



## Appeal Decisions

Hearing held on 4 & 5 July and virtually on 5 September 2024

Site visit made on 4 & 5 July and 8 October 2024

**by H Nicholls MSc MRTPI**

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

**Decision date: 24 January 2025**

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### **Appeal A Ref: APP/E3335/W/24/3337232**

#### **Fortescue Fields Phase II, Norton St Philip, BA2 7PE**

- The appeal is made under section 78 of the Town and Country Planning Act 1990 (as amended) against a failure to give notice within the prescribed period of a decision on an application for planning permission.
- The appeal is made by Lochange Investments Ltd against Somerset Council.
- The application Ref is 2023/0644/FUL.

The development proposed is full planning permission for 30 dwellings (10 on Laverton Triangle and 20 on the south site) including affordable housing. Formation of new vehicular accesses and footpath links. Hard and soft landscaping including retained and new tree belts, ecological and biodiversity enhancements including bat replacement habitat. Car and cycle parking. Associated works.

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### **Appeal B Ref: APP/E3335/W/24/3338939**

#### **Fortescue Fields Phase II, Norton St Philip, BA2 7PE**

- The appeal is made under section 78 of the Town and Country Planning Act 1990 (as amended) against a failure to give notice within the prescribed period of a decision on an application for planning permission.
  - The appeal is made by Lochange Investments Ltd against Somerset Council.
  - The application Ref is 2023/0643/FUL.
  - The development proposed is full planning permission for 27 dwellings (7 on Laverton Triangle and 20 on the south site) including affordable housing. Formation of new vehicular accesses and footpath links. Hard and soft landscaping including retained and new tree belts, ecological and biodiversity enhancements including bat replacement habitat. Car and cycle parking. Associated works.
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## **Decisions**

1. Appeal A is dismissed.
2. Appeal B is dismissed.

## **Preliminary Matters**

3. The appeals were submitted against the failure of the Council to determine the applications within the prescribed periods. Since the appeals were lodged, the Council has indicated that, had it been in a position to determine the applications, it would have refused them for three identical reasons. The three reasons for refusal (RfRs) have been addressed through the submission of planning obligations dated 9 September 2024. The other putative reasons for refusal have formed the main issues in the appeals.

4. The appeal hearing considered these appeals and another appeal on a neighbouring site, known as the 'West Site'<sup>1</sup>. That scheme is for 8 dwellings. This appeal site is known as the 'East/South Site' and incorporates an area known as the 'Laverton Triangle'. Whilst the common matters in all three appeals have been considered together, some aspects have been considered separately. I have issued the separate decision notices for the separate sites in the interests of clarity. However, as the separate decisions cover similar issues, there is some duplication between them.
5. In the submitted Statement of Common Ground on Housing Supply, the main parties agreed that the Council could not demonstrate a 5 year housing land supply as required by the National Planning Policy Framework (the Framework). Though the precise extent of the shortfall was not agreed, the parties did not consider it necessary to narrow the supply position from the range of 2.46 years and 3.09 years offered by the appellant and Council respectively. Both parties agree that this is a very significant shortfall.
6. A revised version of the Framework was published on the 12 December 2024. The main parties were invited to comment on any relevant changes in writing. Of relevance, the Appellant's evidence indicates that the housing supply position has worsened with the Council's 3.09 year position revising down to 1.94 years and the appellant's position revising down to 1.54 years, or a shortfall of between 3,323 or 3,757 dwellings. The Council offer no evidence to the contrary and thus, a very significant shortfall has become an acute shortfall. I have taken account of the relevant changes of the Framework in reaching my decision.

### **Main Issues**

7. The main issues in these appeals are:
  - the effects of the scheme on biodiversity, protected species and designated Special Areas of Conservation (SACs);
  - whether the location of the development would accord with the development plan, and whether the scheme would be sustainably located having regard to the accessibility of the settlement and the available range of everyday facilities;
  - the effects of the proposal on the landscape character and visual amenities of the area, including the village setting of Norton St Philip and whether the schemes would constitute good design; and
  - the effects of the proposal on the significance of the designated heritage asset, Norton St Philip Conservation Area.

### **Context**

8. The appeal sites and the separate scheme for the West Site adjoin 'Fortescue Fields Phase I' which involved the redevelopment of a former chicken factory to a residential development with convenience shop. The existing Fortescue Fields development also connects with a country park (Ponds Country Park) which serves a dual purpose as an area of open space but also as a strategic sustainable urban drainage feature.

