

## **LAND AT PACKSADDLE WAY**

**APP/E3335/W/25/3363055**

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### **CLOSING SUBMISSIONS**

#### **PEOPLE FOR PACKSADDLE – RULE 6 PARTY**

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#### **Introduction**

1. At the heart of this appeal is the tension between the delivery of new housing and the protection of existing community infrastructure.
2. Despite all the arguments about planning policy and points of law, really what we are grappling with here is whether the delivery of 74 houses is more important, more compelling, than the preservation of a much used and well-loved community asset.
3. That is a community asset which in many respects has not changed in the last 250 years and has provided benefits to this town for generations, and in principle, could continue to do so in the future.<sup>1</sup>
4. We do not propose to repeat the evidence you have heard on the issue on the length of use of the Fields or the value the community places on it/that use. You will note that there is no dispute as to the fact of either of those points.<sup>2</sup> In terms of understanding the existing site, how it is used, and the planning benefits it generates, we invite you to read PFP's Opening Submissions, the contributions of members of the public on Day 1, and the evidence appended to Mr Dingle's proof of evidence.

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<sup>1</sup> The Inspector will recall what Mr Jones said about what is likely to happen should the appeal be dismissed.

<sup>2</sup> DD XX. There is a dispute however as to legal ability for the public to use anything beyond the permissive and public footpaths on site.

5. It is uncontroversial that the tilted balance in para. 11(d) applies. But again, as we set out in Opening, the tilted balance is not a licence to carry out development at any cost.
6. On the central issue that arises from para. 11(d)(ii), both the Council and the R6 party are at one: the adverse impact of granting planning permission caused by this development *would* significantly and demonstrably outweigh the benefits such that planning permission should be refused.
7. These Closing Submissions address the Main Issues to explain why that is.

### **The effect on the availability of public open space**

8. It is convenient to start with this issue as this is the matter which has occupied most of the Inquiry's time
9. PFP's overarching submission on this Main Issue is that the proposed development would have an unacceptable impact on the effect on the availability of public open space because:
  - a) The existing site is large, well-used and has significant public value for all the reasons the Inquiry has heard.
  - b) There is a deficit of open space in Frome. PFP's evidence<sup>3</sup> shows a shortfall of **88.73ha**. There has not been any challenge to the accuracy of that figure or the robustness of the methodology used to arrive at it. In that respect, it is the most up-to-date assessment of the quantum of open space within Frome. There is no dispute the deficit is significant.<sup>4</sup>
  - c) The open space comprised in the appeal scheme is not equivalent or better, either in quality or quantity. Indeed, on the latter point, it is not clear at all what *quantum* of open space on site would in fact be *usable* as open space.<sup>5</sup>

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<sup>3</sup> Appended to Mr Dingle's Proof.

<sup>4</sup> Mr Dunlop XX R6.

<sup>5</sup> Mr Paley XX LPA.

- d) The loss of the existing open space is contrary to both local and national policy, and the harm that arises significantly and demonstrably outweighs the benefits such that planning permission should be refused under para. 11(d)(ii) NPPF.
10. The starting point is that there appears to be common ground that in definitional terms the site is open space within the meaning of the Framework and the Local Plan.<sup>6</sup> Given that common ground, PFP do not propose to rehearse the point any further.
11. However, given the confusion in the way the Appellant’s case addresses this Main Issue, it is helpful to identify what (at least as we understand) is actually in dispute between the Appellant, the LPA and R6 Party.
12. First, there is a dispute as to whether DPI6(1) applies to this open space. The view of both the LPA and Council is that it does. The Appellant disagrees.
13. Second, there is dispute on the substantive planning judgement under local and national policy, i.e. whether the appeal scheme would provide open space which is as good or better than the current open space on the appeal site. Both the Council and R6 party say that the proposed replacement would not be equivalent or better. The Appellant disagrees.
14. However, within that issue is a further dispute in how you should reach that judgment, namely what weight you should give to the existing open space in light of the allegation that the public’s use is “unlawful” or a “trespass”. This is a point taken by the Appellant. The Council and R6 Party disagree.
15. We address each issue in turn.

### ***1. The application of DPI6***

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<sup>6</sup> i.e. that the site is open space within the meaning of para. 141 LPP1 part one and the Glossary of the text. It is *not* being suggested that Mr Dunlop conceded that DP16(1) applied to this particular scheme. He maintained that it did for the reasons explained below. He maintained the view that the site must be identified in the policies map or be a “new site” in order for DPI6(1) to apply.

