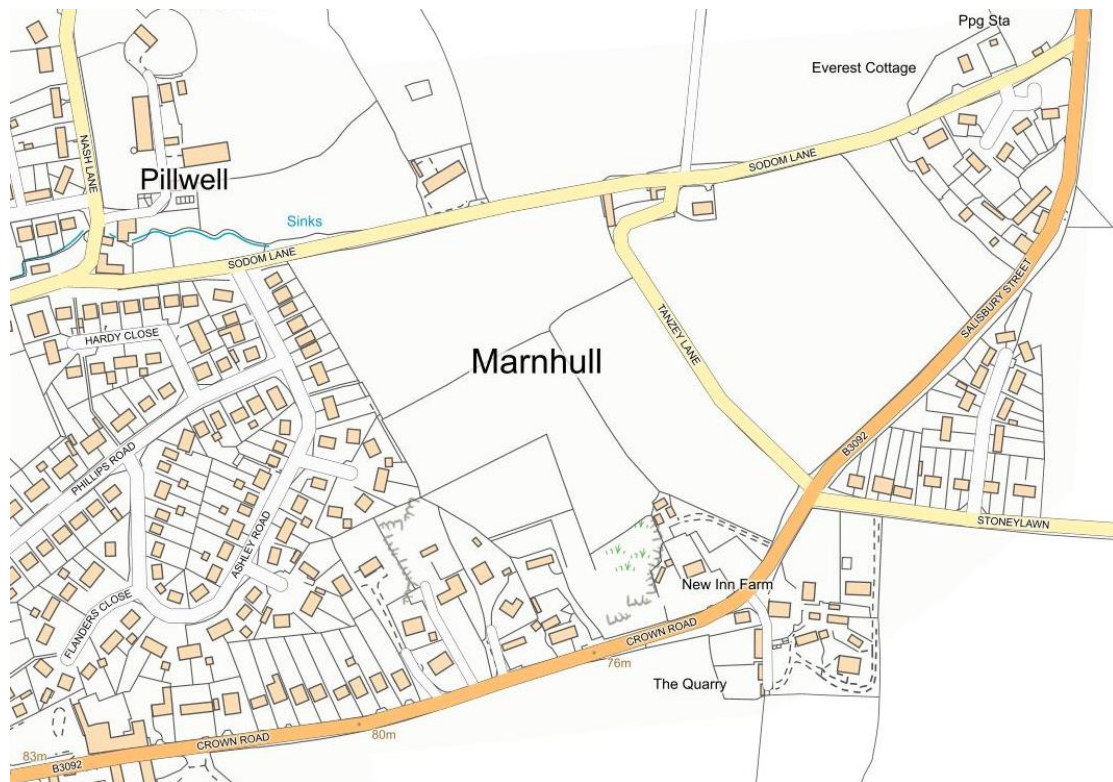
Heritage Appraisal

- 3.17 Marnhull village, due to its linear nature with two separate cores; one to the west of the appeal site, and one of the north-west, has two Conservation Areas. The appeal site sits outside of both designations, with the nearest edge of the southern Conservation Area some 220m to the west, and the norther Conservation Area further at 420m to the north-west. The Council's Policies Map for the settlement of Marnhull is appended at **AB51** for reference.
- 3.18 A full and detailed heritage settings assessment in accordance with Historic England's *'Good Practice Advice in Planning: Note 3'* (2017) (GPA3) has been undertaken by Cotswold Archaeology and is included within the Heritage Assessment (August 2018), which accompanied the planning application and forms part of the package of documents submitted alongside the appeal. The following paragraphs however provide an overview of the assessment and draws out those sections which are relevant to the matters disputed between the parties within this appeal.
- 3.19 There are a number of listed buildings (38 in total) within the broader Marnhull Conservation Areas, however those in the immediacy of the site comprise three Grade II listed buildings; Laburnum Cottage to the north-east corner of the site, Shaston View to the south-west and Rosedale Cottage, also to the south-west. Further afield some 660m north of the site is the Grade II listed Nash Court, and 400m to the west, the Grade I listed Church of St Gregory.

- 3.20 Archaeological geophysical investigation has demonstrated that there are no features beneath the ground of archaeological significance.
- 3.21 The appeal site itself has seen little change, having been used for agricultural purposes for a significant period of time dating back to post medieval times. The site formed part of a medieval open field system, and latterly appears to have been severed off as enclosed pastureland. Whilst this is the case however, the land surrounding the site has seen modern patterns of housing development. With the settlement having expanded to the west of the site in the mid C20, and in the late C20 further development has occurred up to the western site boundary. It is also clear that later limited patterns of infill residential development have occurred at the southern edge of the site.



Extract from OS Plan- Dorset VII.7 dated 1887



Extract from OS Plan dated 2021

Laburnum Cottage

- 3.22 The Grade II Listed Laburnum Cottage is located immediately to the north-east of the site, at the junction of Sodom Lane and Tanzey Lane. Constructed in the 17th century, the cottage is of two storeys and built of squared, coursed rubble with a tile-covered gable ended roof. A later extension adjoins the 17th century structure to the north. It appears from historic mapping that this may previously have been a separate dwelling; however, it has been replaced and now forms part of the cottage. A garage extension is present on the southern elevation of the building.
- 3.23 Structural works have recently occurred to the listed cottage, including the raising of the roof of the projection at the southern end of the building to create a dual pitched roof in replacement of the former single pitched roof. Alongside the raising of the roof, sections of the walls have been rebuilt. These works were subject of listed building consent application ref. 2/2019/0122/LBC.

- 3.24 The heritage significance of Laburnum Cottage derives primarily from its physical fabric, which holds evidential value relating its construction, development and use, as well as 17th century vernacular architectural styles. As a surviving element of the local post-medieval landscape, illustrating the historical development of Marnhull and its rural surroundings, the building also retains historical value. The architectural and historic interest of the asset is recognised in its statutory designation.
- 3.25 Laburnum Cottage is situated within a small, narrow plot, with its principal elevation overlooking enclosed gardens to its east. Although sub-divided following the construction of a later house to the east in the late 19th century, historical mapping shows this immediate setting to have remained relatively unchanged since the time of the 1838 Tithe map, with the boundaries of the plot continuing to be clearly defined by hedgerows and stone walls. This surviving layout confers a high degree of integrity, enabling the building to be understood within its immediate historical context as a modest rural dwelling with associated garden plot.
- 3.26 The wider surroundings to the north, south and west of the cottage, encompassing the Site, are characterised by agricultural land. These wider surroundings serve to enhance the historical illustrative value of the asset, through maintaining an undeveloped, rural backdrop within which the origins of the building, as an isolated cottage on the edge of a rural village, can be appreciated. The Site, as a part of this undeveloped farmland immediately to the rear of the building, can be seen to represent a part of this surrounding rural landscape, and so provides some contribution to the significance of the building. However, no direct historical relationship between Laburnum Cottage and the land within the Site has been identified, with each listed under different land ownership in the Tithe Apportionment.
- 3.27 The best appreciation of Laburnum Cottage is afforded from within its immediate environs to the east and north-east, comprising the enclosed garden and the approach from Sodom Lane (Photograph 3). It is from these vantage points that the historic architectural form of the building, as expressed in its principal façade, can be most clearly seen and understood. Despite its

proximity, the Site is not readily apparent within these views, with visibility of the landscape to the west largely obscured by both the building form and the mature hedgerows alongside Sodom Lane. Within views of the building from the east, along the northern part of Tanzey Lane, the Site can be discerned through a break in the hedge where a footpath passes over a stile adjacent to the building. From here, the Site appears as a discrete section of agricultural land, framed by hedgerows and with modern residential development visible behind. Juxtaposed against the cottage and its associated garden, this glimpsed view of the Site does enable some understanding of the building within its rural context, but this is to some extent limited by both the constrained nature of the view and the presence of modern development within its background.

3.28 A further experience of Laburnum cottage is obtained from the footpath which traverses the north of the Site, leading from Crown Road and passing to the immediate south of the cottage. The rear elevation of the building can be clearly seen within views from the footpath, both at a distance and close range. The footpath has been in existence from at least the time of the 1887 First Edition Ordnance Survey map, and thus these views give an impression of the building as it has been experienced throughout much of its history. The footpath is not a principal access route for the cottage however, and does not have any direct relationship with the building itself. The views of the cottage from the footpath can therefore be defined as incidental, rather than 'designed'.

3.29 On account of its proximity and the open aspect to the rear of the building, it is expected that the northern part of the Site is clearly visible within westward views from the cottage. Visually, however, this surrounding farmland landscape is unlikely to have formed an intentional aesthetic backdrop to the cottage; as a modest rural dwelling, views from the building are unlikely to have been a key consideration in its construction and design, with the more relevant 'designed' aspect being its visibility from the road. While the views over the agricultural landscape to the west, incorporating the Site, are considered to provide some contribution to the significance of the building, through maintaining a visual relationship with its historically rural setting, it is the eastward views from its

principal façade, overlooking the garden and farmland beyond, that are of greater importance.

Shaston View

- 3.30 The Grade II Listed Shaston View is located immediately to the south-west of the site and comprises a late 17th to early 18th century house, with later additions. The building is constructed of coursed rubble and ashlar, and is of two storeys in height with a tile covered, gable-ended roof. A late 19th century block adjoins the main range to the east. The listing description notes that the building is designated for the 17th/18th century range, as opposed to the 19th century addition to the east.
- 3.31 The asset's principal source of significance is the evidential value held within its physical fabric, most notably the architectural features displayed within the building interior. The building is also illustrative of historic settlement patterns and rural vernacular architecture, thereby providing it with historical heritage value.
- 3.32 Shaston House is situated along Crown Road, with a small, enclosed garden to its south. This garden provides an attractive setting to the front of the house, adding a degree of aesthetic value. The building's location along Crown Road, with which it would have had a functional relationship, also provides some contribution towards its significance, as do its historical associations with nearby, broadly contemporary assets located within the surrounding landscape, including the adjacent Rosedale Cottage to the west.
- 3.33 The wider surroundings of the asset, comprising agricultural fields, are also considered to provide some, minor, contribution to significance, through exemplifying its historical context as a rural dwelling. Within the immediate vicinity of the building however, these rural surrounding have seen some alteration; having formerly been in use as a quarry in the later 19th century, the land immediately to the north of the building is now occupied by a small group of structures, including a house and outbuildings, which have partially severed

any former physical and/or functional associations with the open rural landscape to the north. Due to the orientation of the building's principal aspect, towards the south, it is considered that it is the rural landscape in this direction that is most relevant to the significance of the building. By contrast, the fields to the north are not considered to contribute, particularly given the presence of modern intrusions and vegetation screening which serve to limit any visual relationship.

- 3.34 Whilst the appeal site is part of the wider rural landscape setting of Shaston View, the land makes no meaningful contribution to the significance of the asset as a result of the presence of intervening structures within the immediate vicinity of the building. Due to the orientation of Shaston View, and its focus being southwards towards Crown Road, any limited visual association with the site does not make any meaningful contribution towards its significance.

Rosedale Cottage

- 3.35 The Grade II Listed Rosedale Cottage is located c. 50m to the south-west of the Site, along Crown Road. The cottage is thought to date to the mid-19th century, and underwent restorations in the 20th century. It is of two storeys, and built of coursed, squared rubble walls with a gabled, thatch covered roof.
- 3.36 The significance of Rosedale Cottage lies in the evidential value of its 19th century architectural form, as well as its historic value relating to the development of the local landscape in the early modern period.
- 3.37 Rosedale Cottage is situated within its own grounds, set back slightly from and at a lower level than Crown Road. To the south of the building there is a small garden, while to the north a hedge boundary separates the building from an adjacent modern property. The set-back and low-lying position of the building, together with its enclosed front garden, provide the cottage with a degree of privacy that conveys its historical status as a rural dwelling. These immediate surrounds have considerably altered since the 19th century, however, with the building having formerly been situated within a larger plot that was also occupied by the adjacent Shaston View. While this historical relationship with

Shaston View is no longer clearly apparent, with the buildings now situated within separate plots, they do nevertheless retain an important contextual association, and together assist in articulating the historic development of the area.

3.38 Wider agricultural land to the north and south of the Listed Building provides a limited contribution towards its significance, by maintaining a rural landscape setting consistent with that within which the building was originally constructed and functioned. To the north of the building, however, this contribution is further limited by the presence of intervening modern housing, which has severed any direct link with its wider rural surroundings. Although historic mapping indicates that the Site was previously part of a quarry associated with Rosedale Cottage (and the adjacent Shaston View), this former functional relationship is no longer in evidence since the infilling of the quarry in the mid-20th century.

3.39 Due to its low-lying situation, available views from the Listed Building are relatively close-range, and lie principally to the south, towards Crown Road. There are no clear views towards the appeal site afforded from the building and the heritage asset is not appreciated from the site in any manner that would allow any understanding of the asset's evidential or historical values.

Nash Court

3.40 The Grade II Listed Nash Court, located c. 660m to the north of the Site, is a substantial house of late 16th to early 17th century origin. Constructed of coursed stone with ashlar dressings and a slate covered roof, the building comprises a northeast-southwest aligned hall range, with a large cross-wing at its eastern end and a former service range to the north. The building has seen numerous alterations over the course of the 18th to 20th centuries, and is now divided into three separate dwellings, although much of the historic layout and internal features still survive.

3.41 The significance of the building derives predominantly from its evidential and historical values. The physical fabric of the building has the ability to inform an understanding of the techniques and materials employed in its original

construction, as well as its development over time. The historical (associative) value relates to its association with notable figures, including Catherine Parr, to whom the building was gifted by Henry VIII, and the 18th century artist, Giles Hussey, who was born at the property. Further historical (illustrative) value is derived from the building's status as an example of an early post-medieval country house, reflecting the development of the local landscape as well as contemporary architectural styles and social ideals. The asset's significance also lies partly in its aesthetic value as an attractive historic country residence.

- 3.42 Nash Court is set within its own private grounds, enclosed by a boundary wall and vegetation and accessed via two separate gateways leading from Nash Road. Within these grounds are formal and semi-formal gardens and lawns to the south and west of the house, as well as paddocks and outbuildings. These grounds are an important feature of the design of the building, creating a secluded and tranquil space which complements the house. Accordingly, this aspect of the asset's setting makes a large contribution towards its significance, through enhancing the building's intelligibility as a private dwelling of some locally high status.
- 3.43 Topographically, Nash Court occupies a relatively prominent position within the local landscape, on a ridge of high ground overlooking the valley of Chivrick's Brook to the east. This siting, which was likely deliberately intended to maximise the building's visibility within the landscape, as well as the views from the building itself, is also considered to represent a key aspect of the asset's physical surroundings, by way of emphasising its social status.
- 3.44 Wider agricultural land surrounding the building is also considered to provide some, albeit comparatively limited, contribution to the significance of the building, by placing it within a rural context reflective of that within which the building developed. Nash Court. Whilst it is likely that the Site can be seen within long range views afforded the upper storeys of the south elevation, the Site would occupy only a small and peripheral part of the overall view available. Visibility of the Site is expected to be further reduced by the screening effect of surrounding vegetation. The more relevant and wider ranging views are those to the east and north-east, attained from the principal north-east elevation.

- 3.45 The principal views from which the heritage asset is intended to be experienced and which the dwelling has been positioned and designed around are those to the east across Chivrick's Brook, away from the appeal site, which is not considered to make any meaningful contribution towards its significance.

Church of St Gregory and Marnhull Conservation Area

- 3.46 The 12th century Church of St Gregory, designated as Grade I Listed and situated c. 480m to the west of the site. The heritage asset is positioned in the midst of the southern Marnhull Conservation Area.
- 3.47 The appeal site is located outside of the Marnhull Conservation Areas as discussed, but historically would have formed part of its broader setting. The setting of the Conservation Area has however been subject to significant change over the past century. The setting of the Conservation Area seen today has been affected significantly by extensive areas of 20th century development, for example along Ashley Road and Nash Lane (west of the appeal site). The result of this development is that the Conservation Area has lost any form of connection with and shares no intervisibility with the appeal site. The site does not contribute at all to the experience of the Conservation Area due to this intervening built form.
- 3.48 The Church of St Gregory is also not visible from the site in that it cannot be experienced, or its significance appreciated. There are very limited glimpsed views of the top of its spire that can be achieved through unintentional gaps between roof forms to the west in specific positions on the site, however the heritage asset can be experienced along Crown Road within the setting of the 20th century development. The appeal site, due to the intervening built form, is not present in any of these views and again does not contribute towards the setting of the Church or to its significance.
- 3.49 Both the Marnhull Conservation Area and Church of St Gregory do however continue to be experienced in part in the context of rural landscape to the south of the settlement, however evidently the extensive areas of modern

development to the west have comprehensively severed any visual links between these assets and the landscape within the appeal site.

