

Planning Appeal Statement

**Field on the Corner with Ferndale Road, Deadmill Lane
Lower Swainswick, Bath.**

Outline planning application for the erection of 15 dwellings.

May 2022

Table of Contents

1.0	Introduction.....	2
	Planning Application Documents.....	6
2.0	Site & Surroundings	7
	Vehicular & Pedestrian Access	11
4.0	Planning History	12
	Core Strategy (2014).....	14
	Placemaking Plan (July 2017)	15
	National Planning Policy Framework (NPPF)	16
6.0	Planning Considerations	22
	Principle of Development – Agreed with the Council.....	22
	Green Belt	24
	Reason for Refusal 1 – Alleged harm upon local landscape and Bath World Heritage Site	24
	Reason for Refusal 3 – Proposed vehicular and pedestrian access.....	32
	Reason for Refusal 4 – Impact on trees; Reason for Refusal 5 – Potential impact on protected species & Reason for Refusal 6 – Surface Water Drainage	38

Appendices

Appendix A – Decision Notice

Appendix B – Previous Appeal decision

Appendix C – Relevant Policy Extracts

Appendix D – Core Strategy Policy Extracts

Appendix E – Larkhall Character Statement

Appendix F – City of Bath World Heritage Site Setting / City of Bath WHS Management Plan 2016-2022

Appendix G - Secretary of Statement Decision Whitehouse Farm – Derwent Valley Mills World Heritage Site

1.0 Introduction

- 1.1 This appeal statement has been prepared by Church & Green on behalf of Millen (“the Appellant”), in support of a planning appeal (“the Appeal”) for outline

planning permission for the erection of 15 affordable dwellings on land to the north east of Deadmill Lane, Bath.

1.2 The site falls within the jurisdiction Bath and North East Somerset (BNES) Council (“the Council”).

1.3 The description of the appeal proposed development is:

“Outline application (with access and layout to be determined and all other matters reserved) for the development of 15 affordable dwellings.”

1.4 Within section 2 of this Statement, we will describe the Appeal site and surroundings. Section 3 will set out the proposed development subject to this appeal. Section 4 examines the planning history of relevance to this application with section 5 reviewing relevant planning policy applicable. In Section 6 the material planning considerations of this appeal are considered, setting out the justification for why the appeal should be allowed and planning permission granted.

1.5 This appeal follows a previous refusal of planning permission by the Council (Ref.No 20/00491/OUT), dated 9th April 2020 and a subsequent appeal (Ref.No. APP/F0114/W/20/3260800). Whilst having been dismissed by the Inspector on 1st March 2021, the recent planning application (now subject of this Appeal) sought to address a number of matters arising. Notably, however the proposal was deemed acceptable in principle for the purposes of providing affordable housing within the Green Belt. The Council now agree that it is not inappropriate development within the Green Belt.

1.6 Notwithstanding that the Council now accept that the development is not inappropriate development within the Green Belt, the Council refused in its decision dated 15th February 2022, to grant planning permission for the development listed in paragraph 1.3 (Application Ref.No. 21/04746/OUT) for the following 7 reasons (Appendix A):

i) Reason for Refusal 1 – Alleged harm upon local landscape and Bath World Heritage Site

It has not been demonstrated that the proposed development could be delivered whilst ensuring that the local landscape character, features, distinctiveness and views are not harmed. The proposal will result in the erosion of an important open green space as a result of the proposed layout and is considered to result in unacceptable harm to the local landscape and the Bath World Heritage Site. Any harm to the Outstanding Universal Values of the World Heritage Site and its setting are considered to be less than substantial harm. However, the harm is not considered to be outweighed by the public benefits of the proposal. The proposal is therefore contrary to policies B4 and CP6 of the Bath and North East Somerset Core Strategy and policies RA4, NE2, NE2A and HE1 of the Bath and North East Somerset Placemaking Plan.

ii) Reason for Refusal 2 – Alleged Harm to Conservation Area and Dead Mill (Non-designated heritage asset)

As a result of the proposed siting and layout, the proposal is considered to have a detrimental impact upon the setting of the adjacent Conservation Area and the non-designated heritage asset "Dead Mill". Although the public benefits are considered to outweigh the harm to the setting of Dead Mill independently, the impacts contribute to the totality of harm. The harm to the setting of the Conservation Area is considered to be less than substantial and there are not considered to be public benefits which outweigh this harm. As such, the proposal is contrary to policies B4 and CP6 of the Bath and North East Somerset Core Strategy and policies D1, D2, D3, D4 and HE1 of the Bath and North East Somerset Placemaking Plan.

iii) Reason for Refusal 3 – Proposed vehicular and pedestrian access

The proposal fails to provide a suitable vehicular access, which does not prejudice highway safety or provide safe and convenient access to, and within, the site for pedestrians, cyclists and those with mobility impairment. The development would therefore prejudice highway safety. As such, development is

considered to be contrary to the Development Plan, in particular policies ST1, ST7, D1, D3, of the Bath and North East Somerset Placemaking Plan.

iv) Reason for Refusal 4 – Impact on trees

Insufficient information has been submitted to allow for any arboricultural implications of the proposed layout to be fully understood. The proposal does not therefore have due regards to trees, particularly those of wildlife, landscape and amenity value. The development therefore fails to comply with the requirements of Bath and North East Somerset Placemaking Plan policy NE6.

v) Reason for Refusal 5 – Potential impact on protected species

Insufficient information in relation to bat populations and reptile species has been provided and the proposal therefore fails to demonstrate compliance with the Conservation of Habitats and Species (Amendment) (EU Exit) Regulations 2019 and the Wildlife and Countryside Act 1981 (as amended). At this stage, based on the submitted information, it cannot be ascertained whether the development is ecologically acceptable. The development is therefore contrary to policies NE3, NE5 and D5 of the Bath and North East Somerset Placemaking Plan.

vi) Reason for Refusal 6 – Surface Water Drainage

The submitted Flood Risk Assessment is considered to be unacceptable and a suitable method of Surface Water Drainage has not been provided. The proposal is considered to be contrary to policy CP5 of the Bath and North East Somerset Core Strategy.

vii) Reason for Refusal 7 – Absence of a S106 Planning obligation

The application has failed to secure the required planning obligations to the Council's satisfaction, including an agreed policy compliant affordable housing scheme. The proposal is therefore contrary to policies CP9 and CP13 of the Bath and North East Somerset Core Strategy and the Planning Obligations Supplementary Planning Document 2015.

1.7 Of the above reasons **3-7No.** Were also listed in a similar fashion as part of the

decision against the previous planning application (Ref.No. 20/00491/OUT). The Inspector in his decision, set out at Appendix B, however, found no substantive issue with regard to reason for refusal 4 regarding impact on trees, No.5 regarding ecological interests and No.7 regarding drainage. The Unilateral Undertaking Reason 7 was also deemed to be entirely satisfactory for the purposes of securing the affordable housing in perpetuity.