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<sup>1</sup> APP/E3335/W/24/3337357

## Reasons

### *Biodiversity, protected species and SACs*

9. The appeal sites are located around within the impact zones for the *Bath & Bradford-on-Avon Bats Special Area of Conservation* (BBA SAC) and *Mells Valley SAC*. The BBA SAC comprises extensive networks of caves, mines and man-made tunnels which are used by bats for hibernation, mating and as a staging post prior to dispersal. It also includes areas of calcareous grassland, scrub and woodland which are used as feeding and commuting habitat by the bats. The qualifying species for which the BBA SAC is designated include Bechstein's bat, Greater horseshoe bat (GHB), Lesser horseshoe bat and Barbastelle bat. The impact zone radii vary with the different bat species, but the appeal sites are just within 4km of the Band C impact zone of the BBA SAC for GHBs.
10. The Mells Valley SAC has a similar list of qualifying habitats as the BBA SAC and also has GHB as a qualifying species. The appeal site is within Band C of the impact zone for GHBs from the Mells Valley SAC which extends out from 4 – 8 km from the SAC.
11. The Council's putative RfR refers to insufficient information having been submitted to demonstrate that there would be no significant effects on the Mells Valley SAC. Irrespective, as competent authority, I must ascertain that the schemes would not have an adverse effect on the integrity on any internationally designated site under the Conservation of Habitats and Species Regulations 2017, as amended (Habitats Regulations), thus including the BBA SAC.
12. The hearing was undertaken across three days; 4 and 5 July (in person) and virtually on 5 September. The appellant submitted additional bat surveys in between the two hearing dates, specifically, on the 4 September. The submitted evidence relating to the effects on bats and biodiversity was discussed during both in-person and virtual events.
13. Following the closure of the hearing, and because likely significant effects on the SACs could not be ruled out, a draft appropriate assessment (AA), as required by Habitats Regulations, was prepared on the basis of my then views, on the evidence I had read and heard. As required by Regulation 63(3) of the Habitats Regulations, the Statutory Nature Conservation Body (SNCB), Natural England (NE), was then consulted on the draft AA.
14. NE replied on the draft AA by way of a letter dated 16 October 2024 and referred to the written evidence pertaining to the appeal schemes sourced from the Council's website. It objected to the schemes, finding issue with the AA and evidence underpinning it. It also retracted an earlier consultation response on the schemes dated 24 May 2024 which indicated no objections on the basis of no likely significant effect to designated sites.
15. NE's objection details concerns including the omission of reference to the appeal sites falling within Band C of the BBA SAC in addition to Band C of the Mells Valley SAC; lack of robustness of bat survey effort; lack of clarity around Habitat Enhancement Plan (HEP) calculations; fragmentation of commuting routes and lighting thresholds.

16. The appellant provided a detailed response to the NE objection, which was again provided back to NE. In a subsequent response from NE dated 6 December 2024, it clarified and expanded upon the points made, but the overall position of objection was maintained.
17. The appellant's subsequent submission prepared by SWECO (dated 16 December 2024), including new evidence not invited as part of the process, concedes that the site is within Band C of the BBA SAC which had not previously been acknowledged in the appellant's evidence. The submission downplays the significance of this factor but acknowledges that this has the effect of upgrading the baseline habitat value (and future enhanced habitat value) as part of the HEP calculations. The appellant had already conceded that the site is functionally linked to the Mells Valley SAC. However, NE's position is that the appeal sites should be considered functionally linked to both. Given the overlap of qualifying features, suitability of habitat, site size and relative proximity, I am of the view that there is a functional link to both SACs.

### *HEP Calculations*

18. The original HEP calculations were not within the draft AA. Whereas I originally believed that the HEP calculations could be reevaluated post-approval, it has been clarified that the intent would be to do this only to account for any changes in the period between the original assessment and point in time prior to commencement of development. I am clear that a robustly established baseline is necessary now, irrespective of any changes that may be detectable through future survey effort.
19. In my view, despite the appellant's assessment through 36 transects by a FISC<sup>2</sup> Level 4 specialist, the value of grassland and hedgerow habitats on the appeal site appears to have been downplayed in the HEP calculations. The changes between iterations C01 and C02 the submitted Ecological Impact Assessments, differences to previous versions of botanical surveys undertaken by others and basic observations of my own about the species diversity appearing to exceed the 'fair' score recorded by the appellant suggests that the site may hold a greater value for SAC bat species than is being accepted. Similarly, there was little clarity about the use of management codes in the HEP calculations and limited evidence could be provided about the regularity and extent of works undertaken to demonstrate such codes were soundly applied.
20. NE indicate that the AA must refer to HEP calculations. The appellant's letter of 16 December 2024 agrees that the calculations may now be beneficially recorded in the AA. However, I am being invited to take into account HEP calculations adjusted and provided in December 2024 in response to an omission conceded by the appellant which had infected the original calculations, the basis of which had not been wholly accepted in the first place.
21. Given the sustained conflicting views of the parties, and despite the appellant's suggestion that the appellant would be obligated to compensate for any changed HEP differences above the confirmed mitigation requirements, I am of the view that the baseline HEP position has not been robustly established and nor can I be sure that adequate adjustments post-approval could be resolvable by way of the proposed conditions or S106 measures.

