



## Appeal Decision

Site visit made on 13 October 2020

**by Helen O'Connor LLB MA MRTPI**

**an Inspector appointed by the Secretary of State**

**Decision date: 05 November 2020**

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**Appeal Ref: APP/Y3940/W/20/3255756**

**Land at The Clay, Easterton, Devizes, Wiltshire SN10 4PB**

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant outline planning permission.
  - The appeal is made by Messrs P and P Ford against the decision of Wiltshire Council.
  - The application Ref 19/11921/OUT, dated 6 December 2019, was refused by notice dated 19 February 2020.
  - The development proposed is the erection of 4 no. self/custom build dwellings and associated works.
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### Decision

1. The appeal is dismissed.

### Application for costs

2. An application for costs was made by Messrs P and P Ford against Wiltshire Council. This application is the subject of a separate Decision.

### Procedural Matters

3. For clarity, I have added 'Devizes, Wiltshire' to the site address in my heading above.
4. The application has been made in outline, but access is to be determined at this stage with appearance, layout, scale and landscaping shown as reserved.

### Main Issues

5. The main issues are:
  - Whether the site would be a suitable location for housing having regard to local policy and the accessibility of the site; and,
  - The effect of the proposal on the character and appearance of the area, having regard to landscape character and whether it preserves or enhances the setting of the Easterton Conservation Area.

### Reasons

#### *Location and accessibility*

6. Core Policy 1 (CP1) of the Wiltshire Core Strategy, January 2015 (CS) sets out a settlement strategy based on a hierarchy of settlements. Together with the delivery strategy in Core Policy 2 (CP2) it seeks to direct a level of

development commensurate with the degree of accessibility to jobs, facilities, services and public transport to the respective settlements in the county. In turn, this would reduce the reliance on the need to travel by private car. Both parties agree that Easterton is classed as a small village in the CS. This constitutes the lowest tier in the settlement hierarchy described in CP1 as having a low level of services and facilities, and few employment opportunities. CP2 states that development will not be permitted outside the limits of development, as defined on the policies map save for certain exceptions. Moreover, development at small villages will be limited to infill within the existing built area.

7. These policies generally accord with paragraphs 77 and 78 of the National Planning Policy Framework (the Framework). Paragraph 77 indicates that in rural areas planning policies should be responsive to local circumstances and support housing development that reflect local needs. Paragraph 78 states that to promote sustainable development in rural areas, housing should be located where it will enhance or maintain the vitality of rural communities. It further stipulates that planning policies should identify opportunities for villages to grow and thrive.
8. Core Policies 60 and 61 of the CS relate more specifically to transportation but reinforce the overall strategy in CP1 and CP2 by emphasising that locating new development in more accessible areas will help to reduce the need to travel by private car.
9. Easterton has only limited facilities, including a pub and a church. The appeal site comprises agricultural land on the periphery of the village rather than within the existing built area. Moreover, the appellants accept that none of the exceptions to CP2 apply in this case and do not suggest that the proposal would represent infill development<sup>1</sup>. Therefore, on the face of it, the location of the appeal site conflicts with the residential development strategy set out in the CS.
10. The appellant has provided a Unilateral Undertaking dated 8 September 2020 that includes provisions to ensure that the proposed dwellings would be self/custom build homes (SCB). They assert that the provision of 4 SCB homes would help meet the housing needs of settlements as permitted by CP1, for which, unlike other types of specialist housing, no specific provision is made in the CS. The Framework outlines the Government's objective to significantly boost the supply of homes and that the needs of groups with specific housing requirements are addressed. Amongst other groups, paragraph 61 of the Framework refers to the needs of people wishing to commission or build their own homes being assessed and reflected in planning policies.
11. Support for SCB is reinforced by a recent Government announcement<sup>2</sup> to which my attention has been drawn, but more notably by the statutory duties imposed on local planning authorities to establish local registers of self/custom-builders who wish to acquire suitable land to build their own home. It also requires local authorities to have regard to the local register when exercising planning functions. Additionally, subject to certain exemptions, there is a duty to grant planning permission whereby authorities must give suitable

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<sup>1</sup> Paragraphs 4.14-4.16 Appellants' Statement of Case

<sup>2</sup> Press release from Robert Jenrick MP, Secretary of State for Housing Communities and Local Government published 30.10.20.