Planning Application Documents

1.8 The planning appeal is supported by the following plans and documents.

Drawing/Document	Reference/Date
<i>Site Plan and Site Location by Church & Green</i>	<i>DL001</i>
<i>Proposed Block Plan by Church & Green</i>	<i>DL002</i>
<i>Site Plan by Church and Green</i>	<i>DLO03 Rev A</i>
<i>Site Plan Coloured by Church & Green</i>	<i>29.09.21</i>
<i>Location Plan by Millen</i>	<i>DMLB 003 Rev o</i>
<i>Landscape Mitigation Plan by Lingard Farrow Styles Landscape Mitigation Plan</i>	<i>3090-001 Rev B</i>
<i>Planning Statement Church & Green</i>	<i>Oct 2021</i>
<i>Transport Statement</i>	<i>Oct 21</i>
<i>Transport Note</i>	<i>Nov 21</i>
<i>Application Forms and Certificates</i>	
<i>Tree Arboricultural Impact Assessment by Millen</i>	<i>TPP AIA</i>
<i>Sustainability Statement by Millen</i>	<i>22.10.21</i>
<i>Affordable Housing Statement by Millen</i>	<i>21.10.21</i>
<i>Design & Access Statement by Church & Green</i>	<i>Oct 21</i>
<i>Ecology Report by Cherryfield Ecology</i>	<i>04.12.19</i>
<i>Flood Risk Assessment by Skanska</i>	<i>14.10.21</i>
<i>Landscape Visual Impact Assessment by Lingard Farrow Styles</i>	<i>Rev A Jan 22</i>
<i>Landscape Visual Impact Assessment by Lingard Farrow Styles [Superseeded]</i>	<i>Oct 21</i>
<i>Landscape Visual Impact Assessment Response to Comments by Lingard Farrow Styles</i>	<i>Jan 21 [22]</i>

Table 1 – Planning Appeal Submission Documents and Drawings

1.9 A separate Unilateral Undertaking (UU), based on the previously submitted version that was deemed acceptable to the Planning Inspector, is submitted alongside the application that will secure the delivery of the homes as affordable housing in perpetuity.

2.0 Site & Surroundings

- 2.1 The Appeal site (“the Site”) relates to a parcel of land located on the corner of Ferndale Road and Deadmill Lane, within the Lambridge Ward of Bath. The site lies within the designated Green Belt; The World Heritage Site Boundary; and the designated landscape setting of the Settlement of Bath. The Bath Conservation Area borders the southern and eastern boundaries of the site but does not cover the site; and the Cotswolds Area of Outstanding Natural Beauty borders the western boundary of the site - again this does extend to cover the Site.
- 2.2 The Site is located on the lower slopes of the Lam Brook Valley at the northern edge of Swainswick, itself at the northern edge of Bath, an area known as Larkhall. Larkhall features more unified styles of housing and is more strongly defined by the layout of principal roads. The majority of housing of Larkhall is 20th Century but it does include some notable Georgian/Victorian terraces and townhouses towards the south-western edge of the area. The Larkhall Character Study (1998) defines the area to be within one characterised by pre-war and post war housing, prior to reaching “the rural area of Bailbrook Lane”, which lies beyond the Gloucester Road, which lies to the east. There is no more up-to-date conservation area guidance relevant to the area or that has been updated by the Council in the intervening years.
- 2.3 The Site is part of a larger triangular area enclosed by Ferndale Road to its south, Deadmill Lane to its west and Gloucester Road to the east. Ferndale Road ascends steeply to the west to join with Gloucester Road. In the south-eastern corner of this triangle of land is an existing development of two storey post-war housing, set in three terraces that are aligned north-south and run parallel with each other (namely 17-20 Ferndale Road (westernmost terrace), 21-25 Ferndale Road (central terrace), and 85-90 Gloucester Road (easternmost terrace)). The Site is sloping and descends from its north-eastern corner near Gloucester Road (~45m AOD) down to its south-western corner at the junction of Ferndale Road and Deadmill Lane (~31m AOD).

- 2.4 West of Deadmill Lane are several houses, including Sunnymead and Monksmead, Burnside and Banks (both semi-detached post-war and two-storey), Lambrook, Deadmill (work/live unit), Old Mill Cottage, The Ferns and Fernside. The southern side of Ferndale Road is lined by a two storey Victorian terrace (nos. 4-16) and features garages and parking leading to a more modern nursing home at its southern end. The eastern side of Gloucester Road features a mix of two storey detached and semi-detached housing. Bennett's Road that extends eastwards from Gloucester Road features a number of post-war bungalows.
- 2.5 The Site itself comprises two small fields which together cover an area of approximately 0.35ha in area. The smaller southern field is a mix of improved grass and tall ruderal vegetation mainly comprising nettle and bramble. It features two dilapidated sheds and a small poly tunnel; one of the sheds abuts Deadmill Lane. The southern field abuts Ferndale Road to its south where the boundary is defined by a stone wall.
- 2.6 The northern field is separated from the southern field by a brick wall and some adjacent small trees with access between the two fields via a field gate. The northern field is mostly improved grass with areas of tall ruderal vegetation mainly comprising nettle and bramble. Vehicular access is onto Deadmill Lane via a field gate close to an existing light column. Within the field, mostly close or along the boundary are a number of smaller individual trees and larger hedgerow planting.
- 2.7 To the immediate north of the Site's northern field is a similar small field, beyond a post and rail fence. The field north of the Site contains a small dilapidated agricultural structure and features grass and areas of trees and scrub. This is enclosed by Deadmill Lane to the west and the Gloucester Road to the east. This field extends beyond Bennett's Road which forms the outermost edge of the main post-war development in this part of the City. The land is owned by the Council and is proposed to be used for allotments. It extends to broadly 0.46ha in area.

2.8 The site falls within flood zone 1, the lowest area of flood risk and so it not at risk of flooding.

3.0 Appeal Proposals

- 3.1 The proposal is for a wholly affordable housing scheme submitted in outline with all matters reserved other than access and layout.
- 3.2 Notwithstanding those matters relating to Appearance, Landscaping and Scale are reserved for consideration at this stage, careful consideration has been given to a layout to establish how the proposal could deliver the quantum of 15No.dwellings. As such, development of the proposals is able to deliver a carefully considered and mitigated layout that will provide a satisfactory level of information to inform the reserved matters stage submission.
- 3.3 Further detail of the location of the site and design evolution is set out within the supporting documents listed in paragraph . However, it should be highlighted that the proposed dwellings would incorporate a number of sustainable measures including renewable energy, rain water harvesting and thermally efficient envelopes meaning the buildings would be affordable in respect of utility bills and help fight climate change. Millen Homes is committed to sustainable development and is seeking to contribute towards tackling climate change via all its developments. A separate sustainability statement is submitted in support of the application which details the sites' sustainable location and also contains target EPC levels for the energy efficient dwellings.
- 3.4 In summary the Appeal proposals will deliver:
- Fifteen affordable dwellings with private gardens.
 - A mix of terraced and semi-detached properties to meet a range of housing need.
 - 2.5 storeys to a maximum ridge height of ~10m located with floor levels similar to the existing levels of the Site
 - The highest proposed roof ridge is ~51.5m AOD (Plot 3), the lowest roof ridge is ~42m AOD (Plot 15)
 - A materials palette for the buildings informed by the local vernacular, including Bath Stone;

- New vehicular site entrance with visibility splays, close to the existing point of access;
- Internal access road and pedestrian paths, linked to the neighbouring development to the east;
- Permeable grass grid paving to parking areas;
- Integrated landscape mitigation including retained trees, stone walls, new planting.
- Open spaces and vistas across the site, including to Deadmill.
- High energy efficient dwellings with embodied sustainable measures.

Vehicular & Pedestrian Access

3.5 Details of access are set out on Dwg.No. Ref.No 800.0035.001 Rev B - *Proposed Access Design & Visibility Splay Assessment*. This shows adequate visibility splays are able to be provided. It is not required to provide additional street lighting over and above the existing provision. Pedestrian connectivity is via an internal link to the east that links with provision in Ferndale Road. Parking spaces are shown to be provided on the ratio of 2 spaces per dwelling. Cycle parking provision is also shown.