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<sup>2</sup> Field Identification Skills Certificate

### *Bat survey limitations*

22. The issue of bat survey limitations has been a reoccurring theme in the relevant exchanges. NE draw attention to the *Mendip District Bat Special Areas of Conservation (SAC): Guidance on Development: Supplementary Planning Document (2019)* (the Technical Guidance) which states that survey effort in Band C zones should be in accordance with guidelines from the Bat Conservation Trust (BCT). The recent (BCT) guidelines, *Bat Surveys for Professional Ecologists: Good Practice Guidelines (2023)*, require that for sites of high and moderate habitat suitability for bats, static detector surveys should comprise of five consecutive nights of data collection every month between April and October. With the appeal sites, there is a commuting structure present and there is suitable habitat within and adjacent that supports prey species hunted by GHBs. In this case, despite the appellant's classification of the sites as being of *low* suitability for bats, it undertook static detection over four months (April, June, July and August). Whilst the Technical Guidance suggests that developers also take advice from their consultant ecologist, it does appear that there is limited justification for the low suitability / alleged 'minor' effects on bats to justify a deviation from the BCT Guidelines.
23. Furthermore, there are many instances where the survey effort undertaken has been defended by the appellant for falling short of the expectations, such as in respect of a number of nights of suboptimal temperatures; high amounts of rainfall preceding the survey; the timing of the surveys, particularly in respect of the limited survey effort to represent usage in Autumn proper (and the survey effort which was submitted would not have been undertaken at all were it not for the long adjournment between the hearing sittings); the adequacy of number of recorders relative to the site size; location of static monitors which does not take into account the Mackley Lane and other affected commuting route, and type/duration of survey – static or transect - given the known difficulties of detecting calls from GHBs. Taking the number of criticisms of the surveys collectively, there is sufficient reason to doubt the integrity of the overall findings. Therefore, applying the precautionary principle, I conclude that the survey effort is insufficiently robust to qualify the extent and nature of the use of the site by SAC bat species from which to devise and rely on any necessary mitigation measures.

### *Commuting routes*

24. It has been clear that the development would result in some hedgerow loss along Mackley Lane with a smaller hedgerow intervention proposed within the southern boundary of the eastern site. The NE responses have illuminated the insufficiency of survey data to understand the value of these particular features as commuting routes, though the appellant does not deny that they are used in such a way. However, the appellant's response makes some assumptions, particularly in respect of the Mackley Lane commuting route, that despite its inevitable fragmentation, bats will likely be able to use this feature by reliance on the hedgerow on the opposite side of the lane whilst the replanted sections of hedgerow establish. Having given this some further consideration, it seems overly optimistic that the route will prove suitable for ongoing use as a commuting feature until the reestablishment of replacement hedgerow. The reliance on the hedgerow on the other side of the lane will coincide with a temporary, albeit prolonged, period of increased use and disturbance along Mackley Lane, with comings and goings and additional headlight movements of

cars which may not be compatible with an altered pattern of use by bat species.

25. Taking these aspects together, there is a lack of clarity concerning the importance of the Mackley Lane route as a commuting route, and uncertainties surrounding its ability to sustain continued use throughout establishment and beyond, with the sizeable gaps that would remain on a permanent basis for either Appeal A or B schemes.

#### *Lighting Strategy*

26. The absence of a lighting strategy has also been raised as a concern of NE in relation to the potential that habitat areas would be rendered inaccessible by SAC bat species. Whilst conditions have been proposed by the appellant to secure lux levels of 0.2 lux on the horizontal plane and at, or below 0.4 lux on the vertical plane, there is limited evidence to demonstrate the ability to achieve these low levels of lighting. As a detailed scheme, the positions of houses are known, and whilst internal streetlighting may not be proposed, some lighting of external areas will be necessary for pedestrian safety and the potential for light spill from the interior of dwellings could be calculated through modelling, but has not been.
27. The appellant opines that the use of restrictive conditions to limit light sources and control the types and locations of lighting is a sound approach and that there are a number of other approvals, including underpinning AAs, where such conditions have been used. Some decision notices and related information has been sent to demonstrate relevance to the appeal proposal, however, I am far from clear on the full information that was before the respective competent authorities in those cases to understand that the cases are so similar to the ones before me. As such, I cannot conclude that the evidence on this aspect is suitably robust to adopt the same approach in this instance.
28. Therefore, in engaging the precautionary principle, in the absence of clear information to demonstrate otherwise, it cannot be ascertained beyond reasonable scientific doubt that the lighting would not prevent a barrier to SAC bat species accessing some areas of habitat within the site.