- development permission in respect of enough serviced plots of land to meet the demand for self-build and custom housebuilding in the authority's area arising in each base period. However, the evidence provided does not suggest that this establishes an overriding principle over all other relevant planning legislation and considerations.
12. The appellants consider that the need figures recorded on the SCB register appear unreliable with amendments made to the data<sup>3</sup>. Moreover, in the absence of systematic monitoring of completed development, they raise doubts about the accuracy of the supply figures and point to the absence of a mechanism to guarantee that most developments accord with the definition of SCB. The Council state in the case officer's report that *'By the applicants own admission, the Council appears to have delivered 261 plots since the self-build register commenced in August 2015.'* However, they have provided little substantive evidence to demonstrate the number of entries on the SCB register for each base period and only limited reference is made to the number and nature of planning permissions to show that demand is being met.
  13. I have had regard to appeal decisions<sup>4</sup> concerning SCB development and the respective Inspectors findings as to the necessity for an express condition or legal agreement to secure SCB when considering the supply of SCB sites. Greater weight is attributed to the more recent decision in which the Inspector found it would be too onerous a requirement to exclude all cases that do not have an express condition or s106. To do otherwise would tend to exclude development that met the statutory definition of SCB but would not meet the tests for the imposition of exclusive planning conditions or obligations because it was policy compliant.
  14. The supply<sup>5</sup> information provided largely relies upon whether the landowner has claimed the SCB exemption from the payment of the Community Infrastructure Levy. This gives initial grounds to suppose the developments would provide SCB. However, the Inspector in the most recent appeal decision also found that it was not sufficient to rely on CIL exemption forms without some further analysis of the raw data and reference back to the register. There is little before me to suggest that this has been undertaken in this case. Overall, based on the evidence before me, there are grounds to doubt the accuracy of the Council's data and therefore, I am not assured whether sufficient SCB plots are being provided to meet the need in the county. Hence there is some doubt as to whether the Council has met its duty in this regard. It follows that this carries weight in favour of the proposal.
  15. CP1 states that development at small villages will be limited to that needed to help meet the 'housing needs of settlements'. The appellant considers that this wording would not necessarily be limited to the housing needs of the respective individual settlement and highlights the comments of an Inspector<sup>6</sup> in relation to CP2. However, the supporting text to CP1 refers to the general presumption against development outside the defined limits of development of the principal settlements, market towns, local service centres and large villages. Only very modest development that responds to local needs<sup>7</sup> and contributes to the

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<sup>3</sup> Tables for Wiltshire Council SCB Register Entries, Page 15 of Appellants' Statement of Case

<sup>4</sup> Reference APP/G2435/W/18/3214451 dated 25.6.19, Appendix 11, Appellants' Statement of Case & Reference APP/H1840/W/19/3241879 dated 23.7.20, Appendix FC1, Appellants' Final Comments