4.0 Planning History

4.1 Relevant planning history is set out below. The application follows a previous application that was refused by the Council on 9th April 2020. Previous applications are not deemed material to the current application.

Application Number	Description	Decision
20/00491/OUT	Erection of 18 Dwellings.	Refused

Table 4.1 Planning History

4.2 The Council's refusal cited eight reasons for refusal in total and included objections based on:

- 1) Inappropriate Development in the Green Belt;
- 2) Landscape Character;
- 3) Impact on Conservation Area and Deadmill (Non-designated Heritage Asset);
- 4) Arboricultural Assessment;
- 5) Ecology Implications;
- 6) Vehicular Access;
- 7) Floodrisk and Drainage;
- 8) Legal Obligation to secure affordable housing scheme, local training & fire hydrants.

4.3 A subsequent planning appeal was dismissed but for reasons that were sought to be overcome as part of the current submission following a detailed understanding of the site constraints and landscape setting. Importantly, the Inspector deemed that the development was not inappropriate development and was acceptable in principle.

4.4 A number of the Council's other reasons did not carry weight (arboriculture, ecology and drainage) in the planning balance. Accordingly, the applicant sought to review the proposals based on further professional input, notably

including a detailed Landscape and Visual Impact Assessment and heritage analysis. Alongside ongoing urban design input a more refined scheme was submitted that included three less dwellings than as previously sought. Importantly, the overall quantum of development has been reduced to remain viable which reduces the pressure on site and allows a greater degree of openness and permeability through the site.

5.0 Planning Policy

- 5.1 Section 70(2) of the Town and Country Planning Act 1990 (as amended) requires that, inter alia:

“In dealing with an application for planning permission ... the authority shall have regard to—

(a) the provisions of the development plan, so far as material to the application,

(c) any other material considerations.”

- 5.2 Section 38(6) of the Planning and Compulsory Purchase Act 2004 states that:

“if regard is to be had to the development plan for the purpose of any determination to be made under the planning Acts the determination must be made in accordance with the plan unless material considerations indicate otherwise.”

- 5.3 The National Planning Policy Framework, (NPPF) (Feb 2019) states at paragraph 2:

“Planning law requires that applications for planning permission be determined in accordance with the development plan, unless material considerations indicate otherwise. The National Planning Policy Framework must be taken into account in preparing the development plan, and is a material consideration in planning decisions.”

- 5.4 The adopted development plan for BNES, relevant to this Site comprises

- **the Bath & North East Somerset Core Strategy (July 2014)**
- **the Bath & North East Somerset Placemaking Plan (July 2017)**
- the West of England Joint Waste Core Strategy (2011)
- the Bath & North East Somerset saved Local Plan policies (2007) not replaced by the Core Strategy or the Placemaking Plan:
- Policy GDS.1 Site allocations and development requirements (policy framework)
- Policy GDS.1/K2: South West Keynsham (site)
- Policy GDS.1/NR2: Radstock Railway Land (site)
- Policy GDS.1/V3: Paulton Printing Factory (site)
- Policy GDS.1/V8: Former Radford Retail System's Site, Chew Stoke (site)

Core Strategy (2014)

- 5.5 The Core Strategy for Bath and North East Somerset was formally adopted by the Council on 10th July 2014.

- 5.6 The following policies of the Core Strategy are relevant to the determination of this application:

- SD1 Presumption in favour of sustainable development 1, 137, 146-151,154-155, 162, 175
- DW1 District Wide Spatial Strategy
- B1 Bath Spatial Strategy
- **B4 The World Heritage Site and its Setting**
- CP2 Sustainable Construction
- **CP5 Flood Risk Management**
- **CP6 Environmental Quality**
- CP8 Green Belt
- **CP9 Affordable Housing**
- CP10 Housing mix
- **CP13 Infrastructure Provision**
- RA4 Rural Exception Sites

Placemaking Plan (July 2017)

5.7 The following policies of the Placemaking Plan are relevant to the determination of this application:

- **D1 Urban Design Principles**
- **D2 Local Character and Distinctiveness**
- **D3 Urban Fabric**
- **D4 Streets and spaces**
- **D5 Building Design**
- D6 Amenity
- D8 Lighting
- D10 Public Realm
- BD1 Bath Design Policy
- SCR5 Water Efficiency
- **HE1 Historic Environment**
- **NE2 Conserving and enhancing the landscape and landscape character**
- **NE2A Landscape Setting of Settlements**
- **NE3 Sites, species and habitats**
- **NE5 Ecological Networks**
- **NE6 Trees and woodland conservation**

- **ST1 Promoting sustainable travel**
- **ST7 Transport requirements for managing development**
- Larkhall Character Statement and Development Principles 1998
- Locally listed heritage assets
- The Setting of the City of Bath, World Heritage Site
- National Planning Policy Framework (February 2019) and the National Planning Practice Guidance can be awarded significant weight.

National Planning Policy Framework (NPPF)

- 5.8 The National Planning Policy Framework (“the NPPF”) was revised in July 2021 and establishes overarching principles of the planning system which aim to contribute to the achievement of sustainable development. Paragraph 2 of the NPPF states that: “Planning applications for planning permission should be determined in accordance with the development plan unless material considerations indicate otherwise.”
- 5.9 Paragraph 8 of the NPPF stipulates the planning system has three overarching, mutual objectives for achieving sustainable development which are:
- a) “Economic – helping to build a strong, responsive and competitive economy;
 - b) Social – supporting strong, vibrant and healthy communities and providing sustainable homes and by creating a well-designed environment with accessible services that support communities’ social well-being;
 - c) Environmental – protecting and enhancing our natural, built and historic environment; including making effective use of land and helping to improve biodiversity.”
- 5.10 Paragraph 11 states that plans and decisions should apply a presumption in favour of sustainable development. For decision-taking, this means, where the policies which are most important for determining the application are out-of- date, granting permission, unless policies that protect assets of particular importance (such as designated heritage assets) provide a clear reason for refusal, or any adverse impacts of doing so would significantly and demonstrably outweigh the benefits when assessed against the Framework’s policies as a whole.

- 5.11 When determining applications, paragraph 38 stipulates that Local Planning Authorities should approach decisions in a positive and creative way, and work proactively with applicants to secure developments that improve the economic, social and environmental conditions of an area.
- 5.12 Paragraph 47 requires applications for planning permission to be determined in accordance with the development plan unless material considerations indicate otherwise. It encourages decisions on applications to be made as quickly as possible within statutory timescales.
- 5.13 Paragraph 48 asserts that local authorities should give weight to relevant policies in emerging plans according to: a) The stage of preparation of the emerging plan b) The extent to which there are unresolved objections to relevant policies c) The degree of consistency of the relevant policies in the emerging plan to the NPPF
- 5.14 Section 5 on delivering housing sets out the Government's commitment to boosting the supply of homes (paragraph 60).
- 5.15 Paragraph 63 states the provision of affordable housing should not be sought for residential developments that are not major, other than in designated rural areas (where policies may set out a lower threshold of 5 units or fewer).
- 5.16 Paragraph 74 states that a five year supply of deliverable housing sites, with the appropriate buffer, can be demonstrated where it has been established in a recently adopted plan, or in a subsequent annual position statement which has been produced through engagement with developers and other who have an impact on delivery.
- 5.17 Paragraph 85 requires *"Planning policies and decisions should support the role that town centres play at the heart of local communities, by taking a positive approach to their growth, management and adaptation"*. Part of states that it should be recognised *"that residential development often plays an important role in ensuring the vitality of centres and encourage residential development on appropriate sites"*.
- 5.18 Paragraph 92 requires proposals to achieve healthy, inclusive and safe places which are attractive, well designed, accessible, discourage crime / fear of crime, and support health life styles.
- 5.19 Paragraph 105 states: *"The planning system should actively manage patterns of*

growth in support of these objectives. Significant development should be focused on locations which are or can be made sustainable, through limiting the need to travel and offering a genuine choice of transport modes. This can help to reduce congestion and emissions, and improve air quality and public health... this should be taken into account in both plan-making and decision-making.”