#### *Conclusions on SAC effects*

29. Despite NE not participating in the appeal hearings, the Habitats Regulations compel me to consult with NE as SNCB and have regard to its views. Consequently, I attach significant weight to the detailed comments of NE which draw attention to flaws and with the evidence submitted on bats and related habitat quality.
30. On the basis of what I have seen, read and heard, I am not able to conclude beyond reasonable scientific doubt that the schemes would align with the conservation objectives or avoid adverse effects on the integrity of the Mells Valley SAC and BBA SAC. Consequently, the schemes are in conflict with the Habitats Regulations and Policies DP5 and DP6 of *Mendip District Local Plan Part 1* (adopted December 2014) (LPP1) which seek to ensure the protection, conservation and, where possible, enhancement of internationally, nationally or locally designated natural habitat areas and species and require compliance with the Habitats Regulations. I have also given consideration under Regulation 64 of the Habitats Regulations to the possibility of alternative solutions and

whether there are reasons of overriding public interest to grant permissions despite the negative implications for the SACs. I do not find there to be compelling reasons to grant permission for any schemes based on a lack of alternatives or overriding public interest and there is a lack of evidence to suggest otherwise.

#### *Wider biodiversity considerations*

31. In respect of the approach to wider biodiversity effects, Policy DP5 of LPP1 requires that proposals that have the potential to cause adverse impacts on species or habitats will be resisted unless in a number of instances, including where offsetting/compensation for the impacts can be secured. Whilst the mandatory Biodiversity Net Gain (BNG) measures (introduced via the Environment Act 2021) do not take effect for the appeal scheme given its date of submission, the preamble to Policy DP5 describes its purpose as effectively requiring no net loss of biodiversity value and both the Policy and preamble refer to the Council's Biodiversity Offsetting methodology.
32. However, given my findings in respect of protected species, I cannot be certain of the development achieving no net loss in any event, therefore, the proposal fails to accord with Policy DP5 of LPP1, irrespective of any suggestion of BNG mitigation and enhancement measures being achievable through either on or offsite sources.

#### *Location of development*

33. The current development plan includes LPP1 and the *Local Plan Part 2: Sites and Policies* (adopted December 2021) (LPP2).
34. Core Policy 1 of the LPP1 sets out that the majority of development is to be directed towards the five principal settlements of Frome, Glastonbury, Shepton Mallet, Street and Wells. The second tier of the Policy seeks to allow for new development in the rural parts of the district that is tailored to meet local needs in the primary villages, which includes the village of Norton St Philip. Part c) of the Policy seeks to strictly control development in the open countryside unless otherwise permitted under Core Policy 4.
35. Core Policy 2 of LPP1 sets out the housing target for the plan period and apportions this across all identified settlements. It also states in b) that delivery of housing will be secured from a range of areas including, where appropriate, mixed use development, outside of Development Limits through the Site Allocations process. The site is not within the development limits of Norton St Philip.
36. Core Policy 4 of LPP1 sets out that rural settlements and the wider rural area will be sustained by means such as making planned provision for housing within the primary and secondary villages having regard to identified constraints, at a scale commensurate with the existing housing stock and delivering opportunities for the provision of rural affordable housing.
37. The allocation of the site for development in the LPP2 was successfully challenged and, therefore, the site cannot be considered allocated as per LPP1 Core Policy 2. The proposals do not amount to a planned provision of housing either, given that they would be windfall developments adjoining a primary village. Whilst the provision of housing would help to sustain a rural community and would not be disproportionate relative to the scale of the existing housing

stock, neither scheme can be considered compliant with the development plan in terms of their location outside of the development limits of Norton St Philip. The schemes therefore conflict with the development plan in terms of their location.

38. In terms of the sustainability of Norton St Philip to support new development, the main parties agree that the site is a sustainable location with a range of everyday facilities to meet the needs of future users, including a convenience shop, public house, village hall, open spaces, nursery and first school. Out commuting to work is still likely, but there is a bus service available to locations including Bristol and Bath. Considered in the round, my view is that the range of available facilities make the location a sustainable one for either quantum of development proposed.
39. There was discussion during the hearing about the reduction in the bus service in recent years and the nature of the school which caters for a specific early age band rather than for the full range of primary school year groups. There are other local primary schools which cater for the other range of ages and transport is available to them from the respective villages. Similarly, the secondary schools are available in outlying settlements via bus transport. These aspects, whilst suboptimal, do not change my overall view that the village is sustainable and could support future residents without undue reliance on private vehicles.