<sup>5</sup> Appendix 9, Appellants' Statement of Case

<sup>6</sup> Reference APP/Y3940/W/16/3154507

<sup>7</sup> Paragraph 4.16 CS

- vitality of rural communities may be appropriate at small villages. The specific reference to local needs indicates those that are connected spatially to the small village concerned. Moreover, the reference to support for development meeting housing needs of settlements in CP2 is prefaced by an express limitation to infill within the existing built area of small villages.
16. The areas of interest expressed on the extract of the SCB register provided are often generic<sup>8</sup> covering large areas of the county. This is indicative of a high degree of flexibility as to location for many of those seeking to acquire sites to build or commission their own homes rather than a specific need at Easterton.
  17. Moreover, the six expressions of interest resulting from an advertisement placed in the Market Lavington & Easterton Parish Magazine, in some cases refer to an aspiration for SCB in a wider area than Easterton, for example references are made to "in the area" and "in and around Market Lavington"<sup>9</sup>. In addition, the limited information provided suggests that the exercise falls short of rigorous research into need, which limits the weight I can give to it.
  18. It follows that, notwithstanding some representations in support of the proposal, I am not assured that a specific SCB need at Easterton has been clearly shown or quantified. Even if it were, it is not fully explained why this could not be met in a way that would be consistent with the overall settlement and delivery strategies in the CS. Therefore, it is not shown that the provision of SCB in this location would accord with CP1 or CP2.
  19. In support of the proposal the appellants refer to the proximity of Market Lavington, where there are a reasonable range of facilities provided, commensurate with its designation as a Local Service Centre in the CS. They include a number of shops, post office, surgery, school and community facilities. The route along the B3098 is lit which would assist those walking or cycling to these facilities and there is a pavement. In addition, there is a bus service at Easterton<sup>10</sup> that provides a route to the market town of Devizes.
  20. Nevertheless, the pedestrian route adjacent to the B3098 has some stretches where there is little surveillance and when combined with the distance, this may deter its frequent use by some pedestrians. Neither does the pavement extend to White Street and The Clay and there is only limited lighting in White Street. Notwithstanding the existence of the more direct public right of way, this is roughly surfaced, unlit and is not obviously overlooked due to the hedgerows. Consequently, it would not provide a suitable route for all weathers or for pedestrians with reduced mobility, or those with a pushchair.
  21. Furthermore, the B3098 is a moderately trafficked road allowing a speed limit of 40mph for the majority of the route which may discourage less confident or inexperienced cyclists, particularly children. In addition, the hourly bus service is not so frequent that shorter trips to the local facilities mentioned above would be convenient and as such, these trips are more likely to be undertaken by private car.
  22. The proposed development would be likely to accommodate a range of occupants with a variety of travel requirements. Therefore, I find that, although the location of the site would allow some degree of choice for journeys other

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<sup>8</sup> Appendix 8, Appellants' Statement of Case

<sup>9</sup> Responses in Appendix 2, Planning Statement

<sup>10</sup> Appendix 16, Appellants' Statement of Case

than by car, future occupants would nevertheless be likely to rely on the car as their principal means of travel. As such, the appeal site is not within the most accessible locations identified in the CS.

23. The appellants point out that infill of a similar scale to the proposal would be permitted in Easterton under the CS policies, and the accessibility of the proposal would not be materially different to such development. I have also had regard to paragraph 103 of the Framework which recognises that opportunities to maximise transport solutions will vary between urban and rural areas. However, notwithstanding the relatively modest scale of the development, it would nevertheless represent a more dispersed approach than is set out in the CS which seeks to focus limited infill growth within the existing built area of small villages to respond to local needs and to contribute to the vitality of rural communities. Hence, these factors would not lead me to find otherwise.
24. Accordingly, I find that the proposal would not provide a suitable location for housing given its limited accessibility on the edge of a small village. Consequently, it would conflict with the settlement and delivery strategies outlined in CP1 and CP2 of the CS. Additionally, it would be contrary to Core Policies 60 and 61 of the CS which, amongst other things, seek to reduce the need to travel by private car.
25. The Council also refers to Core Policy 18 (CP18) of the CS in the first refusal reason on the decision notice. However, this policy refers to the spatial strategy for the Pewsey Community Area, coverage of which does not appear to extend to Easterton. Therefore, I do not find any conflict with CP18.

#### *Character and appearance*

26. The Easterton Conservation Area (CA) primarily covers the historic core of the linear spring-line village. Its significance is derived from a combination of factors including the distinctive rural setting of the settlement within a valley, with the escarpment of Salisbury Plain to the east. The exceptionally green and wooded surroundings to the village are referred to in the Easterton Conservation Area Statement, September 2003<sup>11</sup> (ECAS). Despite its age, the ECAS remains of relevance in identifying significant features of the CA, and neither party suggests otherwise. Amongst other matters, this document further outlines the importance of agriculture to the evolution of the settlement which was historically a tything of Market Lavington. Accordingly, the interface between the arrangement of the built form, many of which are attractive vernacular buildings, and their rural surroundings, results in an attractive verdant, rural character to the village and CA.
27. The appeal site comprises part of a pastoral field close to, but outside of the CA on the periphery of the village. The absence of built form with the wide grassed verge to the lane and hedgerows along some of the other boundaries gives it an open agricultural character. This contrasts with the enclosure derived from the cluster of residential development and its associated more ornamental planting and tree cover to the north west. When this is combined with the informal narrow lane adjacent and expansive views to Salisbury Plain, the site forms part of the palpable change in character experienced at the village edge when moving into the surrounding more open natural environment. Moreover,