- 5.20 Paragraph 111 explains that applications should only be refused on highway grounds if there is an unacceptable impact on high way safety or the cumulative impact on the road as a result of the proposed development a seen to be severe.
- 5.21 Paragraph 112 of the Framework explains that proposals should: Firstly, give priority to pedestrian and cyclists and then to public transport users; Address needs for people with disabilities and mobility issues; Create safe, secure and attractive places, which avoid any conflict between users; Allow for efficient delivery of good and emergency access.
- 5.22 Paragraph 120(d) states that decisions should “*promote and support the development of under-utilised land and buildings, especially if this would help to meet identified needs for housing where land supply is constrained and available sites could be used more effectively*”.
- 5.23 Paragraphs 122 and 123 require proposals to reflect the changes in demand for land, and explains that Councils are to take a positive approach to applications for alternative uses of land which is currently developed but not specifically allocated.
- 5.24 Paragraph 124 outlines that the appropriate densities of proposal sites shall be determined based upon: The identified need for different housing; Local market conditions and viability; The availability of infrastructure & services, both existing and proposed; The desirability of maintaining an areas prevailing character; The importance of securing well designed, attractive and healthy places.
- 5.25 Paragraph 125 sets out that the potential of land should be optimised to sustain an appropriate amount of development.
- 5.26 Paragraph 130 requires developments to have a high-quality design which integrates and functions well with the surrounding area, to be visually attractive with good architecture, layout and appropriate landscaping, to be sympathetic to local character

and heritage whilst not preventing higher densities, to contribute to local distinctiveness and sense of place, optimise site potential, and provide good level of amenity for residents and not undermine amenity of neighbours.

- 5.27 Paragraph 131 highlights that trees make an important contribution to character and quality of an area, therefore opportunities to incorporate new trees into a development and retain existing trees where appropriate.
- 5.28 Paragraph 134 states: *“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. Conversely, significant weight should be given to: (a) 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 (b) outstanding or innovative designs which promote high levels of sustainability, or help raise the standard of design more generally in an area, so long as they fit in with the overall form and layout of their surroundings.”*
- 5.29 Paragraph 180 requires planning decisions to prevent significant harm to biodiversity, and any harm to be adequately mitigated.
- 5.30 Paragraphs 183 to 186 require development proposals to not have an adverse impact on amenity of future occupants or neighbours due to contamination and pollution, and any impacts should be sufficiently mitigated.
- 5.31 Paragraph 187 requires sufficient noise mitigation in place to prevent noise from existing businesses (such as pubs) having an adverse effect on future occupants, so that unreasonable restrictions are not placed on them in future as a result of allowing the proposed development to proceed.
- 5.32 Paragraphs 199 to 208 set out requirements for assessing impact on heritage assets and how this is weighed in the planning balance. Paragraph 199 states that great weight should be given to the conservation of a designated heritage asset, and paragraph 200 states 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. Substantial harm to or loss of: grade II listed buildings... should be exceptional... [and] assets of the highest significance, notably schedule monuments... grade... II listed buildings... should be wholly exceptional*

5.33 Paragraph 201 states: “Where a proposed development will lead to substantial harm to (or total loss of significance of) a designated heritage asset, local planning authorities should refuse consent, unless it can be demonstrated that the substantial harm or total loss is necessary to achieve substantial public benefits that outweigh that harm or loss.”

5.34 Paragraph 202 sets the test for less than substantial harm: “**Where a development proposal will lead to less than substantial harm to the significance of a designated heritage asset, this harm should be weighed against the public benefits of the proposal** including, where appropriate, securing its optimum viable use.”

5.35 Paragraph 207 states: “Not all elements of a Conservation Area or World Heritage Site will necessarily contribute to its significance. Loss of a building (or other element) which makes a positive contribution to the significance of the Conservation Area or World Heritage Site should be treated either as substantial harm under paragraph 200 or less than substantial harm under paragraph 201, as appropriate, taking into account the relative significance of the element affected and its contribution to the significance of the Conservation Area or World Heritage Site as a whole.”

5.36 The NPPF Chapter 13 Protecting Green Belt Land provides the current national policy on development within the Green Belt. Paragraph 137 states “the fundamental aim of Green Belt policy is to prevent urban sprawl by keeping land permanently open; the essential characteristics of Green Belts are their openness and their permanence.”

5.37 Paragraph 138 states: “Green Belt serves five purposes: to check the unrestricted sprawl of large built-up areas; to prevent neighbouring towns merging into one another; to assist in safeguarding the countryside from encroachment; to preserve the setting and special character of historic towns; and to assist in urban regeneration, by encouraging the recycling or derelict and other urban land.”

- 5.38 Paragraph 147 states: *“inappropriate development is, by definition, harmful to the Green Belt and should not be approved except in very special circumstances”*. For planning applications paragraph 148 directs *“local planning authorities should ensure that substantial weight is given to any harm to the Green Belt. ‘Very special circumstances will not exist unless the potential harm to the Green Belt by reason of inappropriateness, and any other harm resulting from the proposal, is clearly outweighed by other considerations.*
- 5.39 Paragraph 149 part c states: *“A local planning authority should regard the construction of new buildings as inappropriate in the Green Belt. Exceptions to this are: Limited affordable housing for local community needs under policies set out in the development plan (***including policies for rural exception sites***); ”* (our emphasis).

6.0 **Planning Considerations**

6.1 This section considers the following main planning issues set out in the Reasons for Refusal as set out, a final section sets out the merits of the proposal and the planning balance;

- i) Principle of Development – Agreed with the Council**
- ii) Reason for Refusal 1 – Alleged harm upon local landscape and Bath World Heritage Site**
- iii) Reason for Refusal 2 – Alleged Harm to Conservation Area and Dead Mill (Non-designated heritage asset)**
- iv) Reason for Refusal 3 – Proposed vehicular and pedestrian access**
- v) Reason for Refusal 4 – Impact on trees; Reason for Refusal 5 – Potential impact on protected species & Reason for Refusal 6 – Surface Water Drainage**
- vi) Reason for Refusal 7 – Absence of a satisfactory S106 Planning obligation**
- vii) Planning Balance**

Principle of Development – Agreed with the Council

6.2 The site lies within the boundary of the City of Bath and adjacent to the existing built-up area meaning that in principle, residential development can be considered acceptable and would meet the requirements for sustainable development set out within the NPPF having regard to the functional relationship with the existing development forming part of the settlement.

