

Planning Proof of Evidence

of

Mrs Clare Spiller MRTPI

on behalf of

Mr P Crocker

to

Hybrid planning application consisting of:

Full planning permission for a mixed-use development to erect a food store with cafe, plus office space and 2 No. flats above. Erect building for mixed commercial, business and service uses (Class E), (e.g. estate agents, hairdresser, funeral care, dentist, vet). Form vehicular and pedestrian accesses and parking. Form parking area for St. Gregory's Church and St Gregory's Primary School. Carry out landscaping works and associated engineering operations. (Demolish redundant agricultural buildings). Land west of Church Hill.

Outline planning permission (to determine access) to erect up to 120 dwellings.
Land off Butts Close and Schoolhouse Lane.

at

**Land West of Church Hill and Land Off Butts
Close and Schoolhouse Lane, Marnhull**

Our ref: BS-2897

LPA ref: P/OUT/2023/02644

Appeal ref: APP/D1265/W/24/3353912

March 2025 v1

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Prepared by:

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Chapman Lily Planning Ltd

1. Personal/Professional Statement

- 1.1 My name is Clare Spiller. I hold a BSc (Hons) degree in Town and Country Planning and Post Graduate Diploma in Town Planning from the University of Central England¹. I have been a full member of the Royal Town Planning Institute since 2003.
- 1.2 I am currently an Associate Director of Chapman Lily Planning Ltd, a position I have held since October 2023. Prior to this current position I was Senior Planner at Chapman Lily Planning from March 2020. Previous to this I was a Senior Planning Officer at Bournemouth, Christchurch and Poole (BCP) Council (working in Poole one of the legacy authorities prior to the formation of BCP Council).
- 1.3 I have a wide and varied range of experience across all sectors of planning and represent clients across a broad spectrum including individuals, landowners, trusts, and developers in relation to a range and scale of projects. These include major residential proposals.
- 1.4 The evidence which I have prepared and provide for this appeal and in this proof of evidence is true and has been prepared and is given in accordance with the guidance of my professional institute and I confirm that the opinions expressed are my true and professional opinions.
- 1.5 Proofs of evidence are provided by my colleagues as follows,
- Mr Jeff Richards in relation to Housing Land Supply (HLS) matters [CD11.002] and attached to my evidence as **Appendix CS5**
 - Ms Annie Gingell in relation to Affordable Housing matters [CD11.003]
 - Mr Kevin Morris in relation Heritage Asset matters [CD11.004]
 - Mr Jonathan Taylor in relation to character and design matters [CD11.006]
 - Mrs Kim Hammonds in relation to highways matters [CD11.005]
- 1.6 In so far as it is proper to do so, I will defer to my colleagues for their expert opinion on the associated matters. My comments on these matters will be constrained to an analysis of their fit with relevant policy tests and the planning balance.

¹ Now called Birmingham City University

2. Introduction

2.1 This Proof of Evidence has been prepared on behalf of Mr Paul Crocker. It relates to a planning appeal submitted pursuant to Section 78 of the Town and Country Planning Act 1990 and concerns the Appellant's Hybrid proposal:

***Full planning permission** for a mixed-use development to erect a food store with cafe, plus office space and 2 No. flats above. Erect building for mixed commercial, business and service uses (Class E), (e.g. estate agents, hairdresser, funeral care, dentist, vet). Form vehicular and pedestrian accesses and parking. Form parking area for St. Gregory's Church and St Gregory's Primary School. Carry out landscaping works and associated engineering operations. (Demolish redundant agricultural buildings). [The appeal proposal] Land west of Church Hill [The appeal site].*

***Outline planning permission** (to determine access) to erect up to 120 dwellings. [The appeal proposal] Land off Butts Close [The appeal site]*

2.2 The planning application was validated by the LPA 2nd November 2023 and was refused planning permission by notice dated 16th July 2024 which included five reasons for refusal. The decision notice is referenced CD1.051 in the Core Documents library.

2.3 The proposal was the subject of a minor amendment at appeal stage and the documents and plans are listed in section 4.1 of the SoCG [CD4.019]. The planning appeal was submitted on 17th October 2024. Details of these changes were publicised and consulted upon.

2.4 The amended plans were published on the LPA's website as part of the consultation process and remain viewable. The consultation involved writing to all parties that commented during the application stage, local Councillors, the Parish Council and statutory consultees together with the erection of site notices and the delivery of letters to those who wrote in on the application.

2.5 At the request of the Inspector at the Case Management Conference, the Appellant and the LPA have agreed three Statements of Common Ground relating to the following topic areas:

- Most relevant Development Plan policies [CD4.018]
- Housing Land Supply [CD4.015]
- Heritage [CD4.017]

2.6 At the request of the Inspector the Appellant, the LPA and Marnhull Parish Council as the Rule 6 party have sought to agree a Statement of Common Ground relating to the following topic area:

- Highways Issues [CD4.016]

2.7 Matters that are agreed, as well as matters in dispute, are summarised in the General Statement of Common Ground [CD4.019] and in the interests of brevity are not repeated here.

2.8 It is also the Appellant's intention to submit a S.106 planning obligation to secure financial contributions to address off site impacts.

2.9 This planning evidence addresses the town planning issues arising in the appeal. The relevant development plan policies provide the starting point for the determination of the appeal. In addition, there are a number of weighty material considerations that are fundamental to the overall planning balance and the ultimate determination of the appeal. This planning evidence is supported by evidence provided by my colleagues (as detailed in paragraph 2.5).

3. The Appellant, the Proposal and the Appeal Site

The Appellant

3.1 Mr Paul Crocker, lives in Marnhull and owns land in and around Marnhull. Application sites previously owned by the Appellant and which have planning permission are being built out. The Appellant has a partnership agreement with CG Fry on a development site known as Burton Street², whereby it receives a share of receipts from house sales. This is very different from the traditional model of selling the land for maximum profit & helps to derisk the build. This aids both delivery & ensures the focus is on quality. Mr Crocker also built the doctors surgery and pharmacy, which falls within the northern parcel. Mr Crocker has a proven track record in delivering small, bespoke residential schemes, larger-scale residential schemes and building out community facilities.

3.2 The Appellant has a vision for Marnhull. This vision was submitted with my SoC [CD4.005a]. An extract of the plan is at **Appendix CS1** with the larger development sites approved in Marnhull annotated for context.

² Planning permission granted for 61 dwellings 2/2018/1808/OUT and P/RES/2022/05524

The Appeal Site

3.3 The appeal site is described in Section 1 of the General SoCG [CD4.019].

The Appeal Proposal

3.4 The proposed development is described within the design and access statement [CD1.040 – 04b], by the architect, and as set out in section 2 of the SoC. The minor changes³ since the application was refused, on the northern parcel (Tess Square) relate to the car park (with 36 spaces) for the drop off/overflow parking for the school and church accessed via the car park serving the proposed local services and community facilities. On the Southern parcel (Butts Close) the pedestrian footpath adjacent to the vehicular access off Schoolhouse Lane was removed.