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<sup>11</sup> Page 21

- it provides physical and visual separation from the edge of Market Lavington to the south, which is connected by a public right of way directly adjacent to the south eastern boundary from which views of the site are possible through gaps in the boundary hedgerow.
28. My observations of the site were that in combination, its open agricultural character, proximity to the CA and physical relationship with Market Lavington, enable the historic origins of the settlement to be appreciated. As such, the pastoral field which contains the appeal site, makes a positive contribution to the rural setting of the village and forms part of the surroundings in which the CA is experienced, and therefore contributes towards its significance. Hence, I cannot agree with the Heritage Impact Assessment provided<sup>12</sup> that asserts its impact is neutral.
  29. Given the outline nature of the proposal, there could be alternative ways of providing the development. Nevertheless, four dwellings would have a notable physical presence, associated domestic paraphernalia, lighting and activity that would encroach into an area free from built form. This would significantly and detrimentally change its open and agricultural character.
  30. In addition, the positioning of the two access points and the proposed site plan<sup>13</sup> showing four plots both strongly indicate that the built form would be regularly dispersed across the width of the site. As such, rather than 'rounding off' the settlement as is asserted, built form would harmfully protrude into the countryside at this peripheral location pushing the extent of the settlement on the southern side of the lane further eastwards. Additionally, the proposal includes two 8m wide access points that would perforate the wide grassed verge thereby eroding the informal and natural appearance of the lane.
  31. Furthermore, as illustrated in Figure 1<sup>14</sup>, despite not being closer than the existing minimum distance between properties, the presence of the dwellings would nevertheless erode the limited space between the edge of Easterton and the edge of Market Lavington to the south. This would harmfully diminish the degree of severance at a narrow point between the two settlements making it harder to distinguish them.
  32. The harm arising from these factors would be apparent from the lane and glimpses would also be possible from the adjacent public right of way. This is reinforced by the Landscape and Visual Appraisal (LVA)<sup>15</sup> provided which acknowledges that change will be significant for receptors within close proximity to the site. In addition, notwithstanding the limited screening provided by the boundary hedgerow, I was able to see the site from some distance away on the higher ground of the by-way to the east. It follows that there would be visual harm in the foreground of medium and closer views towards the CA. Whilst additional planting may reduce the harm to a certain degree, it would be unlikely to fully prevent the harmful impact of the development in such views.
  33. Accordingly, the proposal would have an adverse impact on the rural character and appearance of the site that would harm the relationship of the settlement with its natural surroundings. Moreover, it would affect the surroundings in

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<sup>12</sup> Heritage Impact Assessment, May 2020, Prepared by Ian Lund, paragraph 5.3

<sup>13</sup> Drawing numbered 19/25:03A

<sup>14</sup> Page 38, Appellants' Statement of Case

<sup>15</sup> WH Landscape, August 2019 Ref 17.626 Rev A, Viewpoints 1-4 and paragraph 5.2.7