6.3 The proposals consist solely of affordable dwellings pursuant to Policy RA4 (Rural Exception Sites) which permits the development of 100% affordable housing schemes to meet identified needs. The detailed requirements set out the following which should be satisfied:

- a - it meets a demonstrated local need for affordable housing;*
- b - the housing remains affordable in perpetuity;*

- c - occupancy of the affordable housing would remain, as a first priority, for those with demonstrated local connections;*
- d - the development is in scale and keeping with the form and character of its location;*
- e - the development is well related to community services and facilities.*

- 6.4 As was clearly understood by the Inspector as part of the previous appeal there remains an extant need for affordable housing consisting of over 100 persons in the locality according to the Council's records at the time of the appeal. This stood at 114 general needs applicants. The applicant had further established that 134 households required affordable housing locally for the local wards and which is still pertinent now. Such a high demand for affordable housing, against a demonstrably low level of delivery, which was in fact zero in recent years pursuant to Policy RA4, meant that the Inspector deemed the requirements of the policy to be engaged. A high level of need was afforded weight to the extent that the Inspector deemed that the requirements of Policy RA4 (a) were fully satisfied. The Council agree within the Officer's delegated report under the criterion (a) that "*It meets a demonstrated local need for affordable housing*" and thus to the fact that there is a demonstrated local need for affordable housing.
- 6.5 Other requirements of Policy RA4 are also addressed through this application: that the housing remains in perpetuity, is secured with a local connection, requirements (b) and (c), is addressed through the legal Undertaking, which the Inspector deemed was also acceptable. The Council do not accept that the legal undertaking is sufficient. The Appellant maintains that its perfectly adequate to enable such matters to be secured.
- 6.6 That the development is appropriate for the area's character (Criterion (d)) is considered more fully below and supported by the detailed Landscape and Visual Impact Assessment submitted in support of the Appeal. In addition, the proximity of local goods and services is highlighted in the Design and Access Statement. Notably, pedestrian access to the site is linked to the

existing footway along Ferndale Road. This makes facilities in Larkhall, including shops and convenience stores as well as public transport connections on Gloucester Road only a short walk away (less than 500m). Accordingly, criterion (e) is also satisfied in the Appellant's view.

Green Belt

6.7 The site falls within the Green Belt. As set out within the NPPF, paragraph 149 part (f) deems that limited affordable housing for local community needs is not to be regarded as inappropriate development. As exception criteria is met, the proposals do not constitute inappropriate development within the Green Belt. Therefore, there is **no requirement to assess the proposals impact on openness, to demonstrate very special circumstances, nor is it harmful to the openness of the Green Belt or to the purposes of including land within it.**

6.8 It is contended that the appeal proposals are therefore wholly in accordance with NPPF chapter 13, and relevant planning policy including CP8 and therefore there are no Green Belt related grounds why the appeal should be upheld on these grounds.

Reason for Refusal 1 – Alleged harm upon local landscape and Bath World Heritage Site

6.9 RfR1 States that:

It has not been demonstrated that the proposed development could be delivered whilst ensuring that the local landscape character, features, distinctiveness and views are not harmed. The proposal will result in the erosion of an important open green space as a result of the proposed layout and is considered to result in unacceptable harm to the local landscape and the Bath World Heritage Site. Any harm to the Outstanding Universal Values of the World Heritage Site and its setting are considered to be less than substantial harm. However, the harm is not considered to be outweighed by the public benefits of the proposal. The proposal is therefore contrary to policies B4 and CP6 of the Bath and North East

Somerset Core Strategy and policies RA4, NE2, NE2A and HE1 of the Bath and North East Somerset Placemaking Plan.

- 6.10 RfR1 relates to matters regarding landscape which relate to consideration of matters regarding the Bath City WHS. The design and layout of the Appeal scheme has been developed to consider the relationship with surrounding buildings and within the landscape setting. This has included reference to a detailed Landscape and Visual Impact Assessment LVIA undertaken by Lingard Farrow Styles (LFS) undertaken in support of the application dated October 2021 in accordance with *Guidelines for Landscape and Visual Impact Assessment', 3rd Edition, Landscape Institute (2013) (GVLIA3)*. A further response (Revision A) was subsequently issued having regard to comments issued by the Council 8th November 2021.
- 6.11 Notwithstanding the additional submissions made on behalf of the appellant at the application stage, the Council found that the proposals would cause “*Less than substantial harm*” with regard to the WHS and its setting and that it considered the benefits of a wholly affordable housing scheme would not outweigh this harm. The magnitude of “*less than substantial harm*” is the lowest possible in the context of the site within this setting. The Appellant’s case is submitted on the basis that this much needed housing, and particularly as for new affordable homes should be given **significant weight** (see below) that would outweigh the loss of two grass fields adjacent to existing housing outside of a conservation area.
- 6.12 The Council do not provide any specific reference to viewpoints, receptor locations, landscape elements or characters, describe any specific instances or occurrences that highlight its concerns or underpin its reason for refusal. There are not points from where specific harm would be materially adverse or locations cited that are not agreed within the LVIA.
- 6.13 The submitted LVIA was thorough and detailed, featuring 13no. viewpoints, selected to cover a range of receptors, distances, angles, and elevations, in accordance with GVLIA3. Two additional viewpoints were requested by the Council and considered in the updated LVIA from more centrally within the

WHS. In total there were 20 receptor locations that were considered from road users, views from rights of way, open access land and public open space. Neighbouring residential dwellings, and more long distant views were also considered along with the landscape designations, character and its component site elements. The Council have not considered that the site is incorrectly characterised or represented within RfR1.

6.14 With all those locations considered the LVIA concludes (para 9.3.1) that **No significant landscape or visual effects have been identified**. The proposed Appeal scheme is therefore considered acceptable in terms of its likely landscape and visual effects. The visual effects are informed by assessment of those viewpoints with the nature effects being at worse ‘*moderate to slight adverse*’, particularly those closer receptor locations. However, planting to come forward (and detailed within any reserved matters) will, it is considered in a short period of time, lead to a reduction in impact to being as being *negligible* in most instances. There is no significant adverse impact as result.

6.15 The City of Bath WHS was inscribed in 1987. The reasons for inscription, or key attributes of Outstanding Universal Value (OUV), can be summarised as:

1. Roman archaeology;
2. The hot springs;
3. Georgian town planning;
4. Georgian architecture;
5. The green setting of the City in a hollow in the hills; and,
6. Georgian architecture reflecting 18th century social ambitions.

6.16 Having regard to the green setting of the WHS (No.5) longer view points from more centrally within the WHS were considered at a distance of some 3.2km to 4.1km in the case of Alexandra Park and Prior Park Mansion respectively. At this distance “*the change in the view likely to be sufficiently small, at such a separation distance, and be among existing housing such that it is likely to be missed by the casual observer.*” These are key views highlighted by the

Council and which on plan provide for the setting to the WHS. The Appellant has undertaken detailed analysis of these views and found that the development, adjacent to existing 20th built form is likely to be imperceptible from anything other than a short distance. As such the proposal is likely to safeguard the OUV of the WHS.

6.17 The Appellant submits that the layout has been informed by a detailed understanding of the site constraints and wider landscape setting. Crucially this site investigation was not previously carried out in depth in previous applications and as part of the considered appeal. Accordingly, there is a greater attention to surrounding character and constraints which has informed this stage of the design. In addition, the Landscape Mitigation Plan further assists in assimilating future development within its context. Notably, site landscape features including walls and existing trees are shown retained.

6.18 Having regard to other notable decisions the Appellant refers to the SoS Case at Whitehouse Farm, Belper (Ref.No APP/M10005/W/17/3198996) within the Derwent Valley Mills WHS. There it was put considered that (para 35) that *“the change in how the setting of the WHS would be experienced from the footpath to the north of the site would mean its setting would not be preserved, although the scale of the change would mean that level of harm would be extremely slight (IR141). He [the SoS] agrees that from, close up the new houses would mean that from certain parts of Belper Lane limited views of the upper parts of the valley opposite would be interrupted, that this would slightly erode part of the countryside setting of the WHS and consequently not preserve that aspect of its setting but that these effects would be limited and particularly localised (IR143).”*

6.19 The SoS agreed with the Inspector that the overall visual impact of the development would not be of a nature which would markedly erode the rural setting of the heritage asset. He went onto allow weighing the benefit of 20 affordable homes (30% of 65 dwellings) as a factor of **significant weight** in favour of the appeal.