3.5 The Tess Square proposal is considered an important element to maintain and enhance Marnhull as a sustainable village, especially since a number of planning permissions have been granted for new housing. The proposed local services and community facilities is anticipated to include:

- Food store (including in-store café and post office) – 1,455 sq.m (GIA);
- Café – 222 sq.m (GIA);
- Estate agent – 99 sq.m (GIA);
- Hairdresser – 100 sq.m (GIA);
- Funeral care – 100 sq.m (GIA);
- Dentist – 100 sq.m (GIA)
- Vet – 100 sq.m (GIA); and
- Offices – 181 sq.m (GIA).

3.6 These facilities will be located in one area and will provide the opportunity for linked trips. It is envisaged that local residents will be able to walk, cycle, use public transport or travel by car (acknowledging that not all options are available to all residents). The purpose of providing services and facilities is to bolster self-containment for Marnhull.

3.7 The proposal also includes extensive landscaping works and the formation of public open space for the residents of Marnhull, by taking agricultural land out of use.

3.8 The design, appearance and layout of the buildings in the Tess Square development have drawn inspiration from local heritage / agricultural-farm buildings typologies and arrangements. It is

³ The technical submission and amendments to the plans (following the judgement in *Holburn Studios v The Council of the London Borough of Hackney* (2018), which refined the “Wheatcroft principles” set out in *Bernard Wheatcroft v Secretary of State for the Environment* (1982)

envisaged that when viewed from further afield across the fields, the proposed buildings will appear as a grouping of rural, agricultural farm buildings which will be built in natural local materials and therefore appropriate to their setting.

- 3.9 The proposal also includes the provision of up to 120 dwellings on the southern parcel (Butts Close). This is an outline scheme with all matters reserved except for the access points into the site proposed from Butts Close and Schoolhouse Lane. The indicative plans show a mix of family housing and the provision of 48 dwellings as affordable housing; therefore, this scheme will be policy compliant. The indicative plans show areas of public open space which have been purposefully considered on site to retain views of the church tower (heritage asset) both from within and outside the site. The eastern part of the site proposes chalet bungalows and bungalows to keep the building height lower on the rural edge, adjacent to Schoolhouse Lane.
- 3.10 Located c.2km from Marnhull is Henstridge Airfield and employment area⁴, this is an established employment area that has seen significant investment & rapid growth over the past decade (refer to appendix CS2 showing the relationship of Henstridge Airfield and Marnhull). The relationship is shown at **appendix CS2**. This falls within South Somerset Authority. Therefore, there are jobs available locally. Jobs will also be created through the retail/commercial element of the scheme.

4. The refusal reasons and main issues

- 4.1 The decision notice [CD1.051] sets out five reasons for refusal.
- 4.2 The following matters have now been resolved between the Council and the Appellant:

Reason for Refusal no. 3:

- 4.3 Amended plans and a Technical Highways Note⁵ were submitted as part of the appeal proposal to overcome the reason for refusal. The LPAs SoC [CD4.010], concluded that reason for refusal 3 had been resolved and no longer in dispute.
- 4.4 Notwithstanding the above, Marnhull Parish Council (Rule 6 party) consider there is a highway safety issue including congestion and the proposal would have sustainable transport implications. A highways topic paper (HSoCG) [CD4.016] between Marnhull Parish Council (MPC), the Councils Highways officer and Paul Basham Associates on behalf of the Appellant identified areas of common ground and areas in dispute. Additional evidence in the form of a Modelling Technical

⁴ Falls under South Somerset Council

⁵ Prepared by Paul Basham Associates

Note [CD4.020] has been provided by the Appellant, which hopefully narrow down the areas of dispute to those set out in this topic paper with MPC.

- 4.5 Kim Hammonds Highways proof of evidence [CD11.005] demonstrates that the proposal would not have an unacceptable impact on highway safety, and residual impacts of the road network would not be severe when taking into account all reasonable future scenarios. Therefore, the proposal would not conflict with paragraph 116 of the NPPF.

Reason for Refusal no. 5:

- 4.6 The Appellant is working with the LPA on a draft unilateral undertaking which secures a number of contributions as appropriate mitigation to make the development acceptable and CIL compliant.

Reason for refusal no. 2

- 4.7 The Appellant submitted a Retail Sequential Test (RST), as part of the appeal submission (**attached as appendix CS3**). Following the Councils SoC [CD4.010] the Appellant received a letter⁶ from the LPA requesting he withdraw the appeal [CD4.012]. This letter referenced changes in the NPPF (2024) and the failure of the Appellant to submit an RIA. The Appellant responded by letter⁷ and duly submitted a Retail Impact Assessment⁸ (RIA) [CD4.014] (**attached as appendix CS4**) to the LPA. Subsequently a letter⁹ from Lambert Smith Hampton (LSH) [CD4.024] was submitted by the LPA which commented on the RST. It is understood that the Inspector is 'taking as read' the RST and the RIA. It is now common ground that the RIA was not required. Moreover, the Inspector has made clear that inquiry time should not be spent on the RST or RIA.
- 4.8 For the avoidance of any doubt, paragraph 9 of the Inspectors notes following the CMC [CD4.025] expressly directs "parties will refrain from going any further on the specific matters of the retail impact assessment and the sequential approach." Consequently, I do not address those matters in this proof but merely append the material previously produced on this topic.
- 4.9 The main issues arising from the remaining, unresolved, reasons for refusal are those set out in the CMC:
- Issue 1: The effect of the development on the character and appearance of Marnhull and on the setting (and significance) of its heritage assets.

⁶ Dated 13th December 2024

⁷ Dated 10th January 2025

⁸ Prepared by Lichfields and submitted to the LPA on 29th January 2025

⁹ Dated 3rd February 2025

- Issue 2: The effect of the scheme on highway safety (including pedestrian safety) and congestion in Marnhull.
- Issue 3: Whether Marnhull is an appropriate location for housing, retail and commercial development of this scale

5 Legislative and Policy Context

5.1 Section 38(6) of the Planning and Compulsory Purchase Act 2004 is unequivocal in the requirement that planning applications are to be determined in accordance with the development plan unless material considerations indicate otherwise. As such, in addition to the Development Plan, I also make reference to relevant paragraphs within the National Planning Policy Framework (NPPF)¹⁰. I also refer to relevant extracts of the PPG, the background to the adoption of NDLP (2016), the background of the emerging Dorset Councils Local Plan including the succession of LDS, the Reg 14 Consultation Draft of the Marnhull Neighbourhood Plan (10th February 2025), and other relevant material considerations.

The Development Plan

5.2 The Development Plan is appropriately described in the Topic Paper on Relevant Development Plan Policies [CD3.001]. The Development Plan remains the same as when the planning application was originally submitted.

Dorset Annual Position Statement

5.3 On 26 September 2024 Dorset Council received the Planning Inspector's report on its Annual Position Statement 2024 [CD5.001]. The Annual Position Statement (October 2024) [CD5.002- 004] and Appendices A to G confirm that Dorset Council can demonstrate a housing land supply of 5.02 years.

5.4 Paragraph 233 of the new NPPF states 'where a local planning authority has confirmed its housing land supply position for a year through a published Annual Position Statement that has been examined by the Planning Inspectorate against the previous version of this Framework, this position will stand until the Annual Position Statement expires.' Therefore, the APS expires on the 31st October 2025.