4.0 Planning History

- 4.1 The site is in lawful use for the purposes of agriculture comprising grazing pastureland. The land has remained in such use for a protracted period and has not been used for any other purpose, with the exception of a limited amount of quarrying activity which took place in the south-western corner of the site.
- 4.2 There is no direct planning history relating to the appeal site. The site has not been subject to development.
- 4.3 The Appellant has sought to promote the site for housing development as part of the Local Plan Review process, submitting it for consideration as part of a Call for Sites consultation. The Council previously originally considered the site as part of its SHLAA process in 2012. The site was excluded at this time on grounds of achievability due to its location on the fringe of the settlement. In all other regards the site was considered suitable for development, hence the Council resolved that the site had longer term potential and it was maintained as a suitable site on that basis subject to a policy review.
- 4.4 The site was promoted again for housing development when the Council commenced the North Dorset Local Plan Review in June 2016, and was also submitted to the Council again in October 2016 and as part of the later Call for Sites Consultation relating to the preparation of the Dorset Local Plan in October 2019. The Council set aside the review of the North Dorset Local Plan, in favour of progressing a holistic local plan for Dorset, following the local authority merger and reorganisation.
- 4.5 The Dorset Local Plan is in the early stages of preparation at this time. There is no pre-submission document and no weight can be attached to it. With the Council's housing supply position, it is essential that sites for housing are brought forwards now so that they can address the significant housing shortfall and absence of delivery within the current adopted Local Plan period.

- 4.6 Informal discussions have been had with the Council regarding the suitability of the site for development following its continued promotion. No formal advice has however been provided by the Council.
- 4.7 The Council recognises that there is a need to bring forwards additional development sites outside of its major settlements in order to address its housing need as echoed by the support given within the North Dorset Local Plan for development at the 18 More Sustainable Villages (MSVs). The appeal site does not lie within a Green Belt designation and does not therefore need to be brought forwards as part of a strategic planning process.
- 4.8 The detailed discussions which took place during the course of the application subject of this appeal are discussed at *Section 8* of this statement.
- 4.9 The Appellant has recently submitted to the Council a new Outline Planning Application (OPA) for the development of the land. The Council will be considering the OPA alongside this appeal proceeding.

5.0 The Proposals

- 5.1 The Appellant is seeking consent for the erection of 72 No. dwellinghouses, including creation of a new access road through the site comprising upgrades to the narrow public highway Tanzey Lane at its southern end and formation of a new access on to Sodom Lane at its northern end. New public footways are to be provided as part of the highways infrastructure improvements. The application was made in outline with all matters except access and quantum/principle and layout reserved for later determination at reserved matters stage.
- 5.2 The proposals seek to confirm therefore that 72 units can be accommodated on the site in the manner proposed. The submitted layout demonstrates how the dwellings can be arranged about a central site road with sufficient parking and landscaped amenity space to meet the needs of future occupants, public open space provision and allowances for drainage infrastructure and ecological buffer zones in order to comply with all other technical requirements and accord with the Council's adopted standards.
- 5.3 The existing access into the site is in the form of a typical agricultural gate; the access lacks the appropriate visibility splays or ability for vehicles to pull off of the highway when manoeuvring. This access will be closed up as part of the proposed development. The proposals provide the opportunity not only to provide a much improved access in to this land parcel but also to make more significant improvements to the existing junction between the narrow lane Tanzey Lane – which is an adopted vehicular highway – and Crown Road. The proposed access has been designed to full adoptable highway specification with appropriate visibility splays having regard for the speed of the highway. The access into the site is given priority from this new junction and Tanzey Lane becomes a lower priority access spurring off from this, so as not to result in the termination of this existing vehicular highway.
- 5.4 The new access arrangements will deliver a significant improvement to highway visibility from this existing junction and wider public benefit through the

provision of new pedestrian footways which will line both sides of the access and join up with the existing provision further along Crown Road to the west.

- 5.5 From this access the estate road runs through the site to its northern edge with a new junction provided on to Sodom Lane – providing a new through link between these two roads to adoptable highway standards – the current connecting road between these two highways is Tanzey Lane, which is unsuited to anything other than very infrequent use, due to its narrow and winding nature and steep decline when travelling northwards. The access junction on to Sodom Lane likewise will provide appropriate visibility splays and upgrades to the public footway in this location.
- 5.6 The access improvements proposed have been fully modelled and can be provided to appropriate highways standards with the new pedestrian footways and appropriate visibility splays. The Appellant has instructed the services of a suitably qualified highway consultant in order to undertake this assessment exercise and also to carry out speed and capacity survey work to ensure its acceptability.
- 5.7 The proposals seek to provide 72 dwellinghouses of mixed size and tenure; including a policy compliant provision of affordable housing.
- 5.8 The layout which has been submitted proposes a mix of 72 terraced, semi-detached and detached dwellinghouses standing at varying heights comprising single storey bungalows to dwellinghouses standing at ½ storey and 2 storeys to their ridge. The proposed scheme comprises:
- 5 No. detached 2 bedroom bungalows;
 - 2 No. detached 3 bedroom bungalows;
 - 4 No. semi-detached 2 bedroom 2 storey dwellings;
 - 11 No. detached 3 bedroom 1 ½ storey cottages;
 - 32 No. semi-detached 3 bedroom 2 storey dwellings;
 - 8 No. detached 3 bedroom 2 storey dwellings;
 - 10 No. detached 4 bedroom 2 storey dwellings;

- 5.9 There is more than sufficient space on site to accommodate the quantum of development proposed including a level of parking commensurate with the Council's adopted Parking SPD and appropriate landscaping and open space; to ensure the development positively integrates into the area. Matters of detailed design and appearance and landscaping will be dealt with as part of any reserved matters application.
- 5.10 At the time of the planning application, the Appellant entered into detailed discussions with the Council in respect of the affordable housing provision on site. The Appellant agreed with the LPA a policy compliant provision of 40% of the development, comprising 28.8 units, which will be split between affordable and social rented tenures and shared occupancy units in the ratio 70/30. The development will provide an appropriate policy compliant provision of affordable housing based on the policy percentage.
- 5.11 The layout has been devised having regard for the built and natural context surrounding the site. The proposals have sought to locate the public open space in a logical location where it sits upon the existing public footpath network which runs through the site and creates an attractive open space with a variety of routes for walkers and provides connectivity to the existing public footways towards key local services and facilities, through new links. Regard has been had for the existing residential development to the west in terms of providing back-to-back relationships with residential gardens which will maintain privacy and residential amenity and for the development fronting Crown Road ensuring again that the estate roads are internalised to maintain the established amenities of these dwellings.
- 5.12 Properties are arranged in the main fronting on to the new road through the site, with small pockets spurring off of this in private drives or cul-de-sac type arrangements. All of the properties have easy access to the footway network, embodying the public footpaths which run across the site in green corridors which will contribute positively to sense of place in this fringe location. Properties are also arranged to appropriately surveil the generous public open space and in a manner which sits comfortably within the landscape.

- 5.13 The robust native hedgerow boundaries to the site are to be retained in as complete a manner as possible. The proposed accesses will require removal of a short length of this, however new hedgerow infilling; including across the existing access into the site and throughout the Public Open Space, will be provided as part of the biodiversity enhancement delivered by the scheme. There are opportunities to supplement the hedgerows around the site where these are weak in order to deliver biodiversity gains and a 5m buffer is proposed around the perimeter of the site to create a wildlife corridor in order to ensure these will be protected and to further promote biodiversity interest and new habitats forming on site and to protect the existing ecological interest identified.
- 5.14 The retention of the hedgerows will maintain the extant attractive rural frontage to the site and positively integrate the development into its edge of settlement location. There are opportunities for new trees and hedgerow planting to be provided within the substantial areas of public open space within the site and in particular along green corridors which will be formed along the existing public footpaths and new created routes. The large areas of open space on the site will allow for the delivery of biodiversity enhancements in taking the fairly benign agricultural pastureland and introducing features which are ecologically rich. Comprehensive details of this will be provided as part of any detailed landscaping scheme provided at reserved matters stage.
- 5.15 Through proper management of the existing and new species proposed on site the development will deliver landscape enhancements and ensure the long-term protection and retention of good specimens. There is no requirement for the removal of any high value trees or high functioning hedgerows to facilitate the development.
- 5.16 The generous area of open space proposed, comprised of the large area provided at the core of the development, and a network of smaller green spaces running through the site total approximately 1.6ha. In addition to this a 5m buffer zone has been provided around the full perimeter of the site, which is excluded from the POS calculation, adjoining the existing native hedgerows as a buffer zone to protect and preserve and enhance the biodiversity value and

potential. This buffer zone will sit along site other enhancements to ensure a net gain in biodiversity terms.

- 5.17 The drainage strategy for the site; comprises the provision of crated surface water features within the communal areas of the site and private soakaways within the curtilage of dwellinghouses, due to the high infiltration rates demonstrated by the land and the ability to deal with drainage directly to the ground in a sustainable manner.
- 5.18 The communal surface water attenuation features will be located below ground and in the positions indicated on the proposed masterplan. These will be usable open space and only in a flooding event or a significant period of rainfall will there be any accumulation of water. The locations of the drainage features will thus be fully usable areas of POS which will be available to residents and the public year-round. The 1.6ha of POS proposed more than meets the required 6acre standards and includes allowance for a Local Area for Play (LAP) or Local Equipped Area for Play (LEAP) as required.
- 5.19 With appearance a matter reserved at this stage the proposed material specification of the development will be devised at as part of any detailed application. The Council will therefore be able to have adequate control over this as part of any latter application.

6.0 The Development Plan

- 6.1 Following the local authority merger, the site is now within the planning jurisdiction of the combined Dorset Council authority. The relevant Local Development Plan Document comprises the North Dorset Local Plan Part 1 (2016) (herein 'the Local Plan'), and its related supplementary planning documents (SPD).
- 6.2 It is not necessary to list all of the policies of the Local Development Plan which were considered as part of the application, instead it is appropriate to focus upon the specific policies which the LPA has cited in defence of its reasons for refusal. In this case, those policies referred to are:
- Policy 2 of the Local Plan;
 - Policy 4 of the Local Plan;
 - Policy 5 of the Local Plan;
 - Policy 8 of the Local Plan; and
 - Policies 13, 14 and 15 of the Local Plan.
- 6.3 The Council has also made reference to Sections 9, 15 and 16 of the National Planning Policy Framework, but not to any specific paragraphs. The provisions of the NPPF are discussed within *Section 7* below.
- 6.4 The other policies of the Local Development Plan which form the context to the Council's determination on all other matters are set out within the Planning Design and Access Statement submitted in support of the application. As stated above, it is not necessary to set these policies out in detail now as they relate to matters which are common ground between the parties and not being of issue in this appeal; the policies identified within the LPA's decision are however discussed below.
- 6.5 The Local Plan intended to set out the required housing supply across North Dorset District over the course of the plan period from 2011 until 2031.

- 6.6 Dorset Council has commenced work on the preparation of a new local plan for the combined authority area, however this remains at an early stage and thus carries no weight in the planning balance at this time
- 6.7 The Local Plan sets out a preference for the majority of housing to be provided within the four larger settlements of the District with a limited amount of housing designated for provision within Stalbridge (the largest sub-settlement) and the 18 other larger villages which are considered to be sustainable locations for further development. These larger villages have been selected due to the availability of local services and facilities capable of supporting a larger community.
- 6.8 The Council has been aware, since the examination of its Local Plan: Part 1, that it would need to undertake an immediate review of its policies relating to the delivery of housing. The Inspector at the time of the examination recognised the work on an updated Strategic Housing Market Assessment (SHMA) was advanced and that the figures proposed by the Council within its plan were already out of date. To ensure the Council was promoting the most appropriate strategy, consistent with National Policy, the Council was required to commit to an early review of the plan.
- 6.9 The housing delivery figures currently set out within the Local Plan are not representative of the Council's actual Objectively Assessed Needs. The need defined by the Government's standard methodology represents the most up to date need for the District and for Dorset Council as a whole. The housing need defined by the standard methodology is greater than they set out within the Local Plan and the Council's rate of housing delivery demonstrates a persistent under delivery against this need
- 6.10 The point is that the Council's strategy for the delivery of housing is out of date. The Council is also unable to display a 5-year supply of deliverable housing sites based on its substantially lower adopted housing delivery figures; the reality is that the Council is likely to be further behind on its needs than claimed.

- 6.11 The lack of a 5-year supply of deliverable sites initially stemmed from the stalling of a series of allocated strategic development sites, particularly at Gillingham, which did not come forwards at the timescales planned for as a result of current market forces in the area. This left the Council with a considerable housing shortfall, and one which it continues to have not addressed.
- 6.12 As a result, the Council should be seeking to permit development on sites within sustainable areas of the District which can, and will be delivered. The significant pressure on the principal settlements to deliver almost the entire planned housing growth for the former District, was not sustainable. Instead, having regard for this, the Council, must look to spread out the housing, making use of the sustainable larger villages, to ensure delivery.
- 6.13 The Government's Housing Delivery Test, as a result of the global pandemic, has been recently amended downwards, to reflect the reduction in building generally across the country across the last 18 months. The Housing Delivery Test nonetheless demonstrates that Dorset Council has significantly under delivered within North Dorset District, demonstrating delivery of just 59% of its need, and that applications must be determined in the frame of the presumption in favour of sustainable development.
- 6.14 The need to deliver additional sites for housing is thus conclusively demonstrate, and moreover that the weight to be attributed to the Council's policies for the delivery of housing must be reduced and the policies considered out of date.
- 6.15 Policy 2 of the Local Plan sets out the Council's core spatial strategy for development across the District. The policy makes clear that the 4 main towns are to be the primary location for growth within the District, the policy also states however that Stalbridge and the 18 other larger villages (More Sustainable Villages (MSVs)) have been identified as suitable for accommodating growth to meet local needs. With respect to development outside of a defined development boundary, any proposals will be subject to countryside policies

where development will be strictly controlled unless it is required to enable essential rural needs to be met.

- 6.16 Policy 2 of the Local Plan is a policy for the supply of housing, and having regard for the Council's housing land supply and recent rate of housing delivery, the policy is to be considered out of date and the weight to be attributed to the policy in the planning balance must be reduced. It will be a matter for the decision maker to consider the weight to be attributed to the policy, however having regards for the significant shortfall the Appellant considers that the weight must be very limited. It should be reinforced however that Policy 2 makes clear that some development at the MSVs was anticipated in order for the Council to meet its housing needs.
- 6.17 Policy 4 of the Local Plan seeks to ensure that adequate protection is afforded to the environment and environmental assets throughout the development process. Developments will be expected to respect the natural environment including designates sites, valued landscapes and other features that make it special. Development should be shaped by the natural environment so that the benefits it provides are enhanced and not degraded. Proposals which seek to conserve or enhance the natural environment should be permitted unless significant adverse social or environmental impacts are likely to arise as a result of the proposal.
- 6.18 Policy 5 sets out the Council's approach to the consideration of the historic environment. The policy states that any development proposal affecting a heritage asset, or its setting, will be assessed having regard to the desirability of sustaining and enhancing the significance of that asset and securing a viable use for it that is most consistent with its conservation. Great weight will be attributed to the conservation of any designated heritage asset.
- 6.19 The Council's approach to the impact of development upon heritage assets is consistent with and, for the most part, repeats the policy approach set out within the NPPF.

- 6.20 Policy 8 sets out the Council's approach to the delivery of affordable housing. The Council seeks to deliver 40% of the units on any qualifying scheme as affordable; to be provided in an appropriate mix and tenure to be agreed with the LPA.
- 6.21 The Appellant acknowledges the requirement to make a policy compliant affordable housing provision and through discussions with the LPA has agreed to a policy compliant provision on site with an off-site commuted sum for part of a unit. The mix of the affordable units, in a 70/30 split between affordable /social rented and shared ownership units, has also been agreed.
- 6.22 Policies 13, 14 and 15 of the Local Plan set out the Council's approach to securing appropriate 'grey', 'social' and 'green' infrastructure. The Council has not adopted CIL, that financial contributions towards infrastructure are to be secured by way of s106 agreement.
- 6.23 Policy 13 indicates that development will be expected to maintain, enhance and provide grey infrastructure, as appropriate to the particular development, by way of direct (on/off site) or indirect (by way of financial contribution) provision.
- 6.24 Policy 14 indicates that development should support the maintenance and enhancement of existing social infrastructure and the provision of new social infrastructure, through provision on site and/or contributions to provision off site, as appropriate.
- 6.25 Policy 15 indicates that Development will be required to enhance existing and provide new green infrastructure to improve the quality of life of residents and deliver environmental benefits. All elements of green infrastructure should be provided on site in line with standards of provision set in the development plan unless:
- (g) it can be demonstrated that it would not be practical or viable to do so;
or,
 - (h) exceptionally, it could be demonstrated that greater benefits could be realised through off-site measures.