#### *Landscape character and visual effects*

40. The Mendip District Landscape Assessment (2020) places the appeal site and the West Site within Landscape Character Area (LCA) C2: Norton St Phillip, Buckland and Orchardleigh Park Ridge. The essential characteristics of this LCA which relate to the site include elevated ridge landform, settlements nestled into sheltered spots on the ridge, medium sized regular fields and busy main roads. The East-South sites are relatively small scale parcels of roughly vegetated land which are enclosed by hedgerows and mature trees that adjoin the existing settlement.
41. A Landscape and Visual Impact Assessment (LVIA) was submitted with the application and a Landscape and Visual Hearing Statement was submitted with the appeal in response to various consultation responses, including that on behalf of the Council and the Parish Council. I have also had regard to the *Parish of Norton St Philip Character Assessment* and visual material submitted by interested parties. A series of Accurate Visual Representations (AVRs) for each scheme for years 1 and 15 was also produced in accordance with an accepted methodology which has been detailed.
42. The proposal would clearly affect the landscape character of the site through the introduction of dwellings onto the currently open fields. It would also reduce the experience of tranquillity, particularly as experienced along Mackley Lane. The retention of hedgerows and trees as key landscape features would be more successful in Appeal B than in Appeal A. In my view however, the landscape effects from either scheme would be tempered by the adjacency of the schemes with the settlement edge and the broad consistency of the form of development proposed to that which it would adjoin. My overall view is that the landscape character effects would be of a moderately harmful magnitude for Appeal B but Appeal A would result in increased character effects through the harsher interventions around Mackley Lane.

43. From a visual perspective, I have considered a range of long and short distance viewpoints suggested by the Parish Council and others. The proposals, alike the existing settlement, would occupy a high point in the landscape, which in turn means that they are theoretically visible from a long distance. The reality is that the proposals would be seen in the context of the existing settlement from all relevant viewpoints and introduces a similar form of development to that which it would adjoin. There would be some degree of visibility from an open gateway on Frome Road, where the upper parts of houses would be visible. Over time the effects here would be minimised through landscaping, but I do not regard that the visual effects from this area would be more than moderately harmful for either scheme.
44. The effects of the proposal on the Laverton Triangle area/Frome Road approach would be different between Appeals A and B. Whilst both proposals would introduce built form onto this space, it would not appear incongruous given the adjacency with other dwellings that surround it. However, the effects of the Appeal A scheme with a greater density, more rigid urban form and reduced landscaping would be more harmful than the Appeal B scheme which would be more open, organic and green following establishment of the landscaping. However, the visual effects here would be experienced within an existing townscape context.
45. The effects of the schemes in views from the Ponds Country Park and nearby footpaths would be in the context of the existing Fortescue Fields Phase I and would be softened over time with landscaping. I reach a similar conclusion in respect of potential glimpses towards the South Site from Church Mead insofar as the effects would be relatively limited and the development seen in context with the existing Fortescue Field development.
46. From within the Churchyard, there would be clearer views of the development to the right of the existing Fortescue Field Phase I, but it would be seen as an extension of the same with the benefit of greater landscaping in between. Additionally, the development would be at a sufficient distance so as not to appear to dominate the view even though there would be a reduced sense of rurality.
47. From footpaths in the wider surroundings, the proposal would generally be obscured by landform, existing buildings or filtered in views through existing vegetation and seen in the context of the existing settlement. There would be a noticeable degree of visual effects from the proposal in views from the A366 Wells Road. However, the development would be seen in context with the settlement and adjoining the existing Fortescue Fields Phase I. The degree of visibility of the settlement in this view given its ridgetop siting means that the development will still appear a relatively modest part of the overall view, and its effects would be softened over time with landscaping and the gradual weathering of the buildings.
48. Whilst I do not agree that the appellant's AVR's misrepresent the effects of landscaping and its ability to soften the impacts of the development by year 15 as alleged, I have assessed the visual effects on a precautionary basis assuming that its establishment could be less successful than that shown, but do not change my overall findings on the visual effects of the proposal.
49. In terms of what is valued locally, one of the key discussion points was the tree belt. It is essentially the 15m wide belt of trees that separates Fortescue Fields

Phase I from the village gateway and forms a boundary of the Laverton Triangle. The trees are not formally protected by tree preservation order but are required to be maintained by planning condition and separately, by way of management agreement. The tree belt has an existing opening in it which would be utilised to provide an access to the appeal site. Under Appeal A, the tree belt would be reduced in width along its length to around 6 metres and a gap would be created within it. Under Appeal B, the tree belt would be largely maintained at a width of 10 metres and would be selectively replanted in some areas to ensure longevity.