¹⁰ The new NPPF was issued on 12th December 2024 and subsequently amended 7th February 2025 to correct cross references to footnote 7 & 8, and to amend the end of the first sentence of paragraph 155 to make its intent clear.

Material Considerations

5.5 Material considerations include the following:

- NPPF
- PPG
- Emerging Neighbourhood Plan
- Emerging Dorset Local Plan- including background work
- Affordable housing crisis in Dorset- evidence provided by Ms Annie Gingell
- Housing Land supply position come 1st November 2025 (when APS falls away)- evidence provided by Jeff Richards
- Highway and pedestrian safety and congestion evidence provided by Mrs Kim Hamonds
- Character and heritage assets evidence provided by Mr J Taylor and Mr K Morris

NPPF

5.6 Following the submission of the appeal the new NPPF was published on the 12th December 2024 (as amended on 7th February 2025). The NPPF is a material consideration in the determination of this appeal; and where I refer to policies in the NPPF the new wording is shown in bold.

5.7 Paragraph 7 states the purpose of the planning system is to contribute to the achievement of sustainable development, including the provision of homes, commercial development and supporting infrastructure in a sustainable manner.

5.8 Paragraph 8 identifies three overarching objectives which are derived from achieving sustainable development, these objectives are economic, social and environment. Paragraph 39 is clear that *LPA's should approach decision making on proposed development in a positive and creative way and that decision-makers at every level should seek to approve applications for sustainable development where possible.*

5.9 Paragraph 11 (d) is unequivocal that:

*d) where there are no relevant development plan policies, or the policies which are most important for determining the application are out-of-date, granting permission unless: i. the application of policies in this Framework that protect areas or assets of particular importance provides a ~~clear~~ **strong** reason for refusing the development proposed; or*
*ii. any adverse impacts of doing so would significantly and demonstrably outweigh the benefits, when assessed against the policies in this Framework taken as a whole, **having particular regard***

to key policies for directing development to sustainable locations, making effective use of land, securing well-designed places and providing affordable homes, individually or in combination.

5.10 Footnote 8 of the NPPF confirms that ‘out-of-date’ is to *“include, for applications involving the provision of housing, situations where: the local planning authority cannot demonstrate a five year supply of deliverable housing sites (with the appropriate buffer as set out in paragraph 78); or where the Housing Delivery Test indicates that the delivery of housing was substantially below (less than 75% of) the housing requirement over the previous three years. See also paragraph 232.”*

5.11 Paragraph 232 states:

“However, existing policies should not be considered out-of-date simply because they were adopted or made prior to the publication of this Framework. Due weight should be given to them, according to their degree of consistency with this Framework (the closer the policies in the plan to the policies in the Framework, the greater the weight that may be given). Where a local planning authority can demonstrate a five year supply of deliverable housing sites (with the appropriate buffer as set out in paragraph 78) and where the Housing Delivery Test indicates that the delivery of housing is more than 75% of the housing requirement over the previous three years, policies should not be regarded as out-of-date on the basis that the most up to date local housing need figure (calculated using the standard method set out in planning practice guidance) is greater than the housing requirement set out in adopted strategic policies, for a period of five years from the date of the plan’s adoption.”

5.12 The last sentence to para 232 was introduced in the new NPPF. This is a material change to the interpretation of ‘out of date’ when reading paragraph 232, and is explored in my proof.

5.13 Para 34 of the NPPF makes it clear that ‘policies in local plans and spatial development strategies should be reviewed to assess whether they need updating at least once every five years, and should then be updated as necessary from the adoption date of a plan, and should take into account changing circumstances affecting the area, or any relevant changes in national policy. Relevant strategic policies will need updating at least once every five years if their applicable local housing need figure has changed significantly; and they are likely to require earlier review if local housing need is expected to change significantly in the near future.’

5.14 Paragraph 61 identifies that to support the Government’s objective of **significantly** (my emphasis) boosting the supply of homes it is important that a sufficient amount and variety of land can come

forward where it is needed. The appeal site is in my opinion, such a location and will deliver housing where it is needed – in a sustainable area, given Marnhull is the largest Village (in the former NDLP area). Furthermore, come 1st November 2025 the HLS position for Dorset Council will drop to 2.67 years¹¹when the APS falls away. Approving applications for housing needs to start now and not wait until the 1st November 2025.

- 5.15 Paragraph 124 is clear in its overarching aim that planning policies and decisions should support development that makes efficient use of land. Equally paragraph 125 of the NPPF provides a requirement for LPAs to refuse applications which fail to make efficient use of land. The evidence submitted in support of the appeal demonstrates how the proposals make efficient use of land.
- 5.16 Paragraph 233 of the NPPF states that “where a local planning authority has informed its housing land supply position for a year through a published Annual Position Statement that has been examined by the Planning Inspectorate against a previous version of this Framework, this position will stand until the Annual Position Statement expires. “

PPG

- 5.17 PPG is guidance that underpins the NPPF. I will refer to relevant guidance in my proofs when necessary.

Emerging Marnhull Neighbourhood Plan

- 5.18 Following the appeal submission, the draft Marnhull Neighbourhood Plan (MNP) has reached Reg 14 status Formal public consultation commenced 10th February 2025 with the end date of the consultation being 31st March 2025. The documents which form the MNP include:

- Marnhull Views Report [CD6.004]
- Marnhull Neighbourhood Plan Strategic Environmental Assessment [CD6.006]
- Marnhull Village Traffic Survey [CD6.005]
- Marnhull Design Codes Report [CD6.002]
- Marnhull Conservation Area Appraisal [CD6.003]
- Reg 14 Draft Neighbourhood Plan [CD6.001]

- 5.19 The MNP document is of ‘limited weight’ given it is at its early stages of production.

¹¹ Agreed in the Topic Paper on HLS and HD [CD4.015]

Emerging Dorset Local Plan and Local Development Scheme (LDS)

- 5.20 Following the formation of Dorset Council in April 2019, work was abandoned on a new NDLP in favour of a Dorset-wide Local Plan with a pledge that this would be progressed quickly (target adoption date was 2023). Dorset Council also confirmed that “North Dorset was producing a new Local Plan, all information gathered is now feeding into the production of the Dorset Council Local Plan.”
- 5.21 The first Local Developments Scheme was adopted in June 2019 [CD7.003], followed by the following revisions:
- LDS adopted July 2021 [CD7.004]
 - LDS adopted October 2022 [CD7.005]
 - LDS adopted March 2024 [CD7.006]
- 5.22 Subsequent to the new NPPF being published, the latest LDS¹² (the 5th version) for the emerging Dorset Local Plan, was very recently agreed by Cabinet on the 25th February 2025. This tables consultation (Regulation 18) at Q3 2025 with adoption in Q4 in 2027. The emerging Dorset Plan therefore remains at an early stage.
- 5.23 Dorset Council in their latest LDS remains clear that “the aim of the Local Plan will be to contribute to achieving sustainable development by meeting Dorset’s needs. This will include the provision of homes, commercial development, and supporting infrastructure.”
- 5.24 Consequently, having regard to paragraph 49 of the NPPF only very limited weight can be attributed to the draft policies set out in the Options Document which was published for consultation purposes back in January 2021. In my opinion that Options document is now out of date anyhow. This is because the new LHN figures have substantially increased the number of new homes required for Dorset, and therefore the level of commercial and supporting infrastructure also requires rethinking in order to achieve sustainable development.
- 5.25 Unfortunately Dorset Council to date don’t have a good track record on delivering a new Dorset wide Local Plan.