- 6.26 Policy 15 continues; where the full requirement for green infrastructure is not provided on-site, development would be expected to provide new green infrastructure off site, and/or enhance (or make a contribution towards the enhancement of) existing green infrastructure off site.

7.0 National Planning Policy Framework

7.1 The Government released the new National Planning Policy Framework (2021) (NPPF), which came into force; in replacement of the NPPF (2019), on 20th July 2021. The Government remains in the process of updating Planning Practice Guidance (NPPG) to reflect the changes made to the Framework.

7.2 Those sections of the Framework which are of relevance to the consideration of the proposed development are set out below:

- Section 2. Achieving sustainable development
- Section 4. Decision-making
- Section 5. Delivering a sufficient supply of homes
- Section 8. Promoting healthy and safe communities
- Section 9. Promoting sustainable transport
- Section 11. Making effective use of land
- Section 12. Achieving well-designed places
- Section 14. Meeting the challenge of climate change, flooding and coastal change
- Section 15. Conserving and enhancing the natural environment
- Section 16. Conserving and enhancing the historic environment

7.3 The NPPF explains (at paragraph 7) that the purpose of the planning system is to contribute to the achievement of sustainable development. Paragraph 8 explains that there are three overlapping dimensions to sustainable development:

- An economic objective – to help build a strong, responsive and competitive economy, by ensuring that sufficient land of the right types is available in the right places and at the right time to support growth, innovation and improved productivity; and by identifying and coordinating the provision of infrastructure;
- A social objective– to support strong, vibrant and healthy communities, by ensuring that a sufficient number and range of homes can be provided to meet the needs of present and future generations; and by fostering well-

designed beautiful and safe places, with accessible services and open spaces that reflect current and future needs and support communities' health, social and cultural well-being; and

- An environmental objective – to protect and enhance our natural, built and historic environment; including making effective use of land, improving biodiversity, using natural resources prudently, minimising waste and pollution, and mitigating and adapting to climate change, including moving to a low carbon economy.

7.4 Paragraph 9 provides clarification that the three objectives should be delivered through the preparation and implementation of plans and the application of policies in the Framework; however, they are not criteria against which every decision can or should be judged.

7.5 Policies and decisions should play an active role in guiding development to sustainable solutions, but in doing so should take local circumstances into account, to reflect the character, needs and opportunities of each area.

7.6 Paragraph 11 of the NPPF states clearly that plans, and decisions should apply a presumption in favour of sustainable development.

7.7 In respect of decision making Paragraph 11 confirms that LPAs should approve proposals which accord with the development plan without delay; or, where a development plan is absent, silent or 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, when assessed against the policies in the framework taken as a whole; or the specific policies listed at *Footnote 7* provide a clear reason for refusing the development proposed.

7.8 Paragraph 12 confirms that the presumption in favour of sustainable development does not change the statutory status of the development plan as the starting point for decision making. Where a planning application conflicts with an up-to-date development plan permission should not usually be granted.

LPAs can however depart from an up-to-date plan if material considerations in a particular case indicate that the development should be allowed.

- 7.9 Section 4 of the NPPF sets out the Government's direction on the approach which LPAs should take to decision making and the value of early and proactive engagement where possible in order to resolve issues at an early stage.
- 7.10 Paragraph 38 of the NPPF states that LPAs should approach decisions on proposed development in a positive and creative way. They should use the full range of planning tools available to work proactively with Applicants to secure development which will improve the economic, social and environmental conditions of the area; development which is sustainable should be approved.
- 7.11 Paragraph 43 makes clear that the right information is crucial to good decision-making, particularly where formal assessments are required (such as Environmental Impact Assessment, Habitats Regulations assessment and flood risk assessment). To avoid delay, Applicants should discuss what information is needed with the local planning authority and expert bodies as early as possible.
- 7.12 Paragraph 47 confirms the requirement in planning law for applications to be determined in accordance with the development plan unless material considerations indicate otherwise. Decisions should be made as quickly as possible within statutory timescales unless a longer period has been agreed with the Applicant.
- 7.13 Paragraph 56 states that planning conditions should be kept to a minimum and only imposed where they meet the relevant tests, as defined by the Planning Practice Guidance. Agreeing conditions early is beneficial to all parties in the process and can speed up decision making. The policy reconfirms the update to the Town and Country Planning Act 1990 which requires that LPAs seek written agreement from Applicants to pre-commencement conditions before these are imposed. The policy directs that they should be avoided unless there is clear justification.

- 7.14 Paragraph 57 confirms that Planning Obligations should only be sought where they meet the tests of being (a) necessary to render the development acceptable in planning terms, (b) directly related to the development and (c) fairly and reasonably related in scale and kind to the development. Where these tests are not met, obligations should not be sought.
- 7.15 Section 5 of the NPPF provides the Government's approach to the delivery of a sufficient supply of housing.
- 7.16 Paragraph 60 requires that, in order to support the Governmental objective of significantly boosting the supply of homes, sufficient amount and variety of land comes forwards where it is needed so that the needs of groups with specific housing requirements are addressed and that land which has permission is developed without delay.
- 7.17 Paragraph 65 states that where major development involving the provision of housing is proposed, planning policies and decisions should expect at least 10% of the total number of homes to be available for affordable home ownership, unless this would exceed the level of affordable housing required in the area, or significantly prejudice the ability to meet the identified affordable housing needs of specific groups.
- 7.18 Paragraph 74 makes clear that strategic policies should include a trajectory illustrating the expected rate of housing delivery over the plan period, and all plans should consider whether it is appropriate to set out the anticipated rate of development for specific sites. LPAs should identify and update annually a specific supply of deliverable sites sufficient to provide a minimum of five years' worth of housing against their housing requirement set out in adopted strategic policies, or against local housing need where the strategic policies are more than 5 years old; which should include the appropriate buffer.
- 7.19 Paragraph 76 states that in order to maintain the supply of housing, LPAs should monitor progress in building out sites which have permission. Where the Housing Delivery Test indicates that delivery has fallen below 95% of the LPA's

housing requirement over the previous 3 years the authority should prepare an action plan in line with national planning guidance.

- 7.20 Paragraph 79 makes clear that in order to promote sustainable development in rural areas, housing should be located where it will enhance or maintain the vitality of rural communities. Where there are groups of smaller settlements, development in one village may support services in a village nearby.
- 7.21 Section 8 of the NPPF provides the Government's approach to promoting healthy and safe communities.
- 7.22 Paragraph 92 states that policies and decisions should aim to achieve healthy, inclusive communities and safe spaces, including promoting social interaction through design, enabling and supporting healthy lifestyles and ensure developments are safe and accessible.
- 7.23 Paragraph 93 states that to provide the social, recreational and cultural facilities and services that the community needs, policies and decisions should (a) plan positively for the provision and use of shared spaces, community facilities and other services to enhance the sustainability of communities and residential environments, and (e) ensure an integrated approach to considering the location of housing, economic uses and community facilities.
- 7.24 Paragraph 98 makes clear that access to a network of high-quality open spaces and opportunities for sport and recreation is important for the health and wellbeing of communities and can deliver wider benefits for nature and support efforts to address climate change.
- 7.25 Paragraph 100 indicates that policies and decisions should protect and enhance public rights of way and access, including taking opportunities to provide better facilities for uses.
- 7.26 **Section 9 of the NPPF** provides the Government's approach to promoting sustainable transport.

- 7.27 Paragraph 104 suggests that transport issues should be considered at the earliest stage of plan making and development proposals to ensure that impacts of development on transport networks can be addressed and opportunities to promote walking, cycling and public transport can be identified and pursued. Paragraph 103 continues that the planning system should actively manage patterns of growth in support of these objectives. Significant growth should be focussed on locations which are or can be made sustainable, through limiting the need to travel and offering choice of transport. However, opportunities to maximise sustainable transport modes will vary between urban and rural locations and this should be taken into account in plan making and decision taking.
- 7.28 Paragraph 110 of the Framework seeks for development proposals to ensure that appropriate opportunities to promote sustainable transport are taken up, given type of development and its location, that safe and suitable access to the Site can be achieved for all users and that any significant impacts arising from the development upon the transport network or on highway safety can be appropriately mitigated. Moreover it is noted that the design of streets, parking areas and other transport elements should reflect current national guidance including the National Design Guide and National Model Design Code.
- 7.29 Paragraph 111 states that development should only be prevented or refused on highways grounds if there would be an unacceptable impact on highway safety, or the residual cumulative impacts on the road network would be severe.
- 7.30 Paragraph 112 provides further direction on how sustainable transport should be addressed within developments. It is confirmed that proposals should give priority to pedestrian and cycle movements both within the scheme and to neighbouring areas and facilitate, where possible access to high quality public transport with opportunities taken within layouts to maximise catchment areas for public transport services. Developments should create places that are secure, safe and attractive and minimise conflicts between different transport types. The Framework also confirms that development should be designed so as to enable electric vehicle charging facilities to be included in safe, accessible and convenient locations.

- 7.31 Paragraph 113 confirmed that where developments will generate significant amounts of movements, they will need to be supported by a Travel Plan and any application should be supported by a Transport Assessment to enable the impacts of the development to be assessed.
- 7.32 Section 11 of the NPPF makes clear the need to make efficient use of land.
- 7.33 Paragraph 119 requires policies and decisions to promote the effective use of land in meeting the need for homes and other uses, whilst safeguarding and improving the environment and ensuring safe and healthy living conditions.
- 7.34 Paragraph 120 indicates that policies and decisions should encourage multiple benefits from both urban and rural land, including through mixed use schemes and taking opportunities to achieve net environmental gains, such as developments which improve public access to the countryside.
- 7.35 Paragraph 124 indicates that policies and decisions should support development that makes efficient use of land, taking into account (a) the identified need for different types of housing and other forms of development, and the availability of land suitable for accommodating it; (d) the desirability of maintaining an area's prevailing character and setting, and (e) the importance of securing well-designed, attractive and healthy places.
- 7.36 Paragraph 125 states that area-based character assessments, design guides and codes and masterplans can be used to help ensure that land is used efficiently while also creating beautiful and sustainable places. where there is an existing or anticipated shortage of land for meeting identified housing needs, it is especially important that planning policies and decisions avoid homes being built at low densities and ensure that developments make optimal use of the potential of each Site.
- 7.37 Section 12 of the NPPF sets out the policy approach for achieving well-designed places.

- 7.38 Paragraph 126 indicates that the creation of high-quality, beautiful and sustainable buildings and places is fundamental to planning and development. Good design is a key aspect of sustainable development.
- 7.39 Paragraph 130 reinforces that policies and decisions should ensure that developments will (a) function well and add to the overall quality of the area, not just for the short term, but for their lifetime, (b) are visually attractive as a result of good architecture, layout and appropriate landscaping, (c) are sympathetic to character and history, without stifling innovation or change (d) establish a strong sense of place, (e) optimise the potential of the Site in terms of the amount and mix of development and (f) create places that are safe, inclusive and accessible.
- 7.40 Paragraph 131 was introduced by the latest iteration of the Framework and notes that trees make an important contribution to the character and quality of urban environments and can help mitigate and adapt to climate change. The paragraph directs that decisions should ensure that new streets are tree-lined, that opportunities are taken to incorporate trees elsewhere in developments, that appropriate measures are in place to secure the long-term maintenance of newly planted trees and that existing trees are retained where possible. Applicants and LPAs should work together with highways and tree officers to ensure that the right trees are planted in the right places and are compatible with highways and the needs of different users.
- 7.41 Paragraph 134 indicates that development that is not well designed should be refused, especially where it fails to reflect local design policies and government guidance on design, taking into account any local design guidance and supplementary planning documents such as design guides and codes. Significant weight should be given to development which reflects local design policies and government guidance on design, taking into account any local design guidance and supplementary planning documents such as design guides and codes; and/or which is of outstanding or innovative design and promotes a high level of sustainability or raises the standards of design more generally within an area, so long as it fits within its context.

- 7.42 Section 14 of the NPPF provides the national policy approach for meeting the challenges of climate change and flooding.
- 7.43 Paragraph 154 indicates that new development should be planned in a manner which avoids increased vulnerability to the impacts of climate change. When new development is brought forwards in vulnerable areas those risks should be managed through suitable adaptation measures including planning for Green Infrastructure. Development will also be expected to minimise greenhouse gas emissions through its location, orientation and design and planning thus for a sustainable pattern of development.
- 7.44 Paragraph 157 states that when determining applications LPAs should expect new development to comply with development plan policies on decentralised energy supply and to take account of the topography, layout and arrangement of development and landscaping to minimise energy consumption.
- 7.45 Paragraph 159 confirms that development should be directed away from those areas at the highest risk of flooding. Where development is necessary in such areas, the development should be made safe for its lifetime without increasing flood risk elsewhere.
- 7.46 Paragraph 166 directs that, when determining applications, LPAs should ensure that flood risk is not increased elsewhere and where appropriate applications are supported by a Site-specific Flood Risk Assessment (FRA). Development should only be allowed in areas at risk of flooding where it can be demonstrated that within the Site the most vulnerable development is located in areas of the lowest flood risk, that the development is flood resistant and resilient, that sustainable drainage systems are incorporated and where any residual risk can be safely managed.
- 7.47 Paragraph 168 requires that applications for major development incorporate sustainable drainage systems unless there is clear evidence that this would be inappropriate. SUDS systems should have appropriate minimum operational standards and maintenance arrangements in place to ensure an acceptable standard of operation for the lifetime of the development and where possible

provide multi-functional benefits. Appropriate advice should be taken from Local Lead Flood Authorities (LLFA) in devising schemes.

7.48 **Section 15 of the NPPF** sets out the policy approach to conserve and enhance the natural environment.

7.49 Paragraph 174 seeks for development to contribute to and enhance the local and natural environment through (a) protecting and enhancing valued landscapes, biodiversity or geological value, (b) recognising the intrinsic character and beauty of the countryside and natural ecosystem, (d) minimising impacts on and providing net gains for biodiversity, (e) preventing new and existing development from contributing to or being put at risk of being adversely affected by soil, air, water or noise pollution. Proposals should, where possible, seek to improve local environmental conditions such as air and water quality, taking into account relevant local information.

7.50 Paragraph 180 states that when determining applications LPAs should apply the following principles (a) if significant harm to biodiversity would result from development which cannot be mitigated or compensated permission should be refused, and (d) opportunities to incorporate biodiversity improvements in and around developments should be encouraged, especially where delivering measurable net gains.

7.51 Paragraph 182 notes that the presumption in favour of sustainable development does not apply where the development is likely to have a significant effect on a habitats Site; whether alone or in combination with other projects, unless an appropriate assessment (AA) has concluded that the development will not adversely affect the integrity of the habitats Site.

7.52 Paragraph 183 indicates that policies and decisions should ensure that sites are suitable for their proposed use taking account of ground conditions arising from land stability and contamination; ensuring adequate investigation and information is prepared by competent persons to inform assessments.

- 7.53 Paragraph 185 of the NPPF expects LPAs to ensure that development is appropriate for its location taking in to account the likely effects, including cumulative effects, of pollution on health, living conditions and the natural environment. LPAs should have regards for the sensitivity of the Site or the wider area to impacts what may arise from development and (a) mitigate and reduce to a minimum potential adverse noise impacts of development, (b) identify and protect tranquil areas that are prized for their recreational and amenity value due to being undisturbed by noise and (c) limit the effects of light pollution on local amenity and nature conservation.
- 7.54 Paragraph 186 of the Framework expects decision making to sustain and contribute towards compliance with relevant limit values or national objectives for pollutants, taking into account the presence of Air Quality Management Areas and Clean Air Zones, and the cumulative impacts from individual sites in local areas.
- 7.55 **Section 16 of the NPPF** sets out the policy approach to conserve and enhance the historic environment.
- 7.56 Paragraph 194 of the NPPF states that LPAs should require an Applicant to describe the significance of any heritage asset affected by proposals, but the level of detail should be proportionate to the importance of the asset and no more than is sufficient to understand the potential impact upon its significance. Where development has the potential to include heritage assets with archaeological interest development should be required to submit an appropriate desk-based assessment and where necessary undertake further field evaluation.
- 7.57 Paragraph 195 states that LPAs should identify and assess the significance of any heritage asset that may be affected by a proposal. This assessment should be taken into account when considering the impact of a proposal upon a heritage asset, to avoid or minimise conflict between the heritage asset's conservation and any aspect of the proposal.