50. Clearly, under Appeal B, the tree belt with the greater width and density of tree screening would ensure coherence and effectiveness as a screening function. Appeal A would cause harm due to the erosion of the tree belt's width to the extent that it would appear 'scrappy' and less effective as a belt feature.
51. Mackley Lane is also a valued local rural lane which would undergo direct and indirect change from the schemes. Whilst a section of widening of the section closest to Frome Road would be needed in both schemes, Appeal B would retain a greater extent of the Mackley Lane hedgerow thereafter, with some openings with replacement hedge inset, and the influences of development visible behind and above it. In the case of Appeal A, more of the Mackley Lane hedgerow would be removed to be replaced, which would leave much of the development exposed for a period of time and would erode more of its rural character. The reestablishment of hedgerows would take a long period to establish to anything similar to that which currently exists.
52. I visited the village during the hours of darkness. I noted the continuous streetlighting on the approach to the village on the Frome Road (B3110). The existing Fortescue Fields development has ornate lighting columns and a relatively white light in public streets, whereas the historic core of the village has relatively dim light levels affixed to the buildings at a lower level. Despite the differences, I did not perceive the existing Fortescue Fields development as an anomaly in the village nightscape. My view is that the effects of the proposal on the nighttime view of the townscape would not be materially harmful.
53. Drawing together all of the above, Appeal A would, by virtue of its density, built form, reduction in landscape features along Mackley Lane and limited landscaping within the village gateway area of the Laverton Triangle, be harmful to the character and visual amenities of the area. The proposal would therefore conflict with Policies DP1, DP4 and DP7 of LPP1. These policies seek to ensure that development contributes positively to the maintenance and enhancement of local identity and distinctiveness and local landscape and achieve high quality design. Under Appeal B, the proposal's effects on the character and visual amenities of the area would also result in harm, but of a reduced magnitude of effect when compared with Appeal A. Nonetheless, the proposal would also conflict with Policies DP1, DP4 and DP7 of LPP1.

#### *Heritage effects*

54. The Norton St Philip Conservation Area (CA) has a dispersed plan form with two nuclei, the area in the west surrounding the grade II\* listed Church of St Philip and St James and the later school, with the development in the east centred around the George Inn and former market place located on the junction of two routes – the High Street/North Street route and the east-west route.

55. The appeal decision for previous appeal schemes<sup>3</sup> notes that the character and appearance of the CA is defined by the interplay between medieval, vernacular Cotswold type and classical architecture, mixed in with some positive Victorian contributions, and its coherent, tightly knit character when experienced along its through routes. My view is also that the significance of the CA is largely defined by its historic settlement pattern and its many listed and historic buildings. However, a contribution is made to the significance of the CA by the more rural and green elements both within and adjoining it, including the Churchyard, Church Mead and its rural landscape setting. The rural setting allows for an appreciation of the settlement's topographical context, modest scale and historic character, with the focal point of the Church visible from many areas in the rural surrounds.
56. Much of the South site is part of the peripheral but elevated wider countryside setting of the CA which, in my view, makes a modest but positive contribution to the significance of the CA.
57. The introduction of a suburban form of development comprising 20 dwellings with associated infrastructure on the wider countryside setting of the CA, would result in a degree of harm. However, due to its adjacency to the existing development of Fortescue Fields Phase I with which it would be seen in combination, the effects would be less pronounced. The effects from this aspect would be the same for Appeals A or B.
58. The smaller Eastern most aspect of the site is the Laverton Triangle, which is a treed space enclosed by high hedges and banks with additional trees within it. Part of it is within the CA and adjoins the frontage of the existing Fortescue Fields development on High Street/Town End and the Mackley Lane side is also bordered by three existing but unobtrusive dwellings. The junction of Town End and Mackley Lane sits surrounded by a cluster of dwellings.
59. As a relatively muted feature within the CA which is absent of buildings with verdant qualities, the Laverton Triangle contributes positively to the significance of the CA. But the way in which the countryside flows into this part of the village here is rather modest, and that one is aware of the built form of the village at this point already, rather than it being very distinctly part of the rural setting of the village.
60. In terms of the effects on the significance of the CA from the Appeal A scheme for 30 dwellings, the Laverton Triangle would receive 10 dwellings, reduced vegetation and associated infrastructure. Due to the amount of development proposed here and its arrangement, this would be a particularly intensive urban form of development for what is a currently undeveloped and green space, with the dwellings higher than those on the opposite side of Town End. The removal and replacement of the existing frontage boundaries behind the visibility splays and Mackley Lane widening here would create another particularly noticeable change in character visible at a prominent arrival point into the village and would add to the hard edge of the existing Fortescue Fields development. Whilst there would be softening effects from the scheme from the proposed replacement landscaping, it would take some time to establish and would not entirely recreate a sufficiently similar effect in the streetscene when compared to the verdant site in its existing condition. Therefore, the urban form of development proposed under Appeal A would cause minor direct harm to the

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<sup>3</sup> APP/Q3305/A/14/2221776 and APP/Q3305/A/14/2224073

character and appearance of the CA and would also harmfully change part of its setting, thus eroding its significance. These harms would cause less than substantial harm, and in my view, the level of harm would be of a moderate magnitude.