¹² LDS March 2025

6 Planning Assessment – response to the reasons for refusal and the Inspector’s main issues

6.1 The Inspector, in advance of the Case Management Conference, identified three main issues, the first issue being:

The effect of the development on the character and appearance of Marnhull and on the setting (and significance) of its heritage assets- this includes village character which was raised in a number of representations.

6.2 Mr Taylors’s Proof of Evidence [CD11.007] demonstrates that the design of the proposal has followed an iterative process which is informed by and derived from an analysis of the local character of Marnhull. In my professional opinion if the decision maker did find any harm to the local character I believe the public benefits would outweigh any harm.

6.3 Mr Morris Proof of Evidence [CD11.004] demonstrates that the harm to the heritage assets would be ‘less than substantial’ and at the lower end of the scale. In my professional opinion I believe the public benefits would outweigh the slight harm identified.

6.4 The second issue identified by the Inspector is:

The effect of the scheme on highway safety (including pedestrian safety) and congestion in Marnhull

6.5 Mrs Kim Hammonds proof of Evidence [CD11.005] has been prepared in response to the Rule 6 party – Marnhull Parish Council, to rebut the matters in dispute as highlighted in the Topic Paper (HSoCG)¹³. The evidence in Ms Hamonds proofs demonstrates that Marnhull is a sustainable location for development¹⁴, that the impact on highway safety would not be unacceptable and capacity issues will not be exacerbated to a ‘severe’ level which is the test in 116 of the NPPF.

6.6 The third issue identified by the Inspector is:

¹³ Which led to the Highways Modelling Technical Note dated 28th February 2025 issued to all parties on the 3rd March 2025 [CD4.020]

¹⁴ The inspectors reports for Land north of Crown Road, Marnhull APP/D1265/W/21/3289314 (72 dwellings) [CD13.006], and Salisbury Street, Tanzey Lane & Sodem Lane, Marnhull APP/D1265/W/3323727 (up to 67 dwellings) [CD13.002] considered Marnhull was a sustainable location to take new growth.

Whether Marnhull is an appropriate location for housing, retail and commercial development of this scale

6.7 It is common ground that both the northern parcel and southern parcel are outside of the 'settlement boundary' for Marnhull. This boundary is now some 20 years old. The doctors' surgery and pharmacy, which forms part of the northern parcel was and still is outside of the adopted settlement boundary.

Background to the adoption of the NDLP (2016)

6.8 Dorset Council states "The North Dorset local plan was adopted on 15 January 2016 and sets out our approach to managing planning development in the district". Dorset Council go on to say that "Although the LP1 replaces many of the policies from the District-Wide Local Plan (adopted 2003), some policies from the older local plan have been saved. In addition, the Proposals Maps from the Local Plan (2003) are still largely relevant; the main changes being that settlement boundaries from some of the smaller villages have been deleted, and the addition of the Gillingham Strategic Site Allocation." This Local Plan was adopted in 2016. The settlement boundary for Marnhull [CD3.002] was carried forwards to the NDLP (2016) from the proposals map in the Local Plan (2003).

6.9 Para 1.10 of the NDLP states:

"The plan period for the new North Dorset Local Plan Part 1 is from 2011 to 2031. This 20-year time horizon enables the plan to consolidate development that has taken place since the end of the last plan period and to take into account longer-term District-wide needs. However, to ensure the plan remains relevant in the face of rapidly changing circumstances, the Council will commence a review of the Plan by the end of March 2016¹⁵ and intends to adopt the Plan by the end of November 2018. The early review of the Plan will ensure that it remains appropriate for the District and continues to encourage and secure the development and infrastructure that the District requires. The review will be informed by an updated evidence base drawing on the strategic work underway for the housing market area and functional economic area, and reflect the duty to cooperate."

6.10 This early review of the local plan commenced but was never completed nor adopted. Dorset council confirm "as part of this process the Council consulted on an Issues and Options Document

¹⁵ The Report to North Dorset District Council dated 17th December 2015 by the Local Plans Inspector required an early review [CD5.018]

from the 27 November 2017 to 22 January 2018.” Consequently, part 2 of the NDLP never happened.

Formation of Dorset Council and transitional arrangements for Local Plans

6.11 The formation of Dorset as a unitary authority came into effect on 1st April 2019. The 5th anniversary of its formation was the 1st April 2024. The PPG¹⁶ states that *“Planning policies adopted by predecessor authorities will remain part of the development plan for their area upon reorganisation, until they are replaced by adopted successor authority policies or until the fifth anniversary of reorganisation.”*

6.12 Therefore, I consider that policies within the NDLP are ‘out of date’ given we are approaching the 6th anniversary of Dorset Council.

The APS

6.13 The APS expires on the 31st October 2025.

6.14 I have already pointed out that the NDLP is ‘out of date’ on a technicality of not meeting the transitional arrangements for government reorganisation. However, I am mindful that the LPA are of the opinion that the NDLP is an up to date local plan, and that they rely upon the APS paragraph 233 of the NPPF.

6.15 Footnote 8 of 11 (d) is relevant when determining whether the NDLP is out of date. This footnote clearly directs the reader to paragraph 232 (Annex 1 Implementation) of the NPPF. This became clear in the 7th February 2025 amendment to the NPPF, when the correct cross reference was made.

6.16 Given the paragraph (232) is long I have ‘broken it down’ and added relevant commentary in unpicking what it actually means:

232. However, existing policies should not be considered out-of-date simply because they were adopted or made prior to the publication of this Framework. Due weight should be given to them, according to their degree of consistency with this Framework (the closer the policies in the plan to the policies in the Framework, the greater the weight that may be given).

Commentary:

- As set out at para 6.12 Dorset Council have not adopted a new combined local plan within 5 yrs of its reorganisation.

¹⁶ Paragraph: 016 Reference ID: 68-025-20190722

- The new NPPF has ‘ramped’ up the housing need figure for Dorset to 3,219 homes per annum, which is now based on Local Housing Need (LHN). It was previously 1,793 homes per annum based on the standard method calculation at that time. This is an increase of 1,426 homes per annum. The NDLP can never meet this LHN figure, therefore the NDLP is inconsistent with the new NPPF.
- The local plan is now 9 years old, it was always envisaged there would be an early review of the NDLP. This stalled following the reorganisation to Dorset Council. Part 2 of the NDLP was never adopted.
- The settlement boundary for Marnhull was carried over from the Local Plan (2003) and is now over 20 years old and drawn tightly around the village, thereby restricting much needed growth.
- It is common ground between the Appellant and the LPA the HLS figure come 1st November 2025 will drop to 2.67 years.¹⁷

...Where a local planning authority can demonstrate a five year supply of deliverable housing sites (with the appropriate buffer as set out in paragraph 78) and where the Housing Delivery Test indicates that the delivery of housing is more than 75% of the housing requirement over the previous three years, policies should not be regarded as out-of-date on the basis that the most up to date local housing need figure (calculated using the standard method set out in planning practice guidance) is greater than the housing requirement set out in adopted strategic policies,...