- which the CA is experienced, albeit that given the relatively modest nature of the proposal, this would be less than substantial harm to its setting.
34. Paragraph 196 of the Framework indicates that where the development proposal would lead to less than substantial harm to the significance of a designated heritage asset, this harm should be weighed against the public benefits of the proposal.
35. The information provided indicates that the Council is unable to demonstrate a five year supply of housing<sup>16</sup>. The proposal would provide four SCB dwellings which would contribute towards the housing supply contributing towards unmet need as well as aligning with the support given in paragraph 61 of the Framework for people wishing to commission or build their own homes. Moreover, there would be economic benefits arising from its construction as well as long term economic benefit from the activities of the future occupants.
36. Although these are important factors, in recognition of the modest scale of the proposal, in combination they garner moderate weight as public benefits. However, the public benefits do not surmount the great weight I must give to conserving the significance of designated heritage assets under paragraph 193 of the Framework.
37. Notwithstanding the reference on the Council's decision notice, I am not aware that the statutory duty<sup>17</sup> to pay special attention to the desirability of preserving or enhancing the character or appearance of a CA extends to its setting. Nevertheless, paragraph 190 of the Framework requires local planning authorities to identify and assess the particular significance of any heritage asset that may be affected by a proposal, and this includes its setting. Core Policy 58 of the CS states that designated heritage assets and their settings will be conserved. On this basis, it is appropriate to consider the impact of the proposal on the setting of the CA.
38. The appellants assert that the Council has mistakenly placed weight upon a section in the ECAS which under the heading of 'White Street'<sup>18</sup> states *'Meadows extend down to the street on the south side except for a wooded area of native plants and several conifers. This area emphasises the rural setting of the village and contributes to the character of the Conservation Area'*. They consider that this does not include the appeal site which is distinct from the meadow mentioned and outside of the CA. Even if I were to accept the appellants' interpretation, the extract still reinforces the significance of the rural setting of the village. Moreover, the ECAS is a largely descriptive document. By identifying one area or characteristic that makes a positive contribution it does not necessarily indicate that there are no others. For the reasons already outlined, the appeal site positively contributes to the setting of the CA. Therefore, this reference does not lead me to a different view.
39. The parties disagree whether the appeal site constitutes a valued landscape within the meaning of 170 a) of the Framework. This requires planning decisions to, amongst other things, protect and enhance valued landscapes in a manner commensurate with their statutory status or identified quality in the development plan. However, the Framework does not provide a definition of

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<sup>16</sup> Wiltshire Council Briefing Note on Housing Land Supply, June 2020, Appendix 21, Appellants' Statement of Case

<sup>17</sup> Section 72 Planning (Listed Buildings and Conservation Areas) Act 1990

<sup>18</sup> Page 12

'valued landscape'. My attention is drawn to a recent appeal decision<sup>19</sup> in Braintree, Essex which specifically considered this section of the Framework. The Inspector took a straightforward reading of the paragraph to find that there were no other categories of valued landscape which are not statutorily designated or identified in a development plan. In light of the relevance to the interpretation of paragraph 170 a) and the recent nature of the decision, this carries considerable weight, and I have little other evidence before me to substantiate the alternative interpretation suggested by the Council.

40. The appeal site is neither nationally nor locally designated. I have had regard to the Kennet Landscape Conservation Strategy, May 2005<sup>20</sup> which generally refers to the rural agricultural character of the Vale of Pewsey and the need to prevent the coalescence of spring-line villages. Nevertheless, this falls short of establishing special characteristics with an identified quality in the development plan. I give no weight to former local plan policies that have been superseded. Therefore, I find the appeal site cannot be a valued landscape within the meaning of the Framework.
41. In line with the approach of the Inspector in the Braintree appeal, it does not follow from my finding on this point that the effect of the proposal on the character of the appeal site would be unimportant. For the reasons already outlined above, the proposal would cause localised harm to the character of the appeal site and landscape. As such, it would fail to achieve a development that would be sympathetic to local character, including the surrounding built environment and landscape setting as referred to in paragraph 127 c) of the Framework.
42. In support of the proposal, the appellants indicate that additional planting could be provided at the reserved matters stage to soften the southern edge of existing development at The Clay, as well as a woodland belt along the edge of Market Lavington<sup>21</sup>. I acknowledge that such planting would provide some benefit but not to such an extent that it would fully overcome the degree of harm arising from the development. In any event, such planting would take some time to become established.
43. Therefore, I find that the proposal would result in landscape harm that would be unacceptably harmful to the rural character and appearance of the area. Furthermore, it would fail to preserve or enhance the character and appearance of the setting of the CA. This would be contrary to Core Policies 51, 57 and 58 of the CS. Core Policy 51 specifies, amongst other things, that development must not have a harmful impact upon landscape character. In requiring development to achieve a high standard of design, Core Policy 57 includes a requirement for development to enhance local distinctiveness by responding to the value of the natural and historic environment. Finally, Core Policy 58 stipulates, amongst other matters, that designated heritage assets and their settings will be conserved, and where appropriate enhanced in a manner appropriate to their significance.