61. The Appeal B scheme for 27 dwellings would include 3 fewer dwellings on the Laverton Triangle. The effects of the development would be of a similar nature to Appeal A, but lessened to a degree by the reduced amount of built mass, greater distance from Frome Road and increased landscaping. Nonetheless, there would still be harm to the CA and to its setting, thus eroding its significance.
62. Given that I have found that harm would be caused to the significance of the CA from either appeal schemes, they would both conflict with, in particular, LPP1 Policy DP3.

#### *Overall heritage balance*

63. Under the terms of the Framework, Appeal A would result in less than substantial harm of a moderate magnitude, with Appeal B resulting in less than substantial harm of a low to moderate magnitude.
64. Appeal A would deliver 30 dwellings, of which 30% would be affordable housing (i.e. 9 units). Appeal B would deliver 27 dwellings, with the same proportion of affordable housing (resulting in the provision of 8 affordable units). Given the Council's shortfall in housing land, the provision of either 27 or 30 units of housing of both mixed and affordable housing is a substantial benefit of the scheme. The dwellings would also be in a sustainable location which is also a positive factor in support of either scheme.
65. Either development would also deliver a multi-use games area and allotment areas of public open space and connect into other outlying areas of public space. This is a benefit of both schemes that attracts great weight.
66. There would also be economic benefits from the construction phase and from new residents using local facilities and services. These benefits attract limited weight in favour of either scheme.
67. Taking account of the weight I attract to the identified public benefits taken as a whole, I conclude that they outweigh the less than substantial harm to the significance of the affected heritage assets, albeit more modestly so in the case of Appeal A.

#### **Other Matters**

68. A Regulation 14 version of the *Norton St Philip Neighbourhood Plan 2019 – 2029 (eNP)* was published and the consultation commenced on 30 August 2024 for 6 weeks. The Regulation 16 eNP was consulted upon until 17 January 2025. Whilst I note that the eNP proposes to allocate a site for a housing redevelopment scheme and identifies the appeal site and part of the East/South site as important green spaces, I attribute it limited weight at this stage.
69. The planning obligations submitted for either scheme seek to secure affordable housing, a multi-use games area, allotment space and other areas of common space and linkages to Ponds Country Park. It also seeks to provide

contributions toward education and highway improvements, and to provide the footpath links proposed to outlying areas. As the appeals are being dismissed, it has not been necessary to further examine the detail of the planning obligations.

### **Planning Balance and conclusions**

70. In respect of their conflict with the development plan by reason of scale and location, harms to landscape character and visual amenities, heritage effects and inability to ascertain that the schemes will avoid adverse effects on integrity of the SACs, the proposals conflict with the development plan when taken as a whole.
71. The shortfall in the housing land supply, whether very significant or acute, engages Framework paragraph 11 d), and consequently reduces the weight I afford to the conflict with the development plan on locational issues, landscape and visual effects. The application of the heritage balance has already resulted in a finding of the public benefits outweighing the identified harms in both cases.
72. However, the SACs are also areas protected by policies and footnote 7 of the Framework. As I have not been able to conclude that the integrity of the SACs would be maintained through either scheme, this factor provides a strong reason for refusing the developments. Therefore, the presumption in favour of sustainable development does not apply.
73. Nevertheless, I have had regard to the Framework's requirement to direct development to sustainable locations, make effective use of land, secure well-designed places and provide affordable homes. The delivery of housing is a public benefit in general, but particularly in the context of an acute shortfall in housing. The number of dwellings proposed would make a modest yet valuable contribution to the overall supply. Along with the delivery of affordable housing, these benefits attract significant weight. I have also had regard to the site's sustainable location which is a positive factor of either scheme.
74. Either development would also deliver a multi-use games area and allotments which would connect into other outlying areas of public space. These factors attract great weight as public benefits. The economic benefits also attract modest weight in favour of development. Other factors that achieve compliance with the relevant development plan policies are neutral factors which neither pull for or against the scheme.
75. However, the totality of these benefits does not outweigh the identified conflicts with the development plan or indicate that decisions should be taken other than in accordance therewith.
76. For the reasons outlined above, Appeals A and B are dismissed.

*H Nicholls*

INSPECTOR

## **APPEARANCES**

### FOR THE APPELLANT:

Mr Douglas Edwards KC	Counsel for the appellant
Mr Hugo Haig	Lochailort Investments Ltd
Ms Sarah Ballantyne-Way	Lochailort Investments Ltd
Dr Robert Adam	Robert Adam Architecture Architect
Ms Lucy Markham	Montagu Evans
Ms Clare Brockhurst	Leyton Place Landscaping
Mr Joshua Stafford	SWECO
Mr Elliott Burns	SWECO
Mr Neil Tiley	Pegasus
Mr Tim Wood	Stuart Michael Associates
Dr Martin Brammah	SWECO