Commentary:

- The answer here is ‘yes’ the LPA are able to demonstrate a 5 yr HLS and >75% HDT, with their APS.

...for a period of five years from the date of the plan’s adoption¹⁸.

Commentary:

- The NDLP was adopted in 2016 which is more than the ‘five years’ since the date of adoption. Consequently, Dorset Council cannot meet this third criterion to benefit from the limited protection afforded by paragraph 232 irrespective of the APS.

6.17 In my opinion the NDLP is manifestly out of date given its inconsistency with the framework in terms of its spatial strategy for the delivery of homes and its failure to significantly boost supply. Dorset Council consequently cannot rely upon the APS for the limited protection afforded in

¹⁷ Topic paper on Housing Land Supply and Housing Delivery [CD4.015]

¹⁸ This was a new insertion in the NPPF (December 2024)

paragraph 232 because, the Local Plan was adopted more than five ago. This threshold criterion of 'five years old from the date of adoption' was only written into the paragraph in the latest iteration of the NPPF (December 2024).

6.18 Consequently, I consider the policies of the adopted plan which are most important for the determining the appeal (in particular those that are relevant for the delivery of housing and the settlement boundaries) are out of date and the tilted balance in paragraph 11.d of the NPPF is engaged.

Is Marnhull an appropriate location for housing and affordable housing

6.19 Policies 2, 6 and 20¹⁹ of the NDLP seek to control the location of development, and this proposal therefore conflicts with these policies. However, given that the NDLP is 'out of date', I will consider the proposal in light of the relevant paragraphs in the NPPF and apply the tilted balance where appropriate.

6.20 The proposed southern parcel would sit adjacent to the east and south side of the settlement boundary of Marnhull. To the east south and west there are individual houses which are outside the settlement boundary. Marnhull is the largest of the villages identified in the NDLP. These villages were identified as the focus for growth, expected to take a minimum of an additional 825 dwellings²⁰. There have been no changes to the settlement boundaries. In Marnhull most of the growth that has been allowed, has been on appeal²¹ and the 'tilted balance' has been engaged.

6.21 This includes Salisbury Street for up to 67 dwellings and an adjacent site at Crown Road for 72 dwellings. These sites are both to the eastern edge of Marnhull sitting outside the settlement boundary. When allowing these appeals the inspectors considered that while some growth was anticipated in Marnhull, there are no specific site allocations and the boundary appears to be fairly tightly drawn for the entire settlement. The inspectors were clear that anticipated development needs could not be met without the release of land outside the various parts of the settlement limit. They concluded that location next to settlement limits, would be the most logical.

6.22 Both inspectors acknowledged that the 825 figure has already been exceeded, but commented that this is a 'minimum' figure. Both inspectors acknowledged that the policy 6 focus in Stalbridge and the villages should be on meeting 'local need rather than strategic need.' The inspector in

¹⁹ Policies 2, 6 and 20 are set out in CD3.001

²⁰ Policy 6 Housing Distribution of the NDLP [CD3.001]

²¹ Land north of Crown Road, Marnhull APP/D1265/W/21/3289314 (72 dwellings) [CD13.006], and Salisbury Street, Tanzey Lane & Sodem Lane, Marnhull APP/D1265/W/3323727 (up to 67 dwellings) [CD13.002]

the Salisbury Street appeal confirmed that *'such an approach would allow communities to adapt more gradually and would minimise the need to travel beyond the settlement.'*²²

6.23 In approving the scheme the Salisbury Street Inspector also recognised the limited accessibility credentials of that site, noting that the future residents 'would likely be reliant upon private cars to meet their needs for most services'.

6.24 However, the location of the housing to the centre of the village with the appeal schemes provides residents with more choice on travel modes than with Salisbury St. This appeal site in contrast is close to the centre of the village and existing facilities e.g. doctors and pharmacy, and village hall. The appeal proposal also includes retail/commercial development in the northern parcel -Tess Sq. The provision of such additional village services and community facilities alongside residential development is a rarity and should be celebrated. The proposal will bolster the self-containment of Marnhull, which is further discussed below.

What is the Housing Land supply and delivery position from 1st November 2025

6.25 I have put forward my arguments as to why the NDLP is 'out of date', why the APS is of limited (if any) assistance to Dorset Council in seeking to argue that the adopted development plan is not out of date, and thus the tilted balance should apply. Notwithstanding, it is common ground that come 1st November 2025²³ when the APS expires the housing land supply position for Dorset will plummet to c.2.67 years which is a staggering shortfall of 7,901 homes against the requirement using the most up to date LHN figure.

6.26 This shortfall is examined in detail in the proofs of evidence by Jeff Richards (CD11.002) which I attach to my proofs (**appendix CS5**), and whose conclusion I endorse.

6.27 Jeff Richards concludes that this is a very serious and significant shortfall in five year housing land supply.²⁴ He goes onto say those shortfalls in supply will persist for many years and a significant step change in housing delivery is required in Dorset to address the up-to-date LHN. The Council's Local Plan is many years away and the Council cannot rely on that plan to address its immediate shortfalls in supply, and the step change in housing delivery that is required now.²⁵ I respectfully commend his conclusion that the required step change must start from the granting of many more

²² Paragraph 15 of APP/D1265/W/3323727

²³ Topic Paper on Housing Delivery and Housing Land Supply [CD4.015]

²⁴ Paragraph 8.23 of the Proofs

²⁵ Paragraph 8.24 of the Proofs

planning permissions for more homes and that will require many more planning permissions on greenfield windfall sites.²⁶

- 6.28 The additional housing needs to go somewhere in Dorset, and it is common sense that the larger villages take some of the required growth. Marnhull has already been considered as a sustainable location by policy 6 of the NDLP and by previous inspectors. The Appellant's proposal incorporates new village services and community facilities to make the village even more sustainable and to provide economic, social and environmental benefits. The Appellant is clearly ahead of the Council in his vision for sustainable growth of Marnhull, which dovetails in with the NPPF. It will be for the new Dorset Local Plan, which is at least a couple of years away from adoption, to catch up. In the meantime, those clear and present needs should not have to wait for the new Dorset Local Plan when the Government's intentions are clear, and the proposal conforms with the overall housing policy imperatives in the NPPF.
- 6.29 To this end the Appellant would accept a condition/S.106 requiring the Tess Square development being implemented ahead of the residential on Butts Close.

What is the current affordable housing position in Dorset

- 6.30 Ms Annie Gingells proof of Evidence [CD11.003] has been prepared in response to the Rule 6 party – Marnhull Parish Council, to rebut the concerns they raised in their SoC that there was 'no local need' for affordable housing in Marnhull and at the request of the Inspector at the CMC. The evidence of Ms Annie Gingells demonstrates that there is an acute shortage of affordable housing in 'Dorset', with a persistent and growing shortfall, exacerbated by the absence of an adopted Local Plan.
- 6.31 Her evidence powerfully amplifies the otherwise largely unheard voices of those in desperate need of affordable housing. There has been a persistent chronic under-delivery of affordable homes. This has now resulted in a cumulative shortfall of 4,374 affordable homes in just three years, with projections indicating that this deficit could reach 10,789 by 2028/29 if current trends continue.²⁷ Her evidence demonstrates the severity of this affordable housing 'crisis', with over 5,400 households on the Housing Register, high homelessness rates, and reliance on costly temporary accommodation²⁸.