- 7.58 Paragraph 197 requires that, in determining planning applications, LPAs take account of the desirability of sustaining and enhancing the significance of heritage assets and putting them to viable uses consistent with their conservation, but also the desirability of new development making a positive contribution to local character and distinctiveness.
- 7.59 Paragraph 199 makes clear that when considering the impact of development proposals on the significance of a designated heritage asset great weight should be given to the asset's conservation. The more important the asset the greater the weight which should be attributed to its preservation. The significance of an asset can be harmed through alteration or destruction of the heritage asset and development within its curtilage.
- 7.60 Paragraph 200 confirms that any harm to, or loss of, the significance of a designated heritage asset (from its alteration or destruction, or from development within its setting), should require clear and convincing justification. Depending on the importance of the asset substantial harm to or loss of an asset should be exceptional in the case of lower order assets, or truly exceptional in the case of those most important heritage assets of the highest significance.
- 7.61 Paragraph 201 states that where a proposed development will lead to substantial harm to or total loss of significance of a designated heritage asset, LPAs should refuse consent unless it can be demonstrated that the substantial harm or loss is necessary to achieve substantial public benefit that outweighs that loss.
- 7.62 Paragraph 202 of the NPPF suggests that 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 proposals, including, where appropriate, securing its optimum viable use.
- 7.63 Paragraph 203 directs that the effect of an application on the significance of a non-designated heritage asset should be taken into account in determining applications. In weighing applications that directly or indirectly affect non-

designated heritage assets, a balanced judgement will be required having regard to the scale of any harm or loss and the significance of the heritage asset.

- 7.64 At Annex 1 to the Framework, with respect to its implementation, 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. It is noted that the closer the policies in the plan to the policies in the Framework, the greater the weight that may be given.

8.0 The Application

- 8.1 The Appellant did not enter into pre-application discussions with the Council prior to the application before the Inspector being made; the Council cannot require that a developer enter into such discussions and the absence of such should not prejudice their decision if the offer of such services is not taken up. As per the guidance set out within the NPPF, LPAs should apply a presumption in favour of sustainable development in accordance with the provisions of both Local and National Planning Policy.
- 8.2 The Appellant however had detailed discussions with the Council in relation to the development site throughout the course of the planning application which is reflected in the changes made to the proposed pattern of development. The Appellant and the Council engaged positively and proactively at the early stages of engagement in respect of the development site which led to the proposals now before the Inspector, however unfortunately discussions broke down from the Council's side and the Appellant was subjected to significant delays and procedural failings in the determination of the application.
- 8.3 The Application was made to the Council in August 2018 and registered as valid on submission under application ref. 2/2018/1124/OUT.
- 8.4 Planning permission was sought originally for the erection of 103 No. dwellinghouses, including creation of a new access road through the site comprising upgrades to the narrow public highway Tanzey Lane at its southern end and formation of a new access on to Sodom Lane at its northern end. New public footways were to be provided as part of the highways infrastructure improvements. The development also included a community facility and a separate pre-school at the southern end of the site. and a generous Public Open Space (POS) at its core. The application was made in outline with all matters except access and quantum/principle and layout reserved for later determination at reserved matters stage.

- 8.5 During the course of its consideration the application was passed between several Planning Officers, eventually being allocated to Mrs Penny Canning, Lead Project Officer.
- 8.6 Whilst the application was originally made for 103 dwellings, this was substantially reduced during the course of the application. Through detailed discussions with the Council's Technical Officers and several design meetings with the Case Officer, we made a series of amendments to the scheme, comprising in total 10 major variants on the site plan; and some more minor changes with Drawing Ref. 16080 SK010Rev.O (**AB2**) comprising the site plan against which the Council's determination was eventually made.
- 8.7 The changes to the scheme saw the number of dwellings reduced to 72, and a significant increase in the quantum of landscaped Public Open Space (POS) provided on the site. Alongside this, the scheme also made changes to the proposed pattern of access, with the route to Sodom Lane at its northern end changed to an emergency access, and a new length of footway proposed westwards to joint with the footway extending from Ashley Road to the west. The layout of the scheme changed quite considerably, but the Council was happy for these changes to occur under the guise of the same planning application, on the basis that public and technical consultee consultation was undertaken again further to the major changes which had been made.
- 8.8 The discussions had with the Council's Officers were generally positive and the application, in September 2020, was at a stage where the Officer had resolved to recommend the scheme for approval. The correspondence before this date is not provided, as it is not considered of explicit relevance.
- 8.9 This was confirmed by the Case officer in a telephone call to the Appellant Cicero Estates on 2nd September 2020, which was followed up by and email from our office to the Council that same day, 2nd September 2020 (**AB3**).
- 8.10 Further conversations were had with the Council and an email was sent to the Appellant's Agent on 10th September 2020 from the Council's Area Manager (North Area) Mrs Hannah Smith. The email confirmed that the Council

considered the Appellant, and Council had worked together to overcome the original concerns and that the s106 contributions would need to be revised in order to allow production of the s106 agreement. The intention was that the application would be heard by the 10th November Planning Committee. **(AB4)**

- 8.11 This did not occur.
- 8.12 On the 11th September 2020, the Appellant's Agent issued to the Council an updated schedule of financial contributions on the basis of a pro-rata contribution for the reduction in the number of dwellings proposed (103 to 72) **(AB5 and AB6)**. The Council's confirmation of these figures was sought such that the s106 agreement could be prepared.
- 8.13 On the 28th September 2020, the Appellant's Agent chased up the Council on this matter and sought to confirm the affordable housing contribution from the development, being policy compliant and comprising 28 dwellings on site, and a commuted sum financial contribution for a 0.8 part of a dwelling . **(AB7)**
- 8.14 On the 29th September and 30th September 2020 the Council responded to confirm its agreement with the contributions proposed by the Appellant and set out a schedule with those figures which were confirmed. **(AB8 and AB9)**
- 8.15 The Appellant's Agent provided these figures to the Appellant's Solicitor Gateley Legal on 30th September 2020 and confirmed that the Primary Care Contribution and that the affordable housing commuted sum remained outstanding and to be confirmed by the Council. **(AB10)**
- 8.16 On the 6th October 2020, the Council confirmed the amount of the Primary Care Contribution **(AB11)**. The Appellant's Agent response to the Council on the same day, confirming the amount of the contribution, due to the significant discrepancy **(AB12)**. The Council thereafter responded confirming the amount of the contribution and that the larger amount was no longer being sought **(AB13) (AB14)**.

- 8.17 Due to the significant number of modifications to the application documents during the course of its consideration, the Appellant provided to the Council on 7th October 2020, a full list of the plans and technical documents which comprised the up-to-date application documents against which the proposals were to be determined. **(AB15)**
- 8.18 On the 8th October 2020, the Appellant provided to the Council an updated Biodiversity Mitigation and Enhancement Plan and Ecology Report. It was confirmed by the Appellant that the then Dorset County Council's Natural Environment Team (NET) had not issued a Certificate confirming agreement to the details of the BMEP at that time. **(AB16)**
- 8.19 On 9th October 2020 the Council confirmed that it would require a NET Certificate to be provided by Dorset County Council NET to confirm that the details of the BMEP were agreed. **(AB17)**
- 8.20 The Appellant's Ecologist; KP Ecology (KPE) submitted again to Dorset County Council NET the Ecology Report and BMP to seek the NET Certificate as confirmed by email dated 14th October 2020. **(AB18)**
- 8.21 On 14th October 2020, the Council emailed the Appellant to confirm that there remained some concerns with the impact upon biodiversity from Dorset County Council NET (DCC NET), which needed to be addressed. The comments provided by DCC NET were enclosed within the email train. The Council also noted a concern with the proposed dwelling mix, but confirmed that this could be resolved at reserved matters stage through a change in the dwelling mix proposed, having regard for the outline nature of the application. The Council noted further that discussions were ongoing regarding the need for an education contribution due to concerns over local capacity of St Gregory's Primary School. **(AB19)**
- 8.22 On the 15th October 2020, the Appellant emailed KPE with the comments which had been provided by DCC NET, to confirm that these had now been dealt with within the updated BMEP and ER. **(AB20)**

- 8.23 Further to discussions with the Appellant's Ecologist, the Appellant's Agent emailed the Council on 15th October 2020 (**AB21**) confirming that the survey work had not been undertaken and that the Appellant was unable to do so outside of survey season and in any event provided appropriate biodiversity enhancement and mitigation on the assumption that protected species were present. The Appellant's Agent also appended an earlier email dated 22nd October 2018 between the two parties, stating clearly that DCC NET was unwilling to sign off the BMEP until further surveys had occurred and seeking confirmation from the Council that the conditions could be subject of condition or carried out to inform the Reserved Matters Application having regard for the details of the BMERP, which assumed the presence of projected species and provided worst-case mitigation and enhancement scenario accordingly as part of the development. It was also confirmed that the Council's Head of Planning had previously confirmed that a NET Certificate was not reasonably required to enable a planning permission to be issued and thus that the mitigation strategy as proposed should reasonably be accepted (**AB22**).
- 8.24 The Appellant's Ecologist KPE confirmed in email correspondence on 26th October 2020 that it was unlikely that DCC NET would provide a different response to that which had been provided previously, but that she stood by the fact that the additional surveys could be conditioned as they were unable to be carried out outside of the survey season and that the results of the surveys would not in any event change the mitigation and enhancement proposed within the ER and BMEP. (**AB23**)
- 8.25 On the 27th October 2020 the Appellant's Agent contacted the Council' Head of Development Management Mrs Anna Lee regarding the significant delays with the application and that no further response had been received from Officers, nor had the application been progressed towards the planning committee. It was also confirmed that the Appellant continued to await confirmation of the remaining s106 contributions to enable the agreement to be prepared. (**AB24**)
- 8.26 On the 2nd November 2020 the Council responded to the Appellant confirming that it was not content to condition the surveys and that it would require these to be undertaken before the application could be determined favourably. The

absence of these surveys would result in an unfavourable recommendation. The Council confirmed however that it would be prepared to agree an extension of time to allow for the survey work to be carried out. **(AB25)**

8.27 On the 3rd November 2020 the Appellant responded to the Council's emails and sought to reinforce once again that the outcomes of the survey work would not change the mitigation and enhancement measures which had already been proposed as part of the scheme, on the assumption that populations of both Bat and Dormice utilised the site. It was confirmed that the survey work could not occur until the earliest in May 2021, when it would commence, and this would need to occur for a period of months. As a result, the Appellant's Agent suggested that the application could be taken to planning committee with a recommendation to delegate power to determine to the Chief Planning Officer pursuant to the resolution of the s106 agreement and the completion of the additional ecological surveys. **(AB26)**

8.28 On the 5th November 2020 the Council confirmed its position that it still expected the surveys take place prior to determination of the application, as without these having been undertaken it was not convinced that a worst-case scenario and the mitigation would be sufficient. The Council also advised that it would recommend the surveys took place before any committee consideration of the application due to concerns of third parties with biodiversity. **(AB27)**

8.29 At this time the only outstanding issue with the proposed development remained the need for further ecological surveys; comprising Bat Transect and Dormice surveys to be undertaken.

8.30 On the 10th November 2020, the Appellant's Agent contacted the Head of Planning Mr Mike Garrity in relation to the application, following discussions that had been had between the Appellant and the Head of Planning. The details of recent conversations and the impasse were set out and the Appellant sought a meeting with the Council's Officers in order to discuss the matter and moving the application forwards towards determination by the Planning Committee on the basis previously discussed. **(AB28)**

- 8.31 On the 11th November 2020, the Council confirmed prospective dates for a meeting by email (**AB29**). In a telephone conversation between the Council's Head of Planning and the Appellant, the Council also now raised additional concerns to the need for ecological surveys to occur, with respect to matters that were previously agreed and resolved in relation to (1) heritage and (2) trees. The Appellant's Agent emailed the Council on 11th November 2020 to confirm the details of that discussion and where the Council's concerns sat, so that an appropriate consultancy team could attend the meeting with the Council to cover these issues. (**AB30**)
- 8.32 On the 13th November 2020, the Council responded to the Appellant's Agent and confirmed that their concerns were not in relation to trees, but now in relation to landscape impact. The matters thus comprised (1) heritage (2) landscape Impact and (3) ecology. (**AB31**)
- 8.33 The Appellant and their technical consultants agreed to meet with the Council virtually on 24th November 2020.
- 8.34 On the 16th November 2020 the Council emailed the Appellant to confirm that they would seek to receive some input from their landscaping team in advance of the meeting. The suggestion being that there had previously been no input from the Council's landscape officers and thus the issues that were being raised at this late stage, pursuant to the Council's earlier confirmation that they were content with the scheme and that it was to be recommended for approval, were as a result of the matter not having been properly looked at by the Council's consultees. (**AB32**)
- 8.35 It was disappointing yet again that these issues were raised late in the process, pursuant to a clear direction from the Council that it was content with the details of the scheme and that it was in a position that it could support the proposals.
- 8.36 The meeting was held on the 24th November 2020 between the Council's Head of Planning, Area Manager, Lead Planning Officer, Landscape Officer, Conservation Officer and DCC NET Ecologist, and the Appellant's Ecologist, Heritage Consultant, Landscape Architect and Planning Consultant.

- 8.37 The Council's Landscape Officer provided comments in relation to the application on the day of the meeting, which the Appellant had not had any prior site of and had no opportunity thus to review or consider (**AB33**). A robust response to the points set out within could not therefore be provided. The Appellant confirmed their disappointment with the Council's engagement in this respect.
- 8.38 On the 25th November 2020, following the meeting, the Council contacted the Appellant to confirm that it would discuss the matters which were raised at the meeting internally and provide its suggested position moving forwards and where points could be addressed under the current application (**AB34**). The Appellant's agent confirmed that they would provide a summary email of the points discussed at the meeting and would await further comment from the Council before further work was undertaken (**AB35**).
- 8.39 On the 26th November 2020 the Appellant's Agent emailed the Council to confirm that the Council's concerns with respect to ecological interests were not on the basis of unacceptable ecological harm, but rather a desire to have the empirical surveys in hand to corroborate the mitigation. This was thus a timing issue and not an issue of technical unacceptability and one which could readily be overcome. With respect to the matters of landscape and heritage impact, the Appellant had rebutted the Council's position and awaited its further comments. The Appellant confirmed a commitment to working with the Council in respect of the application and making amendments to the scheme should the Council consider these necessary to resolve its concerns. The Appellant was not of the view that the Council's new concerns were insurmountable. (**AB36**)
- 8.40 On the 1st December 2020 the Council, following further internal discussions, contact the Appellant to state that, in its view, the changes necessary to overcome its new concerns were significant and bearing in mind the amendments previously made to the scheme it would not be reasonable to delay determination further. The Council proposed therefore either determining the application based on the current plans or withdrawal of the application. The Council accepted that the concerns relating to ecology may be overcome by

the submission of surveys as previously agreed and thus this issue would fall away (**AB37**).

8.41 An internal email dated 2nd December 2020 (**AB38**) discussed the options and confirmed that the Council should be asked to determine the application to allow the right of appeal to be exercised.

8.42 On the 7th December 2020 the Appellant issued a letter to the Council setting out their position (**AB39**). The letter confirmed that they did not see the merit in pre-application engagement having regard for the discussion had to date. The Appellant sought confirmation from the Council of what changes would need to be made to the scheme in order to address its concerns. Moreover, the Appellant made clear that, in their view, the Council's concerns on heritage grounds were not sustainable and sought for the Council to allow the Appellant to respond to the recent comments of the Landscape Officer given that they had no opportunity to do so in advance of the meeting with Officers.

8.43 On the 14th December 2020, the Appellant submitted to the Council its response to the Landscape Officer's comments (**AB40**) prepared by the Appellant's Landscape Architect ACLA.

8.44 On the 15th December 2020 the Council confirmed that it would consider the letter submitted to it and the points of response to the Landscape Officer's assessment. The Council agreed an extension of time until 29th January 2021 to consider the responses. (**AB41**)

8.45 On the 10th February 2021 the Council confirmed that it had reviewed the information but was unable to support the application due to the perceived impact upon the natural and historic environment and harm to biodiversity. The Council sought an extension of time until 19th February 2021 to consider its position further and determine the application. (**AB42**)

8.46 On the 18th February 2021 the Appellant submitted a letter to the Council in respect of the Planning Application expressing their disappointment with the Council's handling of the application and the suggested determination. The

Appellant sought for the matter to be heard by the Planning Committee due to the major scale of the development and the significant contribution that would be made to the Council's housing land supply, alongside the level of public interest in the application. The Appellant rebutted the Council's concerns and sought a formal response from Officers. **(AB43)**

8.47 On the 15th May 2021, the Appellant contacted the Council as a result of no response or further correspondence having been received further to the letter of 18th February **(AB44)**. The Appellant sought a clear response from the Council on its position and if it was to refuse the application, confirmation of a clear timeframe within which this would occur. The Appellant made clear their intention to appeal. The Appellant confirmed that a Technical Note had been submitted to Dorset Council NET (DC NET) prepared by the Appellant's Ecologist Ecosupport and an industry expert on Dormice; Mr Ian White of the People's Trust for Endangered Species. The letter confirmed that there is no habitat on site that is of sufficient quality to support Dormice. **(AB45)**

8.48 On the 18th May 2021 the Council confirmed that further consideration had been given to the issues raised and previous correspondence. The Council confirmed that it continued to have concerns with the impacts of the development and that the application was to be written up for refusal and was with Senior Officers for determination. **(AB46)**

8.49 On the 19th May 2021 the Appellant confirmed that they would continue to engage with Dorset NET and the Council to prepare a s106 agreement to support the appeal proceeding. **(AB47)**

8.50 On the 25th May 2021 DC NET emailed to confirm the way forwards to deal with the concerns on ecological grounds further to a meeting with the Appellant and the Appellant's Ecologist Ecosupport. **(AB48)**

8.51 On the 7th June 2021 the Appellant emailed the Council to confirm that, further to discussions with DC NET it was agreed that the provision of 5m buffer zones to the existing hedgerows on the perimeter of the site would be sufficient to demonstrate conclusively that there would be no harm to Dormice should any

species exist on site. It was confirmed that survey work for Dormice was underway but irrespective of the outcome this level of mitigation would ensure that DC NET are satisfied and there would be no harm or impact. It was also confirmed that the buffers would ensure no harm to protected bat species, which had been identified pursuant to bat transect survey work. The Appellant provided an updated mark-up of the Proposed Site Plan and revision to the LVIA which confirmed the 5m buffer zone. **(AB49)**

8.52 On the 7th June 2021 the Council sought additional time to review the information submitted and update the reasons for refusal if required. The Council sought a further extension of time until Friday 25th June 2021. **(AB50)**

8.53 The Appellant confirmed that no extension of time would be granted in this case. It was however noted that Officers had been privy to all conversations with DC NET and thus should have been well aware of the agreed position.