### FOR THE LOCAL PLANNING AUTHORITY:

Mr Simon Trafford	Somerset Council, Planning
Ms Fiona Webb	Somerset Council, Landscape
Ms Jane Boldy	Somerset Council, Heritage
Ms Sarah Cruickshank	Somerset Council, Ecology
Ms Barbra Lakin	Somerset Council, Ecology
Mr Andre Sestini	Somerset Council, Policy
Ms Jo Milling	Somerset Council, Policy

### INTERESTED PARTIES:

Mr Ian Hasell	Chair of Norton St Philip Parish Council
Ms Tessa Hampden	Context Planning
Ms Sasha Berezina	Context Planning
Mr Fletcher Robinson	CPRE Somerset
Mr George Hitchens	Fortescue Fields Management Company Director
Mr Alan Carter	Local resident
Mr Andrew Blumfield	Local resident
Ms Linda Oliver	Local resident
Ms Dawn Denton	Somerset Councillor for NSP
Mrs Milne	Local resident
Ms Barbara Lund	Local resident
Ms Leslie Baker	Local resident
Mr Paul Sheppard	Local resident

**DOCUMENTS SUBMITTED DURING THE HEARING:**

1. Heritage assessment errata sheet
2. Judgement of Holgate J dated 16.12.22 (in substitute of Order)
3. CPRE Statement
4. Draft conditions V6
5. Norton St Philip Conservation Area Management Plan
6. Email from Mr Trafford
7. Attachment 1 from Mr Trafford – 2011/3015
8. Attachment 2 from Mr Trafford -2012/3082
9. UU – 8 dwellings
- 10.UU – 27 dwellings
- 11.UU- 30 dwellings
- 12.Power of attorney document
- 13.Title document and corresponding register entry
- 14.Title document and corresponding register entry
- 15.Views from PC for unaccompanied SV
- 16.Views from PC for unaccompanied SV
- 17.Norton ST P comments on UU
- 18.FF Man co comments on UU
- 19.West site conditions
- 20.27 unit scheme conditions
- 21.30 unit scheme conditions
- 22.West site landscaping plan
- 23.Cover letter for UUs and conditions
- 24.UU for 8 dwellings west site
- 25.UU for 27 dwellings site
- 26.UU for 30 dwellings site
- 27.Appellant cover letter dated 16.08.24
- 28.SWECO Botanical update 16.08.24
- 29.SWECO Bat Update 16.08.24
- 30.Appellant NPPF Letter
- 31.PC comments on NPPF
- 32.PC Comments on Neighbourhood Plan
- 33.ManCo comments on UU and conditions
- 34.Email from Council on HLS / NPPF changes
- 35.NSP comments on UU
- 36.Council ecology response
- 37.PC comments on conditions
- 38.8 Unit Scheme UU – track changes
- 39.27 Unit Scheme UU – track changes
- 40.30 Unit Scheme UU – track changes
- 41.8 Unit Scheme Conditions – track changes and clean versions
- 42.27 Unit Scheme Conditions – track changes and clean versions
- 43.30 Unit Scheme Conditions – track changes and clean versions
- 44.SWECO Autumn Bat Survey Results and Response to the LPA's submission

- 45.8 Unit Scheme UU – clean
- 46.27 Unit Scheme UU – clean
- 47.30 Unit Scheme UU – clean

**DOCUMENT SUBMITTED AFTER THE HEARING:**

- 48.27 unit scheme conditions clean
- 49.30 unit scheme conditions clean
- 50.8 unit scheme conditions clean
- 51.27 unit scheme conditions tracked changes
- 52.30 unit scheme conditions tracked changes
- 53.8 unit scheme conditions tracked changes
- 54.Email from CPRE Somerset
- 55.Final UU 8 unit scheme
- 56.Final UU 27 unit scheme
- 57.Final UU 30 unit scheme
- 58.Final UU 8 unit scheme (amended)
- 59.Final UU 27 unit scheme (amended)
- 60.Final UU 30 unit scheme (amended)
- 61.Natural England objection letter, dated 16 October 2024
- 62.Email from Council re Natural England objection, dated 21 October 2024
- 63.Appellant letter and response to Natural England objection, respectively dated 16 and 18 October 2024
- 64.Letter from David Scarrow, dated 8 November 2024
- 65.Letter from Fortescue Fields Management Company, dated 12 November 2024
- 66.Letter from Norton St Philip Parish Council, dated November 2024
- 67.Natural England letter, dated 6 December 2024
- 68.Appellant final comments in respect of ecology matters, dated 16 December 2024
- 69.Norton St Philip Parish Council letter dated 21 December 2024
- 70.Appellant letter on December 2024 NPPF, dated 6 January 2025
- 71.Norton St Philip Parish Council letter dated 7 January 2025
- 72.Council email re December 2024 NPPF, dated 8 January 2025
- 73.Appellant final comments on Council email, 14 January 2025