²⁶ Paragraph 8.25 of the Proofs

²⁷ Paragraph 9.6 of the affordable Housing Proofs of Evidence

²⁸ Paragraph 9.7 of the affordable Housing Proofs of Evidence

6.32 The appeal proposal will be policy compliant and deliver 48 much-needed affordable homes, directly contributing to addressing this 'crisis'. I agree with Ms Annie Gingell's conclusion that given the scale of need as demonstrated in her evidence and the Council's failure to meet this need, the provision of affordable housing should generally be afforded substantial weight in the overall planning balance.

Is Marnhull an appropriate location for retail and commercial

6.33 The strategic policies for retail and commercial are policies 11 (Economy) and 12 (Retail) of the NDLP (2016). However, the proposal does not sit comfortably within those policies. This is because the proposal is for services and community facilities within a 'village' location. The Appellant submitted a Retail Needs Assessment²⁹ [CD1.045] with the application and a Retail Sequential Test (RST) (CD4.014) (**appendix CS3**) with the appeal submission. The Appellant also submitted a draft Retail Impact Assessment³⁰ (RIA) (**appendix CS4**).

6.34 I question how relevant policy 11 and 12 of the NDLP really are in the determination of this appeal given the new LHN means that there is a very serious and significant shortfall in the HLS for Dorset.

6.35 Whether now or the 1st November given the significant shortfall in the HLS position, Dorset Council will need to reconsider the hierarchy of villages etc. re-draw settlement boundaries to achieve sustainable development, including the provision of homes, commercial development and supporting infrastructure in a sustainable manner.³¹ This could lead to some nuanced policy changes to policy 11 and 12.

6.36 There are 3 overarching objectives in achieving sustainable development: economic, social and environmental objectives which are interdependent and pursued in mutually supportive ways.³²

6.37 In my view the policies of the NPPF are of greater relevance than those of the out of date development plan-when considering whether Marnhull is the right location for retail and commercial development as proposed.

6.38 This proposal is for retail and commercial³³ development which sits outside but adjacent to the north, south and east of the settlement boundary. This appeal site encompasses the doctors

²⁹ Prepared by Lichfields

³⁰ Prepared by Lichfields submitted to the LPA on 29th January 2025

³¹ Paragraph 7 of the NPPF

³² Paragraph 8 of the NPPF

³³ Two offices with combined floorspace of 181sq m

surgery and pharmacy with associated parking- all are outside the settlement boundary, and built out by the Appellant.

6.39 The Inspectors who allowed the recent appeals³⁴ for housing considered that Marnhull was a sustainable location to take growth. The Appellant is proposing to support this growth by provision of local services and community facilities.

6.40 Therefore, I will assess the Tess Sq. development proposal against the policies within the NPPF and look at how the proposal meets with three overarching objectives.

How the retail/commercial meets the Economic objectives of the NPPF

6.41 For some initial context, the Dorset Local Plan Consultation January 2021 [CD7.002] for Town centre and retail development section (5.5) established that Marnhull was a ‘Tier 3 settlement’³⁵ which were typically identified as (or suitable for) having a local centre³⁶. An extract is set out below:

Local centres	Local centres include a range of small shops of a local nature, serving a small catchment.	<ul style="list-style-type: none"> • Abbotsbury Road, Westham, Weymouth • Beaminster • Bere Regis
	Typically, local centres might include, amongst other shops, a small supermarket, a newsagent, and a pharmacy. Other facilities could include a hot-food takeaway, hairdressers and launderette. In rural areas, large villages may perform the role of a local centre.	<ul style="list-style-type: none"> • Chickerell • Corfe Castle • Corfe Mullen • Easton Square, Easton, Portland • Fortuneswell, Portland • Littlemoor Centre, Weymouth • Lodmoor Hill, Weymouth • Lytchett Matravers • Marnhull • Portland Road, Wyke Regis, Weymouth • Southill Centre, Weymouth • West Bay • West Parley • Wool

6.42 No local centre was ever specifically identified and it is difficult to see how a local centre may have been drawn around the few existing shops and facilities in Marnhull especially given they

³⁴ Land north of Crown Road, Marnhull APP/D1265/W/21/3289314 (72 dwellings) [CD13.006], and Salisbury Street, Tanzey Lane & Sodom Lane, Marnhull APP/D1265/W/3323727 (up to 67 dwellings) [CS13.002]

³⁵ Tier 3 Settlements are described as the ‘more sustainable villages’. The policy says all of these villages will have a settlement boundary allowing for windfall and infilling of development.

³⁶ Under the heading for Network and Hierarchy of Centre

are spread out. We know Marnhull is the largest village in the former NDLP area. Through recent planning approvals there will be significant additions to the housing numbers in Marnhull and the settlement boundary will inevitably have to be re-drawn from that which has subsisted since 2003.

6.43 In light of the new LHN, Dorset Council will need to prepare a local plan which can accommodate the additional growth in a sustainable manner. Moreover, it is highly unlikely that any envisaged local centre for Marnhull would be removed in any subsequent draft local plan submission based on the significant uplift in the LHN. In any case I defer back to the policies in the Framework.

6.44 Chapter 7 Ensuring the vitality of town centres of the NPPF “looks purely at the roles that town centre play in the heart of local communities, by taking a positive approach to their growth, management and adaptation.” The proposal is to provide ‘local services’ and ‘community facilities’ in Marnhull to serve the residents of Marnhull which is the largest village in the former NDLP area. It is not a town and nor does Marnhull have a town centre. Although the policies in Chapter 7 of the NPPF are therefore not really relevant or applicable, the Appellant carried out a RIA. However, to have to carry out a retail sequential test, is in my opinion trying to fit a ‘square peg into a round hole’. NDLP policies 11 and 12 are based on Chapter 7 of the NPPF and to be precluded from bringing forward additional services and community facilities within a village, as opposed to a town does not make good planning sense.

6.45 Consequently, It is my opinion that paragraphs 88 & 89 of the framework- supporting a prosperous rural economy, are the most relevant paragraphs when considering the retail and commercial element of the proposal.

6.46 Paragraph 88 (d) states that planning decisions should enable the development of accessible local services, and community facilities, which includes local shops and meeting places. The proposal would accord with this policy. Local shops and cafes have a valuable role in people being able to meet and stem loneliness which meets the social benefits of the NPPF.

6.47 Paragraph 89 allows for ‘flexibility’ in rural areas in meeting community needs:

89. Planning policies and decisions should recognise that sites to meet local business and community needs in rural areas may have to be found adjacent to or beyond existing settlements, and in locations that are not well served by public transport. In these circumstances it will be important to ensure that development is sensitive to its surroundings, does not have an

unacceptable impact on local roads and exploits any opportunities to make a location more sustainable (for example by improving the scope for access on foot, by cycling or by public transport). The use of previously developed land, and sites that are physically well-related to existing settlements, should be encouraged where suitable opportunities exist.