6.20 Accordingly, the appeal here is cast in similar circumstances as a marginal site with the proposals considered to accord with relevant policy including **B4** and **CP6** of the Bath and North East Somerset Core Strategy and policies **RA4, NE2, NE2A and HE1** of the Bath and North East Somerset Placemaking Plan.

Reason for Refusal 2 – Alleged Harm to Conservation Area and Dead Mill (Non-designated heritage asset)

6.21 Reason for Refusal 2 (rfR2) states:

As a result of the proposed siting and layout, the proposal is considered to have a detrimental impact upon the setting of the adjacent Conservation Area and the non-designated heritage asset "Dead Mill". Although the public benefits are considered to outweigh the harm to the setting of Dead Mill independently, the impacts contribute to the totality of harm. The harm to the setting of the Conservation Area is considered to be less than substantial and there are not considered to be public benefits which outweigh this harm. As such, the proposal is contrary to policies B4 and CP6 of the Bath and North East Somerset Core Strategy and policies D1, D2, D3, D4 and HE1 of the Bath and North East Somerset Placemaking Plan.

6.22 The Appeal Site falls outside of the conservation area, the boundary to which adjoins the southern and eastern boundary.

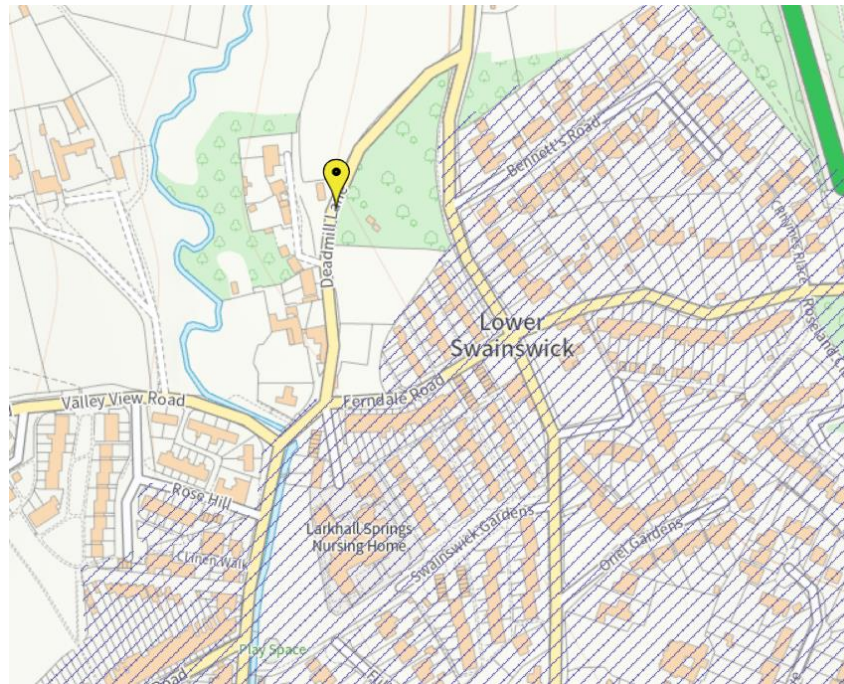


Fig 6.1 Conservation Area Boundary

- 6.23 The proposed development will result in the loss of two grass fields; however, this is not a key characteristic of the Conservation Area. The built form (terrace/semi-detached) and materials (e.g., bath stone) of the appeal scheme are in keeping with that of existing buildings in the environs.
- 6.24 Notably the site sites within an area defined within the Larkhall Character Statement and Development Principles (1998) that is one defined by pre and post war housing. The vicinity of the site is not considered to be within the “*rural area of Bailbrook Lane beyond the Gloucester road*” which forms part of the Larkhall Character Area and which forms the important expanse of green coverage which defines the wider setting and backdrop to the city. Clearly this is nearby but not at the point of this marked transition, which lies further beyond the Appeal site, to the east and north.
- 6.25 A key characteristic of the CA is that the boundary to the countryside to the north is particularly clear and ‘crisp’ due to well-developed hedges. However, this does not apply to the Site which is surrounded by development on three sides and has a visually open boundary on its northern side (post and rail fence). The northern tree and hedge planting of the Landscape Mitigation Plan (Ref.No: 3090-001) provides the opportunity to better define the

boundary of the Site, in keeping with and better reflecting this key characteristic. There is also the opportunity to better reflect a more characteristic detail within the application site and that can be secured and delivered at the reserved matters stage. As planting establishes, this will soften and partially filter/screen part of the view to the proposed development and add to a sense of greenery.

- 6.26 The retained and repaired stone wall also provide a sense of separation from the proposed development and some partial screening to the CA. The existing post-war terraces provide some context for the proposed change. The materials of the proposed development will help the proposed development fit with this context. The addition of tree planting as per the Landscape Mitigation Plan (ref: 3090-001) will soften and filter the built form as it establishes, including that of the existing post-war terraces. It is also noted that the land to the north of the site is intended to provide land for allotment use which, with access safeguarded in an agreeable form, is a further benefit of the scheme as well as ensuring the wider green setting, albeit in a moderate low level agrarian form, will be maintained.
- 6.27 The Appellant notes that as above (para6.11) with RfR1, RfR2 does not provide or support any particular viewpoint or reference to specific harm that might arise, other than there being an overall impact of “*eroding the open green setting of Dead Mill and the Conservation Area*”, albeit that again this is again at the lowest level of “*less than substantial*” harm.
- 6.28 Residents close by are likely to obtain some close-distance views to the proposed development through the existing post-war terraces will provide some context for the proposed change. The materials of the proposed development will help the proposed development fit with this context. The closest proposed house will be ~15m from the houses of Burnside and Banks and be of a similar form to the existing houses themselves.
- 6.29 Dead Mill itself is a non-designated heritage asset (NDHA) and is afforded some weight in terms of this designation in the planning balance. Notwithstanding that much of the buildings original fabric was lost due to

fire, the building serves as a local landmark. The Larkhall Character Study notes it is on the edge of the built-up area with its dominance in the street scene is accentuated by the space surrounding it as the urban area ceases to the south. *“This marked transition to a more rural character, as one leaves the urban area, is key to the setting of the mill itself.”* The proposed indicative layout has sort to better signify such transition by retaining important views across the site, siting buildings further away and providing improved landscape features to be introduced that will provide for an enhancement of this specific viewpoint but otherwise the impact will be to preserve the character and appearance of the CA. Any residual harm is considered to be outweighed by the benefits of the new housing which is 100% affordable housing provision. This considered to carry significant weight in the planning balance.

6.30 The Council are in agreement that the benefits of the proposal are sufficient to outweigh the harm to the Dead Mill, an undesignated heritage asset, when it is considered independently. In accordance with para 197 of the Framework *“a balanced judgement will be required having regard to the scale of any harm or loss and the significance” of any non-designated heritage asset and the Appellant agrees with the Council’s judgement in this regard.* That there is a cumulative impact on the character of the CA, is a point of strong disagreement by the Appellant which is overstating the likely impact. If the field were felt to be a fundamental part of the significance of the CA, it would have been included within it such that its was considered desirable to preserve or enhance it. As a matter of fact, this is manifestly not the case.