### *Other matters*

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<sup>19</sup> Reference APP/Z1510/W/18/3197293 paragraph 185, Appendix 17, Appellants' Statement of Case

<sup>20</sup> Appendix 3, Council's Statement of Case

<sup>21</sup> Development Area and Landscape Strategy, Drawing WHL-899-03 Rev A, LVA

44. I have considered the representations received in support of the proposal, which amongst other matters, consider that the development would provide an opportunity for more innovative and environmentally friendly design. Be that as it may, as the proposal is made in outline, the specific design and environmental credentials of the dwellings cannot be assured unless they would be necessary to meet requirements of the development plan. Therefore, this attracts little weight and would not lead me to find otherwise.

### **Planning balance and conclusion**

45. The policies in the CS predate the Framework and it is common ground that there is no specific policy pertaining to SCB contained within it. The parties disagree whether for this reason CP1 and CP2 should be considered out of date. However, there is no necessity for me to conclude on this point as, in any event, the Council does not dispute that it cannot demonstrate a 5-year supply of deliverable housing sites. Paragraph 11 of the Framework states that in these circumstances policies which are most important for determining the application should not be considered up-to-date. The presumption in favour of sustainable development means that planning permission should be granted unless (i) the application of policies in the Framework that protect areas or assets of particular importance provides a clear reason for refusing the development, or (ii) that any adverse impacts of doing so would significantly and demonstrably outweigh the benefits when assessed against the policies in the Framework taken as a whole (the tilted balance).
46. Footnote 6 to paragraph 11 d)(i) indicates that the policies relating to designated heritage assets are relevant to its application. For the reasons outlined above, I have found, having undertaken the balancing exercise set out in paragraph 196 of the Framework, that the proposal would result in harm to the significance of a designated heritage asset. This provides a clear reason for refusing the proposal. In these circumstances the tilted balance in paragraph 11d)(ii) does not apply.
47. Planning law requires that applications for planning permission be determined in accordance with the development plan, unless material considerations indicate otherwise<sup>22</sup>. There would be benefits arising from the proposal including the provision of four additional dwellings to the housing supply where there is unmet demand. There would be short and long term economic benefits associated with the construction as well as the activities of future occupants of the additional dwellings. Moreover, the dwellings would be SCB, for which support is given in the Framework and Planning Practice Guidance and there is doubt as to whether the needs for SCB are being met with reference to the local register. However, in light of the modest scale of the proposal, overall, these benefits attract moderate weight.
48. Harm would arise as the location and limited accessibility of the site would conflict with the overall strategy of the CS to direct development within a hierarchy of settlements and reduce the need to travel by private car. The shortfall in housing land means that policies CP1 and CP2 are out of date. Furthermore, given that there would be some limited degree of choice as to means of travel this diminishes the weight given to the conflict with CP60 and CP61 of the CS. Nevertheless, they still serve an important function which

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<sup>22</sup> Section 38(6) Planning and Compulsory Purchase Act 2004 and section 70(2) of the Town and Country Planning Act 1990.

broadly aligns with objectives for rural housing in the Framework. On this basis, the conflict with these policies attracts moderate weight.

49. Furthermore, the proposal would be unacceptably harmful to the character and appearance of the area and would be harmful to the setting of the CA, a designated heritage asset. The conflict with CP51, CP57 and CP58 of the CS attracts significant weight. Additionally, in line with national policy, great weight is given to the conservation of designated heritage assets.
50. Accordingly, the benefits arising from the proposal would not provide sufficient justification to find other than in accordance with the development plan policy. Therefore, for the reasons given above, I conclude that the appeal is dismissed.

*Helen O'Connor*

Inspector