6.48 I comment as follows on how the proposal meets the aspirations of this policy.

6.49 Community needs: The application was supported by a Retail Technical Note (RTN)³⁷ This considers the community needs of Marnhull. With the extant planning permissions within Marnhull, the paper concludes there could be an additional 890 people living in Marnhull. The RTN looks at the capacity for convenience floorspace, comparison goods floorspace, food and beverage floorspace, and other service uses i.e. hairdresser, estate agent, funeral care, vet and dentist. In each case the projection of floorspace requirement was slightly higher than the proposed convenience, comparison and food & beverage floorspace. For the other service uses the projected catchment population is sufficient to support the service facilities proposed. The RTN also considers there is significant potential to for Marnhull to increase its retention of expenditure within the local catchment area if new facilities are provided.

6.50 To provide better day to day needs for local residents within the local catchment area would reduce the length of travel time and distance for items and services. Being local there would also be a choice of sustainable travel modes: walking, cycling or using public transport. The proposal would also create local jobs which again would reduce the length of travel time and distance to travel to work and choice in using sustainable transport modes: thereby also contributing to meet the environmental objective of the NPPF as vehicle emissions would be reduced.

6.51 Settlement boundary: The proposal is adjacent to the settlement boundary and adjacent to the doctors surgery and pharmacy, paragraph 89 is a 'permissive' policy as it allows for development outside of the settlement boundary. In my opinion the site is physically well related to the existing settlement and the doctors surgery and pharmacy, the village hall, existing shops, the church and school that there would be 'linked trips'. Again, this would cut down on travel times and distances and provides a choice for residents to use sustainable travel modes: again contributing to the environmental objective of the NPPF as vehicle emissions would be reduced. The locational

³⁷ Prepared by Lichfields 24th October 2023 [CD1.045]

advantages also meet with objectives of policy 98 a) and e)³⁸ of Chapter 8 of the NPPF which looks at promoting healthy and safe communities; thereby also contributing to the social objectives.

6.52 Location: The proposal is in a village which does have a (limited) bus service. To mitigate the impact of the proposal a bus service contribution of £52,952.88 and a financial contribution of £4,800 towards six new pole and flag bus stops, will be secured by a s.106 planning obligation. With more people living in the village, it would be hoped that more people would use the bus service, providing an alternative mode of transport to the car: again contributing to the environmental objective of the NPPF as vehicle emissions would be reduced

6.53 General comments: The proposal by reason of its design is sensitive to its location within the village. It would not have an 'unacceptable' impact on local roads³⁹. The proposal includes upgrading rights of way through surfacing⁴⁰ and forming footpaths across the site thereby improving the access to the facilities on foot.

6.54 The proposal would meet the aims of paragraph 89 of the NPPF which would also contribute to the environmental objectives of the NPPF.

6.55 With regards to the commercial element, this proposal includes two offices with a combine floor area of 181sq m. These offices would be in a sustainable location in the heart of the new local services proposed. They should be attractive to local businesses and startups given their location and offer linked trips to future employees. These would meet the objectives of paragraph 88 a)⁴¹ of the NPPF.

How the retail/commercial proposal meets the social objectives of the NPPF

6.56 The proposal would also provide community uses including a café within the supermarket and a separate cafe. These could be a lifeline for those people who may be living on their own. They will provide much valued community facilities as a meeting place for residents, promoting social interaction thereby helping to achieve healthy, inclusive and safe places according with the

³⁸ Paragraph 98 of the NPPF states: To provide the social, recreational and cultural facilities and services the community needs, planning policies and decisions should: a) plan positively for the provision and use of shared spaces, community facilities (such as local shops, meeting places, sports venues, open space, cultural buildings, public houses and places of worship) and other local services to enhance the sustainability of communities and residential environments; and, e) ensure an integrated approach to considering the location of housing, economic uses and community facilities and services.

³⁹ As evidenced in the Proofs of Evidence (Highways) by Mrs Kim Hammonds [CD11.005]

⁴⁰ To be secured by S.106

⁴¹ Policy 88 of the NPPF states: Planning policies and decisions should enable: a) the sustainable growth and expansion of all types of business in rural areas, both through conversion of existing buildings and well-designed, new buildings;

objective of paragraph 96 a)⁴² of the NPPF. The other local services proposed e.g. vets, dentist would enhance the sustainability of communities and residential environments according with the objectives of para 98 a) and e)⁴³ of the NPPF. This would enhance the mental well-being of visitors/local residents and contribute to the objective of policy 88 d)⁴⁴ (economic) supporting a prosperous rural economy.

6.57 The proposal includes the provision of public 'open space' with planned comprehensive landscaping and upgraded footpaths/enhanced public rights of way which would make them accessible. This would also be a benefit to the health and wellbeing of communities (local people/residents) 'enabling and supporting healthy lives'. The proposal would align with the objectives of para 96 c)⁴⁵ & 98 a)⁴⁶ 105⁴⁷ of the NPPF and also 88 d)⁴⁸ (economic) supporting a prosperous rural economy.

6.58 The location of the services and local community facilities has been deliberately been proposed adjacent to the existing doctors surgery and pharmacy to provide an integrated approach to the location of community facilities and services- enabling 'linked trips' and thereby according with the objectives of policy 98 e(45).

⁴² Policy 96 of the NPPF states .Planning policies and decisions should aim to achieve healthy, inclusive and safe places which: a) promote social interaction, including opportunities for meetings between people who might not otherwise come into contact with each other – for example through mixed-use developments, strong neighbourhood centres, street layouts that allow for easy pedestrian and cycle connections within and between neighbourhoods, and active street frontages;

⁴³ Refer to footnote 37

⁴⁴ Paragraph 88 of the NPPF: Planning policies and decisions should enable d) the retention and development of accessible local services and community facilities, such as local shops, meeting places, sports venues, open space, cultural buildings, public houses and places of worship.

⁴⁵ Paragraph 96 of the NPPF: Planning policies and decisions should aim to achieve healthy, inclusive and safe places which: c) enable and support healthy lives, through both promoting good health and preventing ill-health, especially where this would address identified local health and well-being needs and reduce health inequalities between the most and least deprived communities – for example through the provision of safe and accessible green infrastructure, sports facilities, local shops, access to healthier food, allotments and layouts that encourage walking and cycling.

⁴⁶ Paragraph 98 of the NPPF: To provide the social, recreational and cultural facilities and services the community needs, planning policies and decisions should: a) plan positively for the provision and use of shared spaces, community facilities (such as local shops, meeting places, sports venues, open space, cultural buildings, public houses and places of worship) and other local services to enhance the sustainability of communities and residential environments; e) ensure an integrated approach to considering the location of housing, economic uses and community facilities and services.

⁴⁷ Paragraph 105 of the NPPF: Planning policies and decisions should protect and enhance public rights of way and access, including taking opportunities to provide better facilities for users, for example by adding links to existing rights of way networks including National Trails.

⁴⁸ Paragraph 88 of the NPPF: Planning policies and decisions should enable: d) the retention and development of accessible local services and community facilities, such as local shops, meeting places, sports venues, open space, cultural buildings, public houses and places of worship.