6.31 The proposal is therefore not considered to conflict with policies B4 and CP6 of the Bath and North East Somerset Core Strategy and policies D1, D2, D3, D4 and HE1 of the Bath and North East Somerset Placemaking Plan. The benefits of the scheme are considered to outweigh any residual harm to the character and appearance of the CA.

Reason for Refusal 3 – Proposed vehicular and pedestrian access

6.32 Reason for Refusal 3 (RfR3) is regarding matters of vehicular and pedestrian access and states that:

“The proposal fails to provide a suitable vehicular access, which does not prejudice highway safety or provide safe and convenient access to, and within, the site for pedestrians, cyclists and those with mobility impairment. The development would therefore prejudice highway safety. As such, development is considered to be contrary to the Development Plan, in particular policies ST1, ST7, D1, D3, of the Bath and North East Somerset Placemaking Plan.”

6.33 A small number of matters were raised by the Council during the course of the application and were responded to by way of a Transport Note (Ref.No 800.0035TN1) provided by Paul Basham Associates (PBA) (November 2021) including clarity on a number of mitigation measures and in response made to the comments of the Council acting in their capacity as Local Highway Authority. A full Transport Assessment (TA), undertaken by PBA was submitted in support of the application (October 2021). The TA was supported by a full Stage 1 Road Safety Audit.

6.34 RfR3 deals with vehicular access to and within the site and also the alleged impact for pedestrians, cyclists and those with mobility impairment. RfR3 is not precise having regard to the specificity of the matters raised and is general in nature. The Appellant observes that it should be noted that Article 35(1) of the Town and Country Planning (Development Management Procedure) (England) Order 2015 (“the DMPO”) provides that: “(1) *When the local planning authority give notice of a decision or determination on an application for planning permission or for approval of reserved matters—... (b) where planning permission is refused, the notice must state clearly and*

precisely their full reasons for the refusal, specifying all policies and proposals in the development plan which are relevant to the decision". The reasons for refusal can thus be taken to: (i) constitute the Council's "full reasons"; and (ii) to specify all policies alleged to be breached.

6.35 Whilst not raised with RfR3, with the officer's delegated report, the Council raise a number of matters regarding the proposed access arrangements which can be summarised thus:

- i) The alignment of Deadmill Lane is 'inadequate' and features a slight narrowing by 10cm from the optimum of 4.1m recommended with the Manual for Streets guidance suggested to allow two cars to pass; - **this is considered minor in nature given the volume of movements within the lane itself on a daily basis and noting the very slow speed of traffic at most times of the day;**
- ii) The lane is observed to have a high level of vehicular trips each day, predominantly southbound (in the order of 21 in the AM peak and with 626 recorded over a 12 hour period. Northbound the movements are 221 over a 12 hour period and 21/39 in the AM/PM peak respectively Pg 6 PBA Transport Statement); - **in the context the likely additional trips will be relatively small and likely to have a negligible impact that should not be considered severe.**
- iii) In the Council's view, pedestrians would be more likely to exit onto Deadmill Lane, rather than connecting with the proposed new access via Ferndale Road, as this is not considered as convenient; - **the Appellant has introduced the access for pedestrians to connect into the existing footway network, whilst it is not due south and involves a slight 'dog-leg' the route is no less direct than could reasonably be anticipated;**
- iv) Suggested pedestrian improvements by way of introducing new dropped kerb crossing points; whilst welcome have not been able to be fully assessed by the Council; - **such matters could be secured by**

way of suitable conditions or as part of the detailed Section 278 process.

- v) Cyclists originating at the site will not be provided with satisfactory cycling facilities to reach Cycle Network Route 4 (a car free route), east of Ferndale Road in the absence of any existing facilities provided within the locality; - **this is the case with the entirety of the existing settled population that will be significantly and demonstrably any worse for prospective residents.**
- vi) Visibility to the proposed access requires vegetation on the site to be maintained at less than 0.6m in height; - **this is possible to be secured through suitable landscape management having regard to detailed landscaping reserved matters;**
- vii) A Refuse collection Vehicle, when turning right, will over sail a small section of garden/plot to No.s 1 & 2; The tracking provided is not therefore deemed satisfactory ; **The over sail relates to an element of the vehicle not the tracking of the tyres and is a not uncommon arrangement that can be addressed by the landscaping reserved matters to provide protective bollards if necessary.**
- viii) A virtual footway i.e., solid line road marking provided on the public highway similar to that of an on-carriageway cycleway, whilst deployed in other locations with the Council's jurisdiction, is not considered appropriate in this location; - **the virtual footway is an additional measure to direct connectivity to Ferndale Road but that has been subject to Stage 1 (of 3) Road Safety Audit.**

6.36 The above comments are similar in nature to those raised as part of the previous appeal where the Inspector concluded that "*Whilst these are all important for safeguarding highway safety interests, they are relatively minor matters that could be addressed by way of additional information and / or amended plans. Although access is not a reserved matter, a planning condition could be used to address some of these concerns. I note the provisions of the UU include*

compliance with the highway officer's advice." Accordingly, it is felt that the issues raised with respect to RfR3 are not insurmountable and cannot be addressed by condition or as part of any Section 278 highway works and subsequent road safety audit processes. A More substantive response to selected matters is set out below.

Proposed Access

6.37 Vehicular access to the site is proposed via a new enlarged vehicular access within Deadmill Lane at the point serving the current field entrance to the northern field. The proposals were supported and informed by the TA prepared by PBA (October 2021). A plan (Ref.No 800.0035.001 Rev B - *Proposed Access Design & Visibility Splay Assessment*) has been provided which demonstrates adequate visibility splays (2.4 x 25m) can be provided for the 20mph road. These were deemed acceptable previously as part of the Appeal.

6.38 Whilst some land within the site will need to be kept free from vegetation, this is feasible and can be detailed as part of any future landscape reserved matters. The slow speed of traffic on the 20mph, allied by the fact that accidents recorded are not recorded over the 5 year period preceding the previous application combined to indicate that an access onto the Deadmill Lane was deemed acceptable to the Inspector. There have been no material changes to alter this position.

Trip Generation

6.39 There is forecast to be a relatively small number of vehicular trips in the morning and afternoon peaks of eight and six respectively, with 80 daily movements. In the context of the relatively high traffic movements along the land, it was concluded by PBA (para 6.4 TA) that *"This level of trip generation would have a negligible impact on the local highway network and does not*

amount to a material increase in traffic movements.” No evidence has been put forward to suggest why this would not be the case.