8.54 On the 18th June 2021 the Council's Decision Notice was finally issued.

Post Determination

8.55 At the time of the Council's determination of the Planning Application, the Appellant had commenced both the Bat Transect and Dormice surveys on site.

8.56 The Dormice surveys at this time, and now that these have been completed, have recorded no evidence of activity from the protected species. This is not surprising. As the Appellant's Ecologist Ecosupport had confirmed in discussion with DC NET there is no viable habitat on site which demonstrates that Dormice are likely to be present.

8.57 The Bat Transect surveys have also been completed and the results of the surveys do not indicate that there would need to be any material change in the strategy previously proposed by the Appellant as part of the BMEP. The proposed 5m wildlife corridors around the perimeter of the site will protect the

foraging routes used by protected species, and the enhancements proposed on site will ensure there is no harm.

8.58 The post survey reporting (Land North of Crown Road Marnhull (Dormouse Survey Note) and Land North of Crown Road, Marnhull, Bat Survey Report) and updated Biodiversity Mitigation and Enhancement Plan prepared by Ecosupport are submitted alongside this appeal for the Inspector's reference. The Council has been furnished with these documents and pursuant to the earlier correspondence with the Council's Ecologist, it is anticipated that the Council will no longer seek to pursue its reason for refusal (2) on ecological grounds. With the technical work undertaken having addressed those concerns.

8.59 The report provides details of the biodiversity enhancement which will be delivered, with areas will be allowed to grow out as meadow grassland to enhance foraging opportunities, opportunities for wetland plating close to the SuDS drainage features and the significant quantum of new native hedgerow and trees proposed on site. Recommendations have been made with respect to lighting for the site, which should be kept at a low level. The Council could reasonably have sought a detailed lighting scheme by way of condition. The Appellant raises no objection to the imposition of such a condition should the Inspector be minded to allow the appeal.

9.0 Planning Considerations

- 9.1 Planning legislation requires that planning applications and appeals must be determined in accordance with the Development Plan unless material considerations indicate otherwise: section 38(6) of the Planning and Compulsory Purchase Act 2004.
- 9.2 Additionally, if the relevant policies are considered out of date, for whatever reason, then Paragraph 11(d)(ii) of the NPPF becomes engaged and planning permission can be granted unless there are adverse impacts and only then if these are such that they significantly and demonstrably outweigh the benefits of the proposals.
- 9.3 As such the Local Plan is therefore the starting point for decision making. Proposed development which accords with an up-to-date Development Plan should be approved without delay. Proposals need to be assessed against the Development Plan as a whole. If proposals accord with the majority of policies but there is friction with others then the Council must consider what weight is to be attached to the various objectives and policies to which the proposals accord and to the features that cause friction with others. Notwithstanding this, if any infringement of policy, minor or otherwise, can be offset by the use of other measures then these should be used rather than a refusal of planning permission which could otherwise have been allowed. Clearly it is up to the decision maker what weight needs to be attached to particular matters; the decision maker will however have to demonstrate that their approach is well considered, justified and reasonable in all other respects.

Matters not Disputed

- 9.4 The Council's reasons for refusal in this appeal are comprised of six principal matters; (1) whether the Council can demonstrate a 5-year housing land supply and whether it has significantly under-delivered on its housing needs, (2) whether the proposed development is sustainable; (3) whether the development will result in harm to landscape character, (4) whether the

development will result in unacceptable harm to designated heritage assets, (5) whether there will be an unacceptable impact upon ecological interest, and (6) the requirement for a s106 legal agreement to secure the necessary financial contributions to render the development acceptable in planning terms.

- 9.5 With respect to matter (6) the Appellant has confirmed that this will be dealt with through submission of a s106 legal agreement to secure the contributions required. The Appellant made clear a willingness to enter into such an agreement at the time of the application. It is anticipated that the Council will be able to confirm that this reason for refusal is addressed pursuant to the receipt of the legal agreement.
- 9.6 With respect to matter (5) the Appellant entered into further discussions with the Council's Ecologists (Dorset NET) following the undertaking of additional ecological survey work which could not be undertaken outside of the survey season. The Appellant has undertaken both the Dormice and Bat Transect surveys, which the Council had sought in order to fully inform the Biodiversity Mitigation and Enhancement Plan submitted in support of the application and address their concerns that the BMEP previously represented a worst-case scenario in absence of the surveys having taken place. Following on from the completion of the survey work, the Appellant has conclusively demonstrated that the mitigation proposed within the development is sufficient to ensure that there will be no harm to protested species.
- 9.7 Whilst discussions with the Council have taken place post the determination of the application, this does not however change the fact that the Appellant and the Council are now in agreement that the submission of the survey evidence and BMEP submitted alongside this appeal will address this reason for refusal.
- 9.8 The Council are well aware that the survey work has now occurred and that their previous concerns have been addressed. The reason for refusal should not now be pursued by the Council. As this matter will be common ground between the parties, there is no reason for the Inspector to seek to take a different view.

- 9.9 Should the Council seek to contest this matter, the Appellant shall seek to maintain their right to call a professional witness and contest this matter in giving evidence at Proofs of Evidence stage.
- 9.10 The other technical matters comprised in the development have been considered acceptable. It is common ground between the parties therefore that there are no issues in these respects.
- 9.11 The Appellant has set out the issues at *Section 2* of this statement and provided a brief overview of each matter. These are however discussed further within the sections below.

(1) The Application of the Presumption in Favour of Sustainable Development

- 9.12 The Council acknowledges that it cannot demonstrate a 5-year supply of deliverable housing sites. The Council has also demonstrated persistent under-delivery as demonstrated by the results of the Housing Delivery Test. In both cases, the Council must accept that its housing policies are out of date in accordance with Footnote 8 and Paragraph 74 of the NPPF. The result being that housing applications must be considered in the context of the presumption in favour of sustainable development, with significant weight subsequently to be attributed to the need to address the housing shortfall.
- 9.13 The Appellant will seek to interrogate the degree to which the Council cannot demonstrate a 5-year housing land supply within the proof of evidence of their instructed professional witness. It remains the case however that the Council accepts that it cannot demonstrate a 5-year housing land supply and recognises that, as a result, the presumption applies.
- 9.14 The presumption in favour of sustainable development is defined at Paragraph 11 of the NPPF. In relation to decision taking Paragraph 11 states that proposals which accord with the development plan should be approved without delay and, importantly, where the development plan is absent, silent or 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 when assessed against the policies in the Framework when taken as a whole, or specific policies of the Framework indicate that development should be restricted. Footnote 7 of the NPPF provides a list of ‘specific policies’ which may direct that development should be restricted.

- 9.15 This is the ‘tilted balance’. It is for the decision maker to determine the weight to be attributed to individual policies and issues however the presumption is in favour of granting consent unless individually or cumulatively any impact or harm is sufficient to outweigh the benefits and the presumption in favour of granting consent.
- 9.16 The Council should consider the weight to be attributed to each of its policies in the planning balance. The weight however to be attributed to its housing policies can only either be very limited or no weight should be attributed at all; depending on their specific function. Having regard for the absence of a 5-year housing land supply and a significant shortfall in the Council’s housing delivery both imposing the presumption. This accords with the approach set out in Footnote 8 of the NPPF.
- 9.17 Whilst the NPPF (2012) is no longer in force, the Supreme Court judgements on the current interpretation and application of the presumption in favour of sustainable development are still of explicit relevance. There has been no significant change to the wording or inference of the presumption such that one cannot simply apply the judgement of the courts to the current iteration of the NPPF and Paragraph 11.
- 9.18 The Supreme Court ruled on the correct interpretation of what was Paragraph 49 of the Framework and its relationship with Paragraph 14 [*Paragraph 11*], in *Hopkins*¹. The judgement provides a definitive determination on those policies which are rendered out of date by the absence of a 5-year housing land supply and that such policies are rendered out of date as a whole and not in part. The

¹ Suffolk Coastal District Council v Hopkins Homes Ltd and Another and Richborough Estates and Another v Cheshire East Borough Council [2017] UKSC 37

Supreme Court favoured a narrow definition in that: *in the absence of a 5-year housing land supply Paragraph 49 of the NPPF serves to render those policies concerned in the provision of or location of housing out of date. Paragraph 49 was clear that it concerns ‘policies for the supply of housing’. This does not however mean that other policies not concerned with the supply of housing or affecting the supply of housing are out of date but merely that the weight to be given to them in accordance with Paragraph 14 [Paragraph 11] of the NPPF must be determined by the decision maker.* It is in view of the judgement of the Supreme Court that this appeal should be determined – having regard for the fact that the policies should now be read as their NPPF 2021 counterparts.

9.19 The Council’s policies for the supply of housing are rendered out of date. By virtue of being rendered out of date the weight to be applied to the policies in the planning balanced; in this case the tilted balance, must be significantly reduced. It is a matter for the decision maker to determine the amount of weight to be applied to individual policies within the planning balance, but having regard for the application of the presumption in this case the Appellant considers that the weight to be applied to Policy 2 of the Local Plan must be very limited.

9.20 Within its Officer’s Report, the Council seeks to argue at ‘Section 16.2’ that:

It was never anticipated that local needs be met through large scale housing proposals and notwithstanding the housing shortfall, it is relevant to have regards for the Council’s spatial strategy when considering the appropriate distribution of housing across the district.

9.21 Taking such an approach however seeks to imply that the Council can benefit from an immunity from development outside of its preferred locations in the face of a housing shortfall and the application of the presumption quite simply because it did not intend for development to be located other than in the manner which it has prescribed within Policy 2 of the Local Plan. This however is directly at odds with the operation of Paragraph 11 as defined by the Courts. The precise reason why the Council’s policies for the supply of housing, including in this case Policy 2 of the Local Plan which provides the overarching strategy

for the distribution of development, are rendered out of date, is because this strategy has not delivered sufficient housing to meet the Council's housing needs.

- 9.22 Quite simply put, it is neither reasonable nor appropriate to attribute any significant weight to Policy 2 of the Local Plan having regard for the application of the tilted balance and the development should instead be determined having regard for the provisions of the National Planning Policy Framework as is discussed in detail below in respect of *Matter (2)*.

(2) Principle of the Development and Whether the Proposals Represent Sustainable Development

- 9.23 With the Council's housing policies concerning the location of development and settlement boundaries out of date, sites which could not normally come forwards for development due to their location outside of a settlement boundary, such as the subject land parcel, may reasonably be brought forwards for housing where they comply otherwise with the policies of the development plan and framework and will help to address the housing shortfall.
- 9.24 The proposed development seeks consent for the erection of 72 dwellinghouses on land which has been used for agricultural grazing; but does not represent the best quality or most versatile agricultural land, that is contiguous to the existing developed area of Marnhull settlement, but within an area which would not normally be supported for housing development in accordance with the adopted Local Development Plan due to its location outside of the settlement boundary.
- 9.25 Setting the Council's settlement boundaries aside however, in the face of the housing shortfall and application of the presumption in favour of sustainable development, we must consider whether the appeal site, and Marnhull settlement is an appropriate location for the proposed development.

- 9.26 Marnhull is one of the 18 More Sustainable Villages (MSVs) in North Dorset District. The Council has highlighted these 18 villages within the rural area in particular because it considered them capable of supporting some housing development due to the availability of services and facilities. The Council's adopted settlement strategy has sought to deliver a significant share of the required housing growth for the District in the rural area; given the 5-year supply position however there is a need to put a greater dependency on these sustainable settlements to bring housing sites forwards in a sustainable manner.
- 9.27 The appeal site is located in an accessible area within an appropriate proximity to local services and facilities forming part of Marnhull settlement. The location of the site outside of the settlement boundary does not render the site dissociated from it. Settlement boundaries are a means of controlling the location of development and not definitive of what does and does not comprise part of the village.
- 9.28 In rural areas it is not reasonable to seek to apply the same tests of accessibility that apply in more urban locations. By virtue of being rural it is implied that there will be less access to sustainable transport links and that general infrastructure such as footways running throughout a settlement may not exist. Marnhull has limited and sporadic public footway provision, pedestrians are therefore reliant upon walking along the lengths of footway which do exist and negotiating the public highway where they end to access services and facilities in the settlement. Failing this they will make use of a private vehicle, which it is anticipated is the choice taken by most residents. This is an established situation which is true for the majority of properties within the settlement. The provision of new housing which is subject to the same constraint is not therefore inappropriate. This position is reflected by the Framework which acknowledges at Paragraph 105 that *opportunities to maximise use of sustainable transport solutions will vary between urban and rural areas and this must be taken into account in decision making*, and at Paragraph 84 that new development in the countryside is not always expected to be well served by public transport. There will inevitably be some reliance on a private motor car, but what matters is to

ensure that development is sensitive to its surroundings and does not have an unacceptable impact upon local roads.

- 9.29 As a result of sporadic footway provision, Marnhull which, due to its settlement pattern with services and facilities spread along its length, does not provide continuous safe pedestrian access to all services and facilities without some dependence upon a private vehicle. This is an established norm in rural villages.
- 9.30 The Appellant is seeking to deliver new public footways along the northern and southern boundaries of the appeal site to enhance local permeability in a manner which will contribute positively to public safety and allow for connections to the existing footways. The new footways and enhanced permeability in this area of Marnhull settlement represents a clear benefit in the public interest.
- 9.31 The Case Officer's Report confirms that Marnhull is the second largest village in the District by some distance and is well served in terms of facilities, including:
- Two churches – St Gregory's and Marnhull Methodist Church
 - Two primary schools
 - Two public houses
 - Two convenience stores
 - A post office
 - A hairdressers
 - A fabric shop and a range of other small outlets
 - A doctor's surgery
 - A vehicular repairs garage
 - A village hall
 - A Royal British Legion social club
 - A children's play area and an equipped recreation ground including tennis courts, a cricket ground and other pitches.
- 9.32 The site is highly sustainable and positioned between 125m and 1.4km of all of these services and facilities.

- 9.33 Public footways exist through sections of the settlement, with the highway featuring some verges, and some tighter lanes as a traditional Dorset village settlement.
- 9.34 There are a series of four separate public bus stops which serve the X4 – Sturminster Newton and Gillingham and X10 – Stalbridge, Sherborne and Yeovil, services, to the local major settlements. The bus stops range from 50m to 400m from the site. Short and very comfortable walking distances and at all times on public footways. Both services run on the basis of a once every two hours service throughout the day.
- 9.35 There is no evidence to demonstrate that future residents would not make use of local services and facilities and the development as proposed seeks to enhance access to existing Public Rights of Way (PROWs) and provides connections to all existing footways in the periphery of the site through extending them along the site boundaries, whilst retaining native hedgerows. There are clear opportunities for future residents to make sustainable trips without the need to depend on use of a private motor vehicle.
- 9.36 The proposals also seek to introduce to the village a new pre-school and village hall community facility as part of the scheme, increasing the availability of local community facilities and filling voids which currently exist within the settlement. The Parish Council had previously sought a replacement for its scout hut; hence the provision of the village hall. The development seeks to add to the diversity and availability of local services and facilities reducing the need to drive to other major settlements and contributing towards sustainable living and patterns of movement. The community uses will provide opportunities for both relocation of existing community groups to a new modern facility and support the rise of new community groups and events which will maintain and enhance the vitality of the settlement.
- 9.37 The Council's adopted Policy 27 of the Local Plan (2016) makes clear that support is given for non-commercial community facilities; such as meeting rooms and halls etc. that are of great value to local communities. The policy does not deal specifically with the appropriate location for such facilities or new

provision but seeks instead to restrict the loss of such facilities unless appropriately justified.