How the retail/commercial meets the environmental objectives of the NPPF

- 6.59 The proposal would provide car charging points (in line with the Building Regulations) which would enable visitors to charge their electric vehicles while visiting the local services and community facilities.
- 6.60 The proposal would lead to reduce distance of trips by car and provide choice in using sustainable transport modes thereby reducing emissions into the atmosphere.
- 6.61 The proposal would increase the number of trees planted on site introduce soft landscaping and biodiversity enhancements.

7 The Planning Balance

- 7.1 The NPPF (December 2024) sets out, at paragraph 11(d) the presumption in favour of Sustainable Development. The additional wording to this version is shown in bold. For decision-taking [making], this means:

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

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

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

*ii. any adverse impacts of doing so would significantly and demonstrably outweigh the benefits, when assessed against the policies in this Framework taken as a whole, **having particular regard to key policies for directing development to sustainable locations, making effective use of land, securing well-designed places and providing affordable homes, individually or in combination.**”*

- 7.2 Footnote 8 confirms that where an LPA are able to demonstrate a five year housing land supply (as is the case with regard to this appeal if relying on the APS) the reader needs to also consider 232 of the NPPF. Because the adopted development plan is more than years old the LPA cannot benefit from the limited protection afforded by paragraph 232 of the NPPF irrespective of the APS. Consequently, the tilted balance in paragraph 11.d of the NPPF is engaged.

7.3 I consider that the local plan is out of date for a number of reasons. In particular, its spatial strategy and housing requirement is inconsistent with national policy, especially the need to significantly boost the supply of housing. Whilst the Council seek to rely upon paragraph 232 of the NPPF and contend that the adopted plan is not out of date I disagree for the following reasons:

- The reorganisation of Dorset Council took place more than 5 years ago and they haven't implemented a new local plan (transitional arrangements are for 5 years), therefore the Local Plan is out of date.
- The 'APS' only satisfies one of the three criteria within paragraph 232 of the NPPF i.e. the 5 year HLS. Although Dorset Council also pass the HDT requirement in paragraph 232 it fails to meet the third criterion because as the local plan is more than 5 years old.

7.4 Footnote 7 sets out, in relation to para 11(d)(i) the circumstances when exemptions apply to implementing paragraph 11(d), as being those (within the NPPF, rather than Development Plans) that relate to:

- Designated heritage assets

In so far are relevant to this appeal.

7.5 The judgement "*Mordue*"⁴⁹ has clarified that with regards to the setting of heritage assets. Where the principles of the NPPF are applied, this is in keeping with the requirements of the 1990 Act⁵⁰. Consequently, the less than substantial harm should be weighed against the public benefits of the proposed development. We contend there is no 'strong' reasons to disengages the tilted balance.

Paragraph 215 of the NPPF confirms 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. It is common ground with the LPA that the level of harm is less than substantial. This policy is clear that the [less than substantial] harm should be weighed against the public benefits.

7.6 It will be considered that the public benefits of this proposal outweighs the slight harm identified to the heritage assets, having particular regard to key policies⁵¹ for directing development to

⁴⁹ *Mordue* Secretary of State for Communities and Local Government and others [2016] EWCA Civ1243 [CD13.009]

⁵⁰ Planning (Listed Buildings and Conservation Areas) Act 1990

⁵¹ In the NPPF

sustainable locations, making effective use of land, securing well-designed places and providing affordable homes, individually or in combination

The public benefits – Social, economic and environmental

- 7.7 The proposal will deliver much needed housing, including a total of 122 family homes. The Councils five-year housing land supply position come the 1st November will drop to c.2.67 years (a shortfall of 7,901 homes). The evidence of Jeff Richardson demonstrates that this will be a very serious and significant shortfall in the required five year housing land supply⁵². That necessary step change in the delivery of housing must start now from the granting of many more planning permission for more home, to try and address those shortfalls which are likely to persist for years to come.⁵³ The weight of this planning benefit is substantial and should be recognised as a key material consideration in the determination of this appeal.
- 7.8 The proposal offers an exceptional opportunity to deliver urgently needed affordable housing in Dorset. It directly addresses these critical housing needs by delivering a policy compliant level of affordable homes in a balanced mix that supports a range of incomes. It aligns with national planning policy objectives, which emphasizes meeting housing needs in full and delivering a variety of affordable housing options. The weight of this planning benefit is substantial and should be recognised as a key material consideration in the determination of this appeal.
- 7.10 The proposal will deliver much needed housing in a village which has already been recognised as being sustainable and suitable for future growth. The proposal will also provide local services and community facilities in the village creating a local centre. This will enable linked trips, encourage local spending and will help to bolster self-containment. The additional dwellings will also help to sustain the vitality and viability of the existing and proposed local services and community facilities. There will be job creation for local people through the retail and commercial element of the proposal. The proposal includes the provision of public open space and upgrading of existing rights of way (ROW) to enable the ROWs to be accessible throughout the year and in inclement weather. Locationally, the proposal gives residents more choice on the modes of transport to reach these services and community facilities and will reduce distance of trips if taken in the car. This is a significant benefit of the proposal linked to the social, economic and environmental dimensions of sustainable development.

⁵² Paragraph 8.23 in the Proofs of Evidence on Housing Delivery and Housing Land Supply [CD11.002] (Appendix CS5 to this proofs)

⁵³ Paragraph 8.24 in the Proofs of Evidence on Housing Delivery and Housing Land Supply [CD11.002] (Appendix CS5 to this proofs)

- 7.13 There will be short term benefit relating to employment during the construction.
- 7.14 In my opinion the appeal scheme should be considered as an excellent example of sustainable development when assessed against the policies in the Framework. There is little identifiable harm arising from the proposals, such that the appeal proposal merits approval whether or not the tilted or flat balance is applied - albeit that the Appellant contends that the tilted balance is engaged in the determination of this appeal.

8 Conclusion

- 8.1 This proof of evidence has been prepared on behalf of Mr P Crocker, in my opinion the proposal complies with the Framework as a whole and represents sustainable development, for

Full planning permission for a mixed-use development to erect a food store with cafe, plus office space and 2 No. flats above. Erect building for mixed commercial, business and service uses (Class E), (e.g. estate agents, hairdresser, funeral care, dentist, vet). Form vehicular and pedestrian accesses and parking. Form parking area for St. Gregory's Church and St Gregory's Primary School. Carry out landscaping works and associated engineering operations. (Demolish redundant agricultural buildings). [The appeal proposal] Land west of Church Hill [The appeal site].

Outline planning permission (to determine access) to erect up to 120 dwellings. [The appeal proposal] Land off Butts Close [The appeal site]

- 8.2 The evidence presented by Mr Jeff Richards, Ms Annie Gingell, Mrs Kim Hammond, Mr Kevin Morris, Mr Jonathn Taylor and myself demonstrates that no material harm will arise from the appeal proposal.
- 8.3 I have set out in this proof of evidence why it is my opinion that paragraph 11 d) of the NPPF is engaged and that the tilted balance applies and that the proposal is in overall compliance with the framework, which includes having particular regard to key policies for directing development to sustainable locations, making effective use of land, securing well designed places and providing affordable homes. Should the Inspector find any conflict with development plan policies then a plethora of material considerations indicate that permission should be granted irrespective of those policies. However, the development plan policies most important to determining the appeal are out of date and the tilted balance is engaged, adding further weight to the Appellant's case.