Pedestrian Connectivity and circulation

- 6.40 Whilst the Inspector found issue with the proposed highway reworkings in the previous Appeal, in particular off site works by way of a “virtual footway” the Council appear to remain concerned - although this is not specifically referenced within RfR3. When combined with the slow speeds of traffic, the measures provide additional measures to provide a demarcated space for pedestrians in the Appellant’s view given that the Stage 1 Road Safety Audit process has been followed, should be considered positively.
- 6.41 The Appeal scheme now has an improved internal pedestrian access which links from the eastern boundary between plots 11 and 12 to the existing footway along Ferndale Road to the front of Nos 17-20. This route provides adequate and convenient pedestrian access to the heart of the development.
- 6.42 The Officer’s Delegated Report is critical that the route via Ferndale Rise is not the most direct and *“not located on the pedestrian desire line between the development site and the services, facilities, school and public transport links to the south. Officers are therefore concerned that the future occupiers will walk to local facilities via Deadmill Lane, increasing the risk of conflict between motor vehicles and vulnerable road users, a problem exacerbated by the fact that Deadmill Lane does currently not benefit from a dedicated footway. Officers also note that the existing footways within the vicinity of the application and the services, facilities, school and public transport links to the south do not benefit from dropped kerb pedestrian crossing points, including the provision of tactile paving, making access to local facilities difficult for pedestrians who may be visually and/or mobility impaired.”*
- 6.43 The Appellant strongly disagrees that the direct route to the established footpath would not be attractive or convenient for use. The route links sufficiently well and leads to an appropriate and established, safe, crossing point with dropped kerb adjacent to No.17. That it is slightly longer, up to 82m

for some with up to one minute delay, will be offset by the fact the levels will be less steep and the route through the site onto the path will for the most part be traffic free. Of course, for many prospective residents, particularly those at the southern end of the site, the route would be shorter and wholly convenient and the most practical solution. Such arrangements are common place within small enclosed developments of this nature, where routes for pedestrians often lead to existing safe and convenient crossing points away from that of vehicles serving the site.

6.44 It is also suggested that additional pedestrian improvements be undertaken to provide dropped kerbs. These would need to be subject to other Section 278 related works but that could be secured by condition and required to be provided prior to occupation of any dwelling. Uncontrolled dropped kerb pedestrian crossing (including tactile paving) have been proposed to be provided at the following points:

- i)** Ferndale Road, east of its junction with Deadmill Lane;
- ii)** Ferndale Road, west of its junction with Deadmill Lane;
- iii)** The access road directly opposite the southern end of Deadmill Lane; and
- iv)** The south-eastern end of Valley View Road.

6.45 The Council is critical that these suggested locations have not been fully assessed although, on the basis that they would welcome them, any off site measures such as this could be secured and required to be progressed prior to any occupation. Such measures would be beneficial to the existing population as well.

6.46 The site access and proposed internal circulation provision would permit the safe turning of vehicles within the Appeal Site in order for vehicles to enter and leave in a forward gear. There is a small overhang of the virtual footway of larger vehicles exiting the site. However, such an occurrence would be infrequent and would not lead to a severe highway impact. There is no overrun of any tyres, but by the overhang of any part of the vehicle forward of the front wheels. To mitigate this, small bollard posts could easily be detailed on a

reserved matters layout.

- 6.47 Similarly, such detail regarding visibility splays and planting as required could be secured by condition.

Cycling

- 6.48 Whilst the Council is also critical of any comprehensive package of cycle infrastructure accompanying the submission, the Appellant would observe that whilst they have been engaging with the Council, no such specific measures have been suggested.

- 6.49 The Appellant notes there does not appear to be any improvements for the existing community planned as part of the Council's 'Review of Cycling Infrastructure' dated 2014 which is the most up to date document listed on the Council's website. The Council will be aware of the propensity of those within the existing community who wish to cycle. That they chose to do so without dedicated facilities as part of the existing network should not be held as a reason for withholding planning permission for the Appeal scheme on the edge of the built up area. Adequate parking for cycles, as well as vehicles is agreed to have been adequately set out.

- 6.50 The proposal would therefore in the Appellant's view comply with relevant policies including policies ST1, ST7, D1, D3, of the Bath and North East Somerset Placemaking Plan.

Reason for Refusal 4 – Impact on trees; Reason for Refusal 5 – Potential impact on protected species & Reason for Refusal 6 – Surface Water Drainage

- 6.51 RfR4 (Trees), RfR5 (Protected Species) and RfR6 (Surface Water Drainage) are matters that were raised against the previous refusal and considered by the Inspector.

- 6.52 With regard to trees the Inspector previously noted (para 25) that "*No important trees would be lost, or any other features that are likely to contribute to the enjoyment of this nationally important landscape. New tree planting would also form part of the reserved matters. There is nothing of substance to show that the AONB or its setting would be harmed.*"

- 6.53 With regard to RfR5 he commented under “Other Matters” (para 43) that *“There is nothing of substance to indicate that the proposal would be likely to harm any protected species or important nature conservation interests. As a consequence, the appellant’s suggestion of a condition requiring the submission and approval of an Ecological Mitigation and Management Plan prior to the commencement of development would be appropriate.”* There is nothing fundamentally different with regard to current proposal and there have been no material changes in circumstances as a result. There is nothing to prevent development occurring and a suitably worded condition would ensure that adequate ecological management plans be put into place.
- 6.54 On matters relating to drainage the Inspector also commented (para 35) that *“There is also nothing to demonstrate that contributions would be necessary for open space or that a sustainable urban drainage scheme could not be secured by way of a planning condition.”*
- 6.55 The development is therefore in accordance with policies **NE3, NE5, NE6 and D5** of the Bath and North East Somerset Placemaking Plan and in accordance with policy **CP5** of the Bath and North East Somerset Core Strategy.

Reason for Refusal 7 – Absence of a satisfactory S106

Planning obligation

- 6.56 Condition 7 regards the matter of a satisfactory Unilateral Undertaking an executed copy of which accompanies this appeal. It is in essentially the same format as that

Public Benefits

- 6.57 The appeal proposals have been carefully formulated to minimise any potential adverse impacts of developing the site and to maximise the potential public benefits that will be realised and secured. As the proposed development would therefore result in a number of significant and substantial benefits these would support the objectives of sustainable development, providing economic, social and environmental benefits, as listed below. Primarily the benefits are derived by providing a 100%, wholly affordable housing scheme, with which there is an overriding need in the locality. The Council argue this also includes smaller housing but nonetheless the need arises across all house types and family housing, indeed all affordable housing delivery has been delivered in woefully

small numbers for an extended period of time.

(i) Economic Benefits (Moderate Weight)

- Employment opportunities created through the supply and construction programme;
- Additional spending from new residents within the local economy;
- Additional Council Tax receipts and New Homes Bonus directed to the Council;.

(ii) Social Benefits (Significant Weight)

- Provision of 15 new affordable homes, providing a range of types and sizes to meet local housing need, including terraced and semi-detached; dwellings;
- Provision of 100% affordable housing, sufficient to meet 15 families on the Council's need which currently stands in excess of 1000 persons.
- Land to facilitate future allotment provision accessed through the site;
- Support for long-term vitality of the local community, including through assistance in sustaining local services and facilities;
- Provision of additional open space links to the network of walking routes and permissive paths in the form of the virtual footway;
- Contributions towards community facilities;

(iii) Environmental Benefits (Significant Weight)

- Provision of high-quality homes as part of a carefully designed scheme within a sustainable location, reducing the need to develop less sustainable, more sensitive sites;
- Extensive hedge and tree planting;
- Network of pedestrian routes to promote active travel;
- Enhanced structural landscaping and planted margins, leading to further ecology and biodiversity benefits and Biodiversity Net Gain;
- Network of on-site SuDS utilising infiltration to manage surface water on site at greenfield run-off rates and providing biodiversity benefit;
- Provision of electric vehicle charging points for all dwellings;
- Use of modern methods of construction to provide improved building performance including insulation and air tightness, reducing wastage and resources.

6.58 For the reasons set out above, the case for planning permission being granted is clear and overriding and the Inspector is accordingly invited to approve the scheme and grant planning permission accordingly. It is clear that the economic benefits, considered of moderate weight, and those of social and environmental benefit which should be afforded significant weight in the planning balance. These would, it is considered outweigh any less than substantial harm to both the WHS and the CA, even if great weight were to be given to any residual harm.