9.38 Policy 20 of the Local Plan seeks to direct development within the countryside in accordance with defined settlement boundaries. Development outside of these locations will only be permitted if it is of a type appropriate in the countryside or where an overriding need for its location in the countryside can be demonstrated.

9.39 The weight to be attributed to this policy in the balance of consideration is reduced given the Council's absence of a 5-year housing land supply. With the provision of new residential development which will help support the vitality and viability of the community use in conjunction with the rest of the village, the Appellant considers that the provision of these facilities is appropriately justified and will deliver significant benefit in the public interest.

9.40 With the Council's settlement boundary policies rendered out of date as result of the absence of a deliverable 5-year housing land supply and significant under delivery, it is also relevant to consider Paragraphs 85 and 93 of the NPPF, which does not place such constraint on the location of local services and facilities. The Framework states that *to support social, recreational and community needs support should be given for the retention and development of local services and community facilities including taking an integrated approach to the location of housing and community facilities and services, and moreover that in order to meet community needs in rural areas, sites may have to be found adjacent to or beyond existing settlements and in locations not well served by public transport.*

9.41 The appeal site is an appropriate location for new community facilities where any impact arising from their provision would be very limited. The proposed scheme is of a scale such that the buildings can be viably provided which, in supplement to the provision of much needed housing, will deliver significant public benefits which weigh in favour of the development in the tilted balance.

9.42 The Council confirmed within its Officer's report at 'Section 16.2':

That said, many of the services identified above would be accessible on foot from the development site within approximately 10-15 minutes, with access to a large number of the services possible via pedestrian footways.

- 9.43 The Council suggest that the fact that residents may need to make use of alternative transport modes, such as private vehicles to access a broader range of services and employment, i.e. at the major settlements which are accessible by public bus links, means that the site is not sustainably located.
- 9.44 The Council considers the opportunities for occupiers to make sustainable choices in terms of travel are relatively limited. As the Appellant's evidence demonstrates however, there is a wide range of local services and facilities that will cater for day to day needs and there are options for sustainable transport to the local major settlements, should residents seek to make sustainable travel choices. The NPPF recognises that opportunities for sustainable travel vary from urban to rural locations and thus it is not considered that the site is unsustainable.
- 9.45 Again, with reference to Paragraph 105 of the NPPF, different policies and measures will be required in different communities and opportunities to maximise sustainable transport solutions will vary from urban to rural areas. Rural areas inherently will have a reliance upon the use of a public car and whilst development that will generate significant movement should be located where the need to travel will be minimised and sustainable transport modes can be maximised, this approach needs to have regard for other policies of the Framework, particularly in rural areas. The principal policy for consideration in this regard is Paragraph 79 of the NPPF.
- 9.46 As discussed at *Section 7* of this statement, whilst the NPPF 2021 is now the document in force and this superseded the previous iterations of the Framework, the inference and wording of many of the polices has not changed substantially such that previous judgements on the correct application of planning policies within the NPPF, as ruled on by the Courts, should be dismissed or are no longer relevant. One must consider whether the wording or inference of the polices remains the same. This is evidently the case in

respect of the correct interpretation and application of Paragraphs 79 and 80 of the NPPF; formerly Paragraph 55 of the NPPF 2012. Whilst the policy has been separated clearly into two parts, functionally it has always operated in this manner as the Courts have confirmed. The correct application of this policy was presided over by the High Court in October 2017 and latterly by the Court of Appeal in March 2018; these rulings remain of relevance, and have been further clarified in a later judgement as discussed below.

- 9.47 In October 2017 Lang J presided over *Braintree*²; she rejected the submissions of the District Council that the key test in Paragraph 55 [*Paragraphs 79 and 80*] was whether a development was proximate to services and facilities so as to maintain or enhance the vitality of a rural community. The judge opined that Paragraph 55 [*Paragraphs 79 and 80*] should be *interpreted objectively in accordance with the language used and read in its proper context* (per Lord Reed in *Tesco Homes*³).
- 9.48 In this regard, the word 'isolated; is not defined in the NPPF and thus must be given its ordinary objective meaning of 'far away from other places, buildings or people; remote'. Taking this definition and putting it in context, Paragraph 55 [*Paragraphs 79 and 80*] makes the distinction between 'rural communities', 'settlements' and 'villages' on the one hand, and 'the countryside' on the other. The policy suggests therefore that 'isolated homes in the countryside' are not in communities and settlements so the distinction between the two is primarily in spatial/physical terms.
- 9.49 Lang J held that Paragraph 55 [*Paragraphs 79 and 80*] as a whole seeks to promote the economic social and environmental dimensions of sustainable development, and to strike a balance between the core planning principles of recognising the intrinsic character and beauty of the countryside and supporting thriving rural communities within it.

² *Braintree District Council v SoSCLG and others* [2017] EWHC 2743 (Admin)

³ *Tesco Stores Ltd v Dundee District Council* [2012] UKSC 13

- 9.50 Importantly the section of Paragraph 55 [*Paragraphs 79 and 80*] which seeks to direct housing *'where it will enhance or maintain the vitality of rural communities'* is not limited to economic benefits. The word 'vitality' is broad in its scope and includes the social role of sustainable development as described in Paragraph 7 [*Paragraph 8*] of the NPPF as *'supporting strong, vibrant and healthy communities by providing the supply of housing required to meet the needs of present and future generations'*. It is not solely considered with the economic strand of sustainable development. Provision of rural homes can contribute to social sustainability because of proximity to other homes.
- 9.51 Paragraph 55 [*Paragraphs 79 and 80*] cannot therefore be read as a policy against development in settlements without services and facilities since it expressly recognises that development in a small village may enhance and maintain services in a neighbouring village, as people travel to use them. However equally it evidently does not discriminate where development would support the vitality and viability of services and facilities in the settlement where the housing would be built.
- 9.52 The PPG section entitled; 'How should local authorities support sustainable rural communities?' states that, *all settlements can play a role in delivering sustainable development in rural areas and so blanket policies restricting housing development in some settlements and preventing other settlements from expanding should be avoided unless their use can be supported by robust evidence...'*. There are no restrictions therefore on size of settlement or availability of facilities in existing settlements which should prevent the delivery of sustainable housing development in rural areas. This accords with the inference of Paragraph 55 [*Paragraph 79*] of the NPPF that to promote sustainable development in rural areas housing should be located where it will enhance or maintain the vitality of rural communities, and that where there are groups of smaller settlements development in one village can support services in a village nearby.
- 9.53 In the same stead therefore, in settlements with services and facilities, the need to use a private car to access these does not render the site isolated or unacceptable as *'development in one village may support services in a village*

nearby'. In this manner it is very clear that the location of the appeal site on the periphery of the settlement does not render it unsustainable because residents are likely to make use of a private car to access some services and facilities, whilst others remain within comfortable walking or cycling distance.

- 9.54 Following the judgement of the High Court, (Braintree District Council) sought leave to challenge this in the Court of Appeal, which was granted. The Court of Appeal deliberated over *Braintree* in March 2018.
- 9.55 The Court of Appeal upheld the judgement of Land J and provided some clarification on the appropriate interpretation of the words: 'community', 'settlement' and 'village' as cited in Paragraph 55 [*Paragraphs 79 and 80*].
- 9.56 Following the judgements of the Courts in *Braintree*⁴, a further judgment was made by the Court of Appeal in *Bramshill*⁵. *Bramshill* delivered additional clarity in relation to interpretation of 'isolated'. The judgement confirmed that the measure for whether a site is 'isolated' is its proximity to a settlement, not other dwellings.
- 9.57 Having regard for the judgments of the Courts therefore, there can be no question therefore that the development complies with the intentions of National Policy and will deliver sustainable housing growth in an appropriate location which is not isolated, and will support the vitality and viability of the rural settlement, in accordance with the direction of Paragraph 79 of the Framework.
- 9.58 The changes to the Framework, with the superseding of the previous document, have resulted in no fundamental change in respect of the direction of development in the rural area to appropriate and sustainable location where it will maintain and enhance services and facilities and support the continued vitality and viability of rural settlements. Marnhull is a sustainable settlement capable of supporting growth and thus should bear a reasonable share of the District's housing needs having regard for the housing land supply position.

⁴ *Braintree District Council v SoSCLG, Greyread Ltd and Granville Developments Ltd [2018] EWCA Civ 610*

⁵ *City & Country Bramshill v SSHCLG and others [2021] EWCA Civ 320*

- 9.59 It is relevant and appropriate to have regard for modern patterns of living in considering the sustainability of the development. There has been a significant shift in modal patterns of working, with the rise of large sectors of the public now working from home, whether on a permanent or more regular basis, reducing the need to travel. We have also seen a modal shift in shopping patterns with online shopping, both for consumer goods and also for general groceries becoming the accepted social norm. The dependence upon driving to large retail stores or parks at major settlements, or to places of employment has been significantly reduced. There is no indication that this trend is likely to be reversed.
- 9.60 The development proposed is sustainable, the Appellant has demonstrated that day to day local services and facilities can be accessed in a sustainable manner and that sustainable public transport opportunities exist which facilitate access to the larger local settlements. The Framework recognises that opportunities for sustainable transport vary from urban to rural areas, and in this respect the appeal site represents a sustainable location within the rural area where such opportunities still exist. Future residents would not need to be reliant on use of a private car should they not wish to use one.
- 9.61 The expectation that residents will use a private car to access some services and facilities within Marnhull does not therefore render the development unsustainable. In terms of principle therefore, there are no overriding issues with the proposed development. The proposals do not represent isolated development within the Countryside for which special circumstances need to be demonstrated and instead comply with the general direction of Paragraph 79 in delivering sustainable development in the rural area. The development proposed is located within an existing village and it is very clear that the site will contribute towards the vitality and viability of the existing services and facilities within the settlement.
- 9.62 The fact that the development seeks to provide new community facilities, to replace the existing tired scout hut within the broader settlement, and provides a new building for flexible local community use which will deliver wider social benefits, further confirms that the development will contribute to and enhance the vitality and viability of this rural settlement.

9.63 The scheme will also deliver improvements to pedestrian connectivity providing safe footways towards public services and facilities both from the north and south of the site and will deliver enhancements to the existing public footpath network which runs through the site through re-alignments which provide better links to the broader network, and which are appropriately integrated into the new landscaped greenspaces which will be delivered by the development and which will give the public access to the land for recreational purposes which they do not currently benefit from.

9.64 The Appellant considers that there are no adverse impacts of the development when assessed against the framework as a whole and there are no 'specific policies' which indicate that development should be restricted. There are thus no matters which significantly or demonstrably outweigh the benefits in favour of the development when considered in accordance with the tilted balance.

9.65 The appeal scheme must be considered against each of the three strands of sustainable development as defined by Paragraph 8 of the Framework; social, economic and environmental. The specific benefits of this development are thus:

Social

- The provision of new homes located on the edge of a sustainable settlement within an appropriate proximity of services and facilities which will support their continued vitality and viability and moreover contribute in a meaningful manner to the Council's shortfall in housing supply.
- The scheme also proposes a new pre-school and community hall facility which will supplement and enhance the availability of such facilities locally. It is recognised from conversations had with the Parish Council that the existing scout hut facility in the village is in poor condition and thus this new provision will provide a sustainably located alternative and support the growth of new community groups and projects.
- The scheme will also provide a suitable provision of affordable housing which will supplement the local stock making home ownership a reality for more local people.

- The delivery of 72 dwellings will contribute towards the social sustainability of the settlement and the vitality and viability of its services and facilities.
- In addition to physical on-site community facilities the development will also contribute towards offsite provision and upgrading of existing community services and facilities through financial contributions in accordance with Policies 13, 14 and 15 of the Local Plan; which includes contributions towards education, sports and play facilities and healthcare provision as pertinent examples.
- Pedestrian and vehicular improvements are proposed to the public highways Crown Road and Sodom Lane, extending the local footway provision and providing safe and accessible links to the wider footpath and bridleway network around the settlement, which the site currently forms part of.

Economic

- The development will provide immediate local economic benefit through the construction of the homes and skilled and unskilled labouring jobs during the course of the development. For every £75,000 of construction expenditure one full time temporary job will be created for the period of the project. Based on projected construction costs of circa £11.9 million this would generate approximately 159 construction jobs over the project.
- The provision of new homes, including affordable housing will supplement the local economy through local spending and an increased workforce to take up locally available positions. Based on approximately 154 working age adults occupying the development of 70 units earning an average salary of £24,000 and having a disposable income of on average £11,000, this would generate an annual local spend of approximately £1,694,000. This spend has a multiplier of effect upon the local economy of approximately 1.5 times and thus the development will provide approximately £2,541,000 benefit to the economy.

Environmental

- The proposals seek to deliver enhanced green corridors across the site, embracing the established public footways and through new soft landscaping and tree and hedgerow planting, with meadow grassland areas which will be allowed to develop naturally to provide a rich and biodiverse habitat, a net gain in biodiversity terms.

- Alongside new landscaping the proposals seek to deliver enhancement to the existing mature verdant boundaries with new supplemental hedgerow planting to make these buffers more robust where required and alongside this a defined 5m wildlife corridor and buffer zone, is to be maintained around the site perimeter to preserve and enhance these features and their interest.
- The scheme will provide biodiversity enhancements in accordance with the submitted Biodiversity Mitigation Plan and through opportunities for wetland style habitat around the SuDs drainage features. The retention of the native boundaries of the site and provision of new landscaping features will allow for retention of the existing and creation of new habitats.
- The scheme represents the development of land which whilst read in short and some medium distance views, is always read against and contiguous to the existing urban area. Such views are commonplace across this part of the District comprising numerous villages and hamlets. Residential groupings of development are very much a feature of any immediate views and the character of the area and thus the site can be brought forwards in favour of the development of more sensitive sites with greater landscape and ecological value. The Council is well aware that additional land needs to be brought forwards for housing development and thus where less sensitive sites can be delivered around larger sustainable settlements they should be supported.

9.66 As a matter of principle therefore the Appellant considers that the development will deliver on all three strands of sustainable development in accordance with Paragraph 8 of the NPPF and consent should be granted in accordance with the presumption in favour of sustainable development and the tilted balance as defined by Paragraph 11 of the NPPF.

(3) Impact upon Landscape Character

9.67 The appeal site is located on the fringe of an established residential area comprised of a mix of dwelling types and sizes; properties are of mixed period and design as a result of a progressive pattern of development. The site relates well to the existing developed area of the settlement and does not represent a finger of development projecting out into the countryside but rather the natural

extension to the settlement. The hedgerow and tree lined eastern boundary to the site forms an appropriate transition out to the open countryside to the east and a logical terminus to development on the site.

- 9.68 The site is located outside of any protected landscape designation and thus is not subject to the more restrictive policy approach advocated by the NPPF within locations which are more sensitive in landscape terms.
- 9.69 From Crown Road, at its southern end, the site is read in the context of substantial mature hedgerows which shroud all but limited glimpsed views into the land parcel at lower level, with the crowns of substantial trees on and adjoining the site visible beyond this. The land falls from south to north, such that the northern end of the site is not visible to any degree in these views. Where limited aspects of the site are seen, the vista is of open agricultural land.
- 9.70 There are limited views into the site from the public highway Tanzey Lane, which runs along its eastern edge; the change in levels along the highway in combination with the tall mature hedgerows, provide a comprehensive screen. Limited views across the land are provided at its northern end through the entrance to the public footpath, of the land sloping to its southern end and the backdrop of modern residential development at Ashley Road.
- 9.71 The same is true from Sodom Lane, along the southern edge of the site with views into the land parcel all but screened by its mature boundary hedgerows. Limited views can be achieved from the north-western corner of the site, where the existing agricultural access lies. These are of the land sloping substantially upwards towards the centre of the site and the mature trees which sit upon it read as part of the skyline. This view is again read in the context of the existing pattern of residential development at Ashley Road, along its western edge.
- 9.72 There is a public footpath leading into the land from Ashley Road; the path itself lies between two modern chalet style dwellings, with views into the land parcel further obscured by the mature form of T26. Views along this path are thus very much in the context of existing residential development.

- 9.73 From within the land parcel itself, the existing pattern of residential development at Ashley Road and Barnes Close reads quite starkly along the western site boundary. The hedgerow coverage on this edge of the site is lesser and will be made more robust as part of the proposals in order to deliver net biodiversity gains and preserve privacy for both existing and future residents. The point being however that the existing urban edge to the settlement is clearly read from within the site and there is an absence of any firm boundary to it.
- 9.74 The eastern boundary to the site on to Tanzey Lane is, on the contrary, a much stronger and more defined boundary and a more logical terminus to the settlement. When read in wider views, the land parcel at present bears a clear relationship with the developed area of the settlement and is the logical location for its expansion.
- 9.75 It is not considered that the development of this site would have any material impact upon the local landscape; residential development is a clearly established feature in local views and the development provides an appropriate opportunity to infill a recognised gap between the two defined settlement boundaries which comprise Marnhull settlement.
- 9.76 The Appellant instructed the services of a Landscape Architect to undertake a Landscape Visual Impact Assessment (LVIA) in accordance with GLVIA3 guidelines to consider the sensitivity of the landscape and its ability to accommodate the development proposed. The submitted technical report assesses the site from all local viewpoints, at short, medium and long distance, and has made a determination on the magnitude of effect that is likely to occur as a result of the development both with and without mitigation.
- 9.77 During the course of the consideration of the application subject of this appeal, the Council made reference to the conclusions of the high-level Strategic Landscape and Heritage Study for North Dorset Area undertaken by Land Use Consultants (LUC) dated 2019. A technical note was prepared and submitted to the Council in response to this document which discusses and responds to the Strategic Landscape and Heritage Study and demonstrates why the intrinsic character identified will not be harmed.

- 9.78 It is accepted that the development will result in the loss of green fields to development, and that there will evidently be an impact. However, the fact that there may be an impact arising from the development is not the relevant policy test, the relevant consideration is whether there will be harm and, if so, to what extent and whether this can be appropriately mitigated.
- 9.79 There are no important connecting views between the identified heritage assets as discussed later within this statement, this is not a defined component of their significance. Indeed, with respect to most of the assets, there is no intervisibility at all. The site performs no function in providing these 'connecting views' which are claimed within the Council's first reason for refusal. The Council refer in particular to the development '*resulting in a prominent change across the ridgeline to the detriment of the landscape qualities of the area*', however the Council do not provide any substance to back up these claims in terms of substantiating what the landscape qualities of the area are, or indeed how these would be harmed through the appreciation of the proposed development set in a carefully considered landscape setting against the backdrop of the 20th century development immediately to the west of the site. The greatest perceived impact being in medium distance views, outside of this, the impacts are negligible. The Council has previously accepted this position, and moreover the Council's Landscape Officer has accepted that there will be '*limited harm perhaps in the early years of the development*', this again must be weighed in the planning balance in the frame of the presumption in favour of sustainable development.
- 9.80 Having regard for the baseline position without mitigation, the LVIA makes appropriate recommendations of mitigation to be provided on site in the form of an indicative landscaping scheme, providing new native tree, hedgerow and shrub planting to help positively integrate the development into the landscape. It is accepted that the most sensitive views of the site are the medium distance views to the north of the site.
- 9.81 The Appellant submitted photomontages of the proposed development from the public footpaths in this location, which demonstrate how the site would be read and experienced.

- 9.82 The LVIA was also accompanied by an Indicative Landscape Scheme which seeks to demonstrate how new tree and shrub planting and native mix hedgerow would be introduced to the site in order to positively integrate the development into the landscape and to provide appropriate softening and mitigation in sensitive views.
- 9.83 With the mitigation proposed, the LVIA concludes that there will be no unacceptable impacts upon the landscape. Any harm is limited and as the landscape mitigation matures over time will be increasingly lessened. The proposals will see the site positively assimilated into the landscape and providing an appropriate edge to the settlement. There are no impacts or harm which are considered to either significantly or demonstrably outweigh the public benefits of the development when considered in the tilted balance.
- 9.84 Having regard for the impact upon landscape character it is relevant to consider the detailed matters of layout, scale, massing and design to understand how the appeal scheme has responded to the constraints to ensure it can be comfortably assimilated into the landscape.

Layout

- 9.85 The Appellant has given appropriate consideration to the pattern of vernacular development towards the historic core of the settlement in considering the quantum of development which would be appropriate for the site, culminating in the proposed masterplan. The scheme represents a lower density development appropriate for the rural location which seeks to avoid higher density forms of accommodation which would provide a more urban pattern of development. The Council accepts within its Officer's Report at 'Section 16.3' that the development would provide a built density of approximately 17dph, which is expressly low density and not representative at all of urban development and appropriate for the fringe location. The Council however states within its first reason for refusal that the development is '*overly suburban and repetitive*' and through its position on a hillside and proximity to heritage assets, '*would compromise the unspoilt rural pastoral field setting of the*

heritage assets'. The impact upon heritage assets is dealt with later within this statement at *Matter (4)*.

- 9.86 The proposed scheme provides for a density of development comparable with the existing urban grain within the village; comprised of two storey detached and semi-detached dwellings, and 1 ½ storey detached cottages and detached bungalows. Each of the properties features a landscaped frontage and generous private rear gardens and sufficient parking provision either on plot or in a more communal arrangement. The dwellings proposed are generous family homes appropriate for this rural location and providing accommodation which meets or exceed the Nationally Described Space Standards (NDSS).
- 9.87 With this quantum of development there is still more than sufficient space on site to accommodate the required open space, landscape improvements and sustainable drainage solutions, all of which will also contribute positively to biodiversity interest on the site and represent a net enhancement. The layout is not cramped or discordant but rather sits comfortably in its context and in no manner constitutes over development.
- 9.88 The plan proposes a development which is, in the main, inward looks, so as to preserve its mature boundaries hedgerows which are its main contributory feature to the local landscape. The scheme is arranged about a central estate road which runs arterially through the site from the principal southern access from Crown Road, to the northern access from Sodom Lane. Spurring from this main route are lower order private drives with slightly reduced highway width. Pedestrian pathways are provided throughout the site crossing the highway and providing a selection of walking routes.
- 9.89 Across the site properties in the predominance face into the development with private amenity spaces orientated towards the site boundaries; offset by generous wildlife corridors of 5m in width around much of the site. Along the main arterial route through the development properties predominantly address the street scene with a modest set-back for soft landscaping to provide an active street frontage and strong sense of place. The development provides a substantial separation between the Grade II listed Laburnum Cottage at the

north-eastern corner of the site and the nearest proposed dwellings to retain a generous verdant setting to the heritage asset with appropriate landscaped planting and new trees. The proposals are not considered to diminish the setting for this heritage asset, and in any event as discussed at *Matter (4)*, the appeal site contributes very little to the significance of the heritage asset. This landscaped setting will allow the asset to be better experienced from the west better revealing its significance, notwithstanding that the designed views of the property are from the east towards its principal elevation.

- 9.90 The native hedgerows which envelop the site are to be retained in a managed format to preserve the character of the rural lanes which form its perimeter, with gapping up where appropriate and new native hedgerow planting to the boundaries which are considered weak in landscape terms, reinforcing the verdant setting of the site and contributing towards biodiversity enhancement. Within the site the scheme embraces the large area of public open space set at the most sensitive corner of the site affording opportunities for new tree, hedge and shrub planting to appropriately screen the development in the landscape.
- 9.91 The road through the site includes traffic calming features to ensure the public highway is safe for future residents and respects its rural location. The road is not a through route, with the access on to Sodom Lane to the north being only for emergency purposes and providing convenient connectivity for cyclists use. In this manner the scheme seeks to preserve the local rural character rather than introducing a more urban arrangement. The existing footpath links through the site are retained and enhanced through green spaces which dominate the site, providing positive pedestrian permeability and supporting sustainable patterns of movement.
- 9.92 Consideration has been had for the most appropriate location for the proposed community uses; being sited close to the primary entrance into the site and public footways which provide a pedestrian link to the other services and facilities at this end of the settlement; further to the west.

- 9.93 Careful consideration has been given to views into and out of the site from the surrounding undulating topography; taking appropriate account of its layout and definition between areas of built development and soft landscaping. The appeal scheme seeks to maintain the rural and tranquil character of the broader landscape through setting the development sensitivity into the site with appropriate landscaping features which screen both the built development and associated infrastructure.
- 9.94 The mature boundaries of the site will provide screening to the development and assist in integrating the site into the landscape alongside landscape enhancements delivered as part of any detailed scheme. The existing landscape features on site are therefore a vital component which the Appellant recognised must be embodied into the layout proposed.
- 9.95 The proposals will provide an appropriate development on the rural fringe which successfully embraces its natural context and preserves the features of value in the site which contribute positively to local the local landscape and townscape character.

Scale, Massing and Design

- 9.96 The outline application subject of this appeal seeks only determination of access, layout and the principle of the erection of 72 dwellings. All other matters are reserved for later determination. The Appellant has provided indicative details of the scale of development that is inferred by the proposed scheme. The layout provides for 72 No. single, 1 ½ and 2 storey dwellinghouses of varying size and tenure which are consistent with the scale of development within the surrounding residential area and would contribute positively to the local housing mix, as can be seen clearly on the photomontages which were submitted at the time of the application.
- 9.97 The final scale, massing and design of buildings will be determined at detailed application stage. It is clear however that the scale of development indicated is not contrary to the character of the area; being consistent with the existing

pattern of development, and as a result would not give rise to harm as a matter of principle.

- 9.98 At the detailed application stage, considering those matters reserved, should the appeal be granted, the development including its scale, massing and detailed design would be objectively assessed by the Council's Officers in terms of its specific impacts upon landscape character. The Appellant is committed to working with the Council to deliver an appropriate development at the detailed stage which respects local design quality and preserves and contributes positively towards local landscape character and builds upon the framework proposed at this outline stage.

Summary

- 9.99 In terms of physical arrangement, scale and plot sizes the indicative scheme would be comfortably assimilated into Marnhull settlement and is consistent with local character.
- 9.100 The site is of sufficient scale to accommodate a form of development, and on-site landscape enhancements to be delivered by a detailed landscaping scheme, which will contribute positively to local landscape character. The site also provides the opportunity for attractive vernacular development which will raise the standard of design locally and which sits comfortably in the landscape. There is no reason in principle therefore why any detail stage scheme cannot be appropriately designed so as to be comfortably assimilated into the area.
- 9.101 The Appellant has demonstrated an appreciation and understanding of the sensitivity of the fringe location of the appeal site through assessment of the existing landscape and understanding of those features which contribute towards its character. Through the considerate design and arrangement of the proposed development the Appellant has demonstrated how the proposals will site compatible with this landscape character, preserving its tranquillity and screening the development appropriately within the landscape.

- 9.102 Whilst the new landscape enhancements will take some time to mature in the early years of the development, this can be mitigated through the introduction of larger than standard specimens in the most sensitive locations to introduce an immediate impact and appropriate screening within the landscape. Alongside an appropriate mix of more juvenile specimens, this approach will deliver a robust landscape framework which contributes positively towards local landscape character.
- 9.103 The Appellant submitted detailed technical information in the form of an LVIA and Indicative Landscape Scheme which carefully considered the impacts of the development upon the landscape and its sensitivity and how, through the appropriate landscape mitigation and enhancement proposed the development can be comfortably assimilated within the landscape without giving rise to any significant impacts or harm.
- 9.104 There will be no harm that either significantly or demonstrably outweighs the benefits in the public interest of the development weighed in the tilted balance. The Council's reason for refusal in this regard is considered to have been unfounded.

(4) Impact upon Heritage Assets and Archaeological Interest

- 9.105 Whilst the appeal site is located outside of the Marnhull Conservation Area designations, there are designated heritage assets in close proximity to the site which the Appellant has given careful consideration towards in developing the proposed scheme to ensure there is no unacceptable impact or harm to their significance through a change to their setting.
- 9.106 The Appellant instructed the services of Cotswold Archaeology to prepare a Heritage Assessment (HA) assess the impacts of the development upon designated heritage assets, comprising: the Grade II listed Laburnum Cottage, Grade II listed Shaston View, Grade II listed Rosedale Cottage, Grade II listed Nash Court and Grade I Listed Church of St Gregory. Regard has also been had for any archaeological interest or significance recorded locally and

potentially beneath the site, with the report determining that there is no noted interest on site.

9.107 Whilst the impact upon Archaeological significance did not feature within the Council's reason for refusal, the Appellant has sought to address this matter briefly below, as this was an issue raised by the Council's Conservation Officer, despite the County Archaeologist confirming that, following a geophysical survey having been undertaken, he was satisfied that the development would give rise to no impacts or harm in this respect and no further archaeological evaluation or mitigation would be required.

9.108 The Appellant instructed the services of Wessex Archaeology to undertake a Geophysical Magnetometer Survey of the site in May 2019, which determined that there is no evidence of any material interest which requires further investigation. The Geophysics Report prepared by Wessex Archaeology is submitted alongside this appeal as part of the application documentation for completeness. Again, the County Archaeologist confirmed that they were content with the details of the report and that no further archaeological evaluation or mitigation would be required. This matter can thus be appropriately set aside.

9.109 In accordance with Paragraph 194 of the NPPF, the Heritage Assessment submitted in support of the application detailed the significance of each of the assets which may be affected by the development, discussed the impact upon their particular significance and setting and, in accordance with Paragraphs 199-202 of the NPPF, reached a conclusion on the extent to which there would be harm; if any at all.

9.110 The following paragraphs deal with each of the heritage assets in turn, as referred to by the Council in its first reason for refusal.

Laburnum Cottage

- 9.111 The Grade II listed Laburnum Cottage adjoins the north-eastern corner of the appeal site and bears the closest relationship, of the local designated assets, to it.
- 9.112 The cottage is comprised of a late C17 core with latter extensions, which appears from historic mapping to have once constituted a second dwellinghouse, latterly amalgamated.
- 9.113 The significance of the building is held to be primarily in its physical form and architectural styling (evidential value) and historical value through illustration of the historical pattern of development of Marnhull settlement.
- 9.114 The immediate setting of the cottage is characterised by agricultural land and thus an undeveloped ruralised setting. Despite this however there is no direct historical or functional relationship between the cottage and the appeal site. This has always been in separate and non-related ownership; thus, this is more a relationship of coincidence than can be said to form an original and character defining feature of the cottage's setting.
- 9.115 The proposed development recognises the importance of maintaining a semi-rural setting for the heritage asset. The layout has sought to retain a significant area of open and undeveloped land at its north-western corner maintaining an open backdrop to the cottage, the proposed dwellings at the northern end of the site will sit discretely into the site set back a significant distance, in excess of 70m from the heritage asset, beyond the open space; again so as to maintain this sense of openness and separation from other built forms and a pastoral setting that the heritage asset has experienced, even though this was not by design.
- 9.116 The mature hedgerows which form the boundary between the appeal site and Laburnum cottage will be retained in their entirety and form a clear and defined buffer between the two, which will be reinforced as part of the landscaping strategy with the new trees, shrub and hedgerow planting within the large open

space. The dwelling is appreciated in the context of this mature and well-defined boundary treatment and the manner in which it is experienced will be enhanced by this generous landscaped setting.

9.117 The Council's Conservation Officer considered that the development would; *'cause the [listed] building to no longer be viewed within a rural landscape, particularly in views from footpaths within the application site, and this would result in less than substantial harm to the aesthetic value of the cottage'*. However, as discussed, the listed building has no historical or direct functional relationship with the application site. The landscape was not intended to form an aesthetic backdrop for the cottage, this is purely incidental to the actual designed setting of the cottage to the east. Views from the footpaths within the site, featuring the rear elevation of the building offer no clear appreciation of the asset's historical or architectural interest. In particular, there is an insensitive rear addition read from the west at the rear of the listed building. The manner in which the proposed development has been arranged, including the new landscape planting will significantly reduce views of the proposed development when reading the listed building from both Sodom Lane and Tanzey Lane, to the point that the proposals will be read in a very limited fashion at all and not diminish the importance and primary of the listed building or how it is experienced.

9.118 It is recognised that the key 'designed' aspect of the cottage is its visibility from the public highway. Whilst some contribution to its setting and significance are provided by the appeal site, maintaining a visual relationship with the rural setting, the views from its principal façade eastwards, and across its gardens are of greater importance.

9.119 The proposed development will have no physical impact upon the listed building or its evidential value, from which its significance is principally derived and thus there will be no harm in this regard. As per its listing, the relationship between the cottage and its associated garden to the front, a key element of its setting, will remain unchanged, as too would the views across the wider landscape to the east and north. These matters contribute in a more significant degree to its significance.

- 9.120 The Council's Conservation Officer, at the latter stages of the consideration of the application sought to assert that, due to later additions to the heritage asset, views and appreciation of the asset from the east, towards its principal features and of its designed views, are of lesser importance than views of the non-designed and unintentional relationship with the appeal site to the west. With respect, this is not in our view an argument which holds any merit. The importance of the building is held in its evidential and historical value as carefully examined and discussed within the Appellant's Heritage Assessment.
- 9.121 The fact that there is a change in the setting of the listed building means there will be some impact arising from the proposed development upon it. It is the degree of the impact however that is the important consideration. Whilst there will be some change to the setting of this building therefore, the manner in which the development has been designed to retain a large area of undeveloped public open space in this corner of the site and preserve the sense of rural openness around the heritage asset aids to ensure that any harm is at the lower limits of less than substantial harm and in no manner outweighs the clear benefits in the public interest of the development when considered in the heritage planning balance.

Shaston View

- 9.122 The Grade II listed Shaston View is located to the south-west of the appeal site, fronting on to Crown Road. The property does not directly adjoin the application site, but rather is separated from it by the vehicular driveway serving a neighbouring property, which sits to its rear.
- 9.123 The property is a late C17, early C18 house which has been latterly extended.
- 9.124 The significance of this property is held in its evidential value comprised of its architectural features; most notably within its interior. However, again, there is some interest in terms of historical value through illustration of the historical pattern of development of Marnhull settlement.

9.125 The wider surroundings of the property, comprising agricultural fields, including the appeal site, provide some minor contribution to the building in terms of its context as a rural dwelling; however, in the immediacy of the dwelling there have been some alterations through new built development and quarrying activity in its immediacy in the C20. The property fronts on to Crown Road and it is these views southwards which are most relevant to its significance. In contrast, the appeal site is fundamentally separate from it given the modern built intrusions and boundary screening and thus there is limited visual and no physical relationship here.

9.126 It is not considered that the appeal site makes any meaningful contribution to the significance of this building and it does not serve to allow for the appreciation of the evidential or historical values of the asset given its limited visibility from within it.

9.127 The proposed development would not alter any of the principal factors which contribute to the significance of the listed building and there would not be any changes to the most important aspects of its setting, including the relationship between the dwelling and the road frontage. It is not, as a result, considered that there would be any harm to the significance of Shaston View.

Rosedale Cottage

9.128 The Grade II listed Rosedale Cottage is location approximately 50m south-west of the site, accessed from Crown Road, but sits back from it and at a level substantially below the highway.

9.129 The property is of mid C19th construction and has latterly been subject of much restoration. Its significance lies in the evidential value of its architectural form and, like the other two properties, historical value in illustrating the evolution of Marnhull settlement.

9.130 The site historically appears to have been related to the Grade II listed Shaston View, but this is no longer the case; albeit they maintain a contextual

association. The set-down of the property into the landscape functionally separates it from its immediate surroundings; including the agricultural land to the north and south. As a result, the undeveloped farmland, including the application site, provides little contribution towards its significance. To the north of Rosedale Cottage sits modern housing development which has further severed this relationship with the open landscape and forms an established feature of its setting. The property is only minimally visible in slight glimpsed views from the application site.

- 9.131 It is not, as a result, considered that the proposed development will give rise to any harm to the significance of Rosedale Cottage.

Nash Court

- 9.132 The Grade II Listed Nash Court is located approximately 660m north of the appeal site; far removed from it.
- 9.133 The property is a substantial house originating from the late C16 to early C17. The property underwent significant alterations in the C18-C20 and was subdivided in to three dwellings.
- 9.134 The significance of the building is held in its evidential and historical value. In historical terms its value is 'associative' having been related to notable historical figures, but also 'illustrative' in its status as a post-medieval country house. There is also some contribution in aesthetic terms due to its attractive presentation.
- 9.135 Nash Court is set in substantial private grounds enclosed by defined walls and vegetation; the grounds themselves are an importance feature of the property and contribute strongly towards its setting and significance. The building has importance associations with other listed assets in its former grounds, comprising what was once a larger estate.

- 9.136 The building occupies a prominent position topographically, sitting atop a ridge overlooking the valley of Chivrick's Brook, eastwards. Its siting was deliberate and thus contributes towards its visibility and importance. The wider agricultural land which surrounds the building, and its grounds makes come very limited contribution to the significance of the building, through its setting within a rural context.
- 9.137 Whilst the proposed development would introduce a new built element into the wider surrounds of the Grade II listed asset, the inter-visibility between the property and the application site is limited to rather distant and intermittent views which do not provide any meaningful contribution to the asset's significance. The development proposed would not feature prominently in any views from the building and, if viewed, would be perceived as an extension of the existing development on the eastern edge of Marnhull which forms a backdrop to it; representing no material change in the landscape. It is not considered that there will be any discernible impact upon or harm to this asset as a result.

St Gregory's Church and the Conservation Area

- 9.138 In their comments at the time of the application, the Council's Conservation Officer provide commentary of the perceived importance of routes to the north and south of the site, and their separation; comprising Sodom Lane and Crown Road, as a '*defining factor of the village and its Conservation Areas*'. The Conservation Officer also took the view that the site serves to preserve the setting of the Conservation Area and in particular the Grade I Listed Church.
- 9.139 As will be readily apparent to the Inspector when reading the site either in aerial views, or physically from the grounds, the setting of the Conservation Area has already been significantly affected and diminished by extensive areas of C20th development, including in particular the large estate immediately to the west of the site, which sits directly and as an intervening feature between the Conservation Area, and the Grade I listed church and the site. As a result, it must be reinforced that there is no intervisibility between the site and the

Conservation Area. The site makes no contribution at all to the experience of the Conservation Area for this reason.

- 9.140 The Council recognises this simple fact within its Officer's Report at 'Section 16.4', stating:

'Owing to the separation of the application site from the more historic parts of the village, the relationship with the conservation areas is less direct with limited inter-visibility between the areas. Consequently, its development has a more limited impact upon the character and historic value of those areas.'

- 9.141 With respect to St Gregory's Church, the heritage asset is not viewed in any substantive manner from the site at all., there are very limited glimpsed views of the spire of the church from very specific and limited positions of the site, as a result of the topography, when one can read this between unintentional gaps between roof forms of the modern development to the west at Ashley Road, but this is not a designed view and does not change the fact that the substantial modern development sits as an intervening feature within its foreground and severs any connection between the heritage asset and the application site. The church is best experienced from Crown Road to the south of the site, along an intended vista and axis towards the church, even in this case, it reads however within the context of C20th development

- 9.142 The development of the application site will not have any effect on these views or the manner in which the Grade I listed church can currently be experienced. Neither will the development have any effect on the significance of any other listed buildings within the Conservation Area of the designation itself. The assets will continue to be appreciated in their extant setting, which comprises in part rural pastoral landscape to the south of the settlement, but to the north and west in the context of extensive areas of modern development which has severed any intrinsic links between the assets and the application site.

- 9.143 It should be noted that, the positions from within the appeal site where the tower of the Church of St Gregory may be glimpsed are located within the proposed public open space within the development and thus these glimpsed views will still be achieved through the structured landscape framework.

9.144 It is considered therefore that the development in the main will give rise to no harm to designated heritage assets. Any harm to the setting of the Grade II listed Laburnum Cottage is at the lower limits of less than substantial harm and is mitigated through the sensitive and appropriate approach taken to the design and layout of the site and retention of an appropriate verdant backdrop for this cottage with a substantial set-back of the proposed pattern of development from it. The appeal scheme will form a more appropriate transition from the existing hard urban edge of the settlement whilst not diminishing the setting of the heritage asset in a rural setting and separated from other built development.

9.145 In accordance with Paragraph 202 of the Framework, where proposals will result in less than substantial harm to a heritage asset, such harm should be weighed against the public benefits of the proposal (the 'heritage balance'). The proposals will result in the lower limits of less than substantial harm to Laburnum Cottage and give rise to no harm to any other heritage assets. The public benefits clearly outweigh any harm to heritage assets when considered in the balance. Moreover, there is therefore no harm which significantly and demonstrably outweighs the benefits of the proposal when considered against the presumption in favour and the tilted balance set out at Paragraph 11 of the Framework. The Council's concerns in this regard are considered to be unjustified.

(5) Impact upon Ecological Interest

9.146 The appeal site is located outside of any protected designations of ecological interest. The appellant instructed the services of a suitably qualified ecologist to undertake a Phase 1 Ecological Assessment, and thereafter undertake appropriate protected species surveys to determine whether the development of the site would impact upon any protected species or habitat. At the time the application was made, it was not possible to undertake such surveys, being outside of the survey season. As a result, the Appellant submitted a worst-case Biodiversity Mitigation and Enhancement Plan (BMEP) which should to demonstrate that, even in the presence of protected species, the development would not give rise to any unacceptable impacts or harm.

9.147 At the time of the application, The Council raised concerns that the development may cause harm to Ecological Interest in absence of full phase 2 surveys having been carried out. During the course of discussions with the Council however, and pursuant to the determination of the application, the survey work requested has been carried out on the site and has fully informed the mitigation proposed. The Council's Ecologist confirmed in discussions at the time of the determination of the previous application that the survey work undertaken would overcome the Council's concerns (**BB46**). The Council confirmed that, with the wildlife corridor/buffer zones increase to 5m in width the Council would be satisfied with the proposed mitigation. The Appellant made the appropriate changes to the scheme prior to the determination of the application, and these are reflected on the refused Site Plan ref. 16080 Rev.O.

9.148 The Appellant has submitted in support of the appeal, detailed reports prepared by the Appellant's Ecologist Ecosupport, which summarise the results of the Bat Transect and Dormice surveys undertaken during the course of the determination of the application and completed following the Council's refusal of the scheme. Alongside these reports, an updated BMEP has been prepared which takes account of this survey information. The following documents are thus submitted for the Inspector's attention:

- Land North of Crown Road Marnhull (Dormouse Survey Note)
- Land North of Crown Road, Marnhull, Bat Survey Report
- Biodiversity Mitigation and Enhancement Plan

9.149 The reporting concludes that that the site supports a limited range of protected bat species, which utilise the hedgerows for the purposes of foraging. The appeal scheme incorporates ecological buffers to the existing native hedgerow on site; comprising 5m setbacks of property boundaries to create an ecological corridor within which any protected species utilising the site can continue to forage unhindered by domestic activity. The BMEP and reporting demonstrates that with the proposed mitigation and retention of the key areas of interest on the site with an appropriate buffer, there will be no harm to ecological internet and that there are opportunities for biodiversity enhancement to be delivered comprising:

- Replacement of value-poor grassland on site with areas of new meadow grassland planting,
- Opportunities for wetland planting around SuDS feature to introduce new opportunities for invertebrates and foraging opportunities for bats,
- Reinforcement of hedgerows and new native hedgerow planting and large standard tree planting to provide immediate interest,
- Active features comprising bird and bat boxes to be incorporated into the gable ends of dwellings and within retained trees/hedgerows.

9.150 The existing biodiversity interest of the site is held predominantly in the native hedgerows which envelop its boundaries, providing commuting and foraging corridors for bats, nesting opportunities for birds and habitat for reptiles within the immediate scrub. These are to be retained and enhanced with the wildlife corridors created to provide a safe zone for the continued use of protected species. The hedgerow will be gapped up where necessary to ensure it remains species rich, and significant lengths of new hedgerow are proposed across the site which will provide biodiversity enhancement.

9.151 The trees on site are all retained and positively incorporated within the development, in a manner consistent with the approach to the native hedgerows. The trees and hedgerow offer potential for roosting birds and thus any removal should take place outside of the breeding season.

9.152 The BMEP confirms that with the delivery of the wildlife corridors, the ecological interest on site will be preserved and with the carrying out of the recommendations of the report the development will not give rise to harm.

9.153 There are no ecological grounds on which to object to the proposals which will result in no harm to ecological interest and will deliver biodiversity net gain. The appeal scheme accords with the provisions of Policy 4 of the Local Plan and Section 15 of the Framework in this respect.

9.154 It is not anticipated that, pursuant to discussions had with the Council's Ecologist, the Council will seek to pursue this reason for refusal. However, the

Appellant reserved the right to make detailed submissions of this matter and call a professional witness should the Council take a different view.

10.0 Conclusion

- 10.1 Those matters which are not discussed above are common ground between the Council and the Appellant and are not an issue. There is no need for the Inspector to consider matters beyond the key issues identified at *Section 2* of this statement and discussed further at *Section 9.0*. The Appellant considers that the appeal turns on six issues; (1) the application of the presumption in favour of sustainable development and the tilted balance, (2) the principle of the development and whether it is sustainable, (3) the impact of the development upon landscape character. (4) the impact of the development upon designated heritage assets, (5) the impact upon ecological interest and (6) the requirement for a s106 agreement to secure the proposed affordable housing and necessary financial contributions.
- 10.2 The proposed development seeks outline planning permission for the erection of 72 dwellinghouses with matters for consideration limited to the access, layout and the quantum of development. In respect of Matter (1), the housing policies of the Local Development Plan are considered out of date as a result of the Council being unable to demonstrate a 5-year supply of deliverable sites and its significant and persistent under delivery against its housing needs. The application falls therefore to be determined in accordance with the presumption in favour of sustainable development and the tilted balance as set out by Paragraph 11 of the NPPF.
- 10.3 In such circumstances permission should be granted unless the impacts significantly and demonstrably outweigh the benefits when considered against the framework as a whole; including the specific policies listed at Footnote 7 of the NPPF, which must be weighed as part of the planning balance.
- 10.4 With respect to Matter (2), the appeal site is situated on the edge of a sustainable village settlement which the Council consider to be capable of supporting additional housing growth. The site is not isolated, it is clearly related to Marnhull settlement and capable of delivering housing which will support the viability of existing services and facilities in the village and those nearby in accordance with Paragraph 79 of the Framework. The site is also within walking

distance of local services and facilities and public transport links including regular frequency bus services. The development will support the social sustainability of the settlement through the delivery of new housing including 40% affordable housing and support the vitality and viability of the settlement. The development seeks to deliver new community facilities and will deliver financial contributions towards local infrastructure. The development is considered to address each of the three strands of sustainable development as defined by Paragraph 8 of the NPPF.

- 10.5 In relation to Matter (3) the Appellant has recognised the need to provide a high-quality development which will preserve and enhance the character of the area. The Appellant has prepared a detailed site plan which shows that this quantum of development can be comfortably accommodated on the site without unacceptable harm to local visual amenity or the residential amenity of the surrounding uses and the development will not give rise to unacceptable harm when read in the broader landscape. The development is only read in short to medium distance views, with no longer distance views impacts. With respect to those shorter to medium distance views, it is only in those to the north of the site where there is perceived to be sensitivity.
- 10.6 The proposals seek to develop a greenfield site, and thus there will clearly be a change and impact upon the landscape as a result. The consideration however for the decision maker is whether this will give rise to unacceptable harm as a result of the magnitude of change. With appropriate mitigation, as proposed by the Appellant, it is considered that the degree of effect upon the landscape will not be significant. The specific impacts of the development upon the local landscape and established pattern of development are in no manner considered sufficient to significantly and demonstrably outweigh the benefits of the development when assessed in the tilted balance. There is no conflict with Policy 4 of the Local Plan, or Section 15 of the NPPF in this respect.
- 10.7 With respect to Matter (4) the appeal scheme has carefully considered the relationship between the site and the surrounding designated heritage assets. Any harm to the setting of the Grade II listed Laburnum Cottage is at the lower

limits of less than substantial harm and is mitigated through the sensitive and appropriate approach taken to the design and layout of the site.

10.8 In accordance with Paragraph 202 of the Framework, where proposals will result in less than substantial harm to a heritage asset, such harm should be weighed against the public benefits of the proposal (the 'heritage balance'). The proposals will result in the lower limits of less than substantial harm to Laburnum Cottage and give rise to no harm to any other heritage assets. The public benefits clearly outweigh any harm to heritage assets when considered in the balance. There is considered to be no conflict with Policy 5 of the Local Plan or Section 16 of the NPPF in this respect.

10.9 With respect to Matter (5), the Appellant has entered into discussion with the Council in respect of its second reason for refusal, which it is considered has now been adequately addressed through the completion of additional ecological survey work and the preparation of an updated BMEP.

10.11 The Council was well aware that the surveys could not be undertaken outside of survey season, and the Appellant commenced the surveys at the earliest opportunity to enable this information to be provided. The results of the surveys demonstrate that the mitigation proposed by the Appellant will ensure that there is no unacceptable harm to ecological interest. It is anticipated that the Council will no longer seek to contest this reason for refusal. There is no conflict with Policy 4 of the Local Plan or Section 15 of the Framework in this respect.

10.12 With respect to Matter (6) and the Council's third reason for refusal, it is common ground between the parties that this can be adequately addressed through the submission of a s106 legal agreement to secure the necessary contributions. The Appellant made clear that they were willing to do so during the course of the application and sought to engage with the Council to agree the amounts sought. The Council did not however provide the Appellant with a complete list at the time of the application; their remained details outstanding. The Appellant will seek to engage with the Council to determine the contributions sought, and it will be for the Inspector to consider whether the contributions are reasonably necessary having regard for the tests of National

Policy. This reason for refusal, will however be addressed. There is considered to be no conflict with Policies, 8, 13, 14 or 15 of the Local Plan as a result.

10.13 There are no other technical issues which indicate that development should be restricted or that individually or cumulatively outweigh the presumption.

10.14 There are no unacceptable impacts arising from the proposals which override the public benefits of delivering additional housing in the face of the Council's absence of a deliverable housing land supply in a sustainable location. The proposals comply with the relevant policies of the Framework and there are no overriding conflicts which individually or cumulatively tip the tilted balance against granting consent.

10.15 At the appeal event we will ask therefore that the Inspector allow the appeal.