16. In respect of DPI6(1), the Appellant maintains through Mr Dunlop that DPI6(1) does not apply to the Appeal Site because in order for the policy to apply to a particular open space it must either:
- a) be identified in the Plan's Policies Map, or
  - b) is a site which "comes forward" after the adoption of the plan.<sup>7</sup>
17. PfP submits that this interpretation of DPI6(1) is wrong and that DPI6(1) applies to the Site.
18. We start with the relevant principles of interpretation. They are unlikely to be in dispute. As to the general approach to determining the meaning of a planning policy:

"Well established principles are engaged (see the judgment of Lord Reed in *Tesco v Dundee City Council*, at paragraphs 17 to 22). Development plan policies must be interpreted with realism and common sense, and with a proper understanding of their practical purpose. The court must keep in mind that this exercise is not the same as construing provisions in a statute or the terms of a contract. The formulation of the policy in question may not be perfect, especially perhaps if it is the product of re-drafting in successive processes of plan-making. **But whatever shortcomings there may be in its drafting, the object in interpreting the policy is always to ascertain the true meaning of its language and the effect it is intended to have in guiding planning decision-making. A policy must, of course, be seen in its context. And it is also essential to view the policy itself in its entirety, avoiding a disjointed reading of individual criteria or phrases within it, and thus gain a true sense of how its constituent parts fit with each other and work together as a whole. A practical and coherent interpretation, if that is possible, should be the aim**" (*R. (on the application of Plant) v Lambeth LBC* [2023] EWCA Civ 809 at [34]).

19. The supporting text of a policy can be relevant to ascertaining the meaning of the words used in the policy itself. But those words cannot trump the meaning of the policy itself:

"... it seems to me, in the light of the statutory provisions and the guidance, that when determining the conformity of a proposed development with a local plan the correct focus is on the plan's detailed policies for the development and use of land in the area. The supporting text consists of descriptive and explanatory matter in respect of the policies and/or a reasoned justification of the policies. **That text is plainly relevant to the interpretation of a policy to which it relates but it is not itself a policy or part of a policy, it does not have the force of policy**

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<sup>7</sup> Within the meaning of para. 6.149 LPP1.

**and it cannot trump the policy.** I do not think that a development that accorded with the policies in the local plan could be said not to conform with the plan because it failed to satisfy an additional criterion referred to only in the supporting text. That applies even where, as here, the local plan states that the supporting text indicates how the policies will be implemented” (*R. (on the application of Cherkley Campaign Ltd) v Mole Valley DC [2014] EWCA Civ 567* at [15]).

20. Applying those principles, the Appellant’s interpretation is wrong for the following reasons.
21. **First**, the text of DPI6(1) does not say that its application to a particular open space within the meaning of the policy is conditional on identification of the site in some supplementary planning document such as a map. Those words are not in the Policy.
22. Rather, it says in plain English that existing open spaces will not be developed unless certain criteria are met. It is not expressed to be conditional on “identification” elsewhere. Mr Dunlop agreed that, looking at those words in the policy itself, no reasonable reader could understand them as meaning that the application of the policy is conditional on identification in the policies map.<sup>8</sup>
23. That was a very fair concession. The words clearly mean what they say. Existing open space falls to be protected. There is no requirement that is conditional upon further criteria. That really ought to be the beginning and the end of the matter. The remarks of Lord Reed in *Tesco Stores Ltd v Dundee City Council [2012] UKSC 13* will be familiar to everyone: “planning authorities do not live in the world of Humpty Dumpty: they cannot make the development plan mean whatever they would like it to mean.” This is a case in which the Appellant is trying to do precisely that.
24. **Second**, the supporting text to the policy in the Local Plan does not take Mr Dunlop’s interpretation any further.
25. The Appellant cannot identify any words in the policy itself to identify the conditionality they contend for. They therefore seek to identify the requirements in the supporting text.

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<sup>8</sup> Mr Dunlop XX R6.

26. The starting point must be that even **if** it were possible to read in a requirement that the application of DPI6(1) is conditional on further criteria identified only in the supporting text, that cannot “trump” the policy. That text is relevant to the interpretation of a policy to which it relates but it is not itself a policy or part of a policy, it does not have the force of policy and it cannot trump the policy. As the Court of Appeal said in **Cherkley**, “...a development that accorded with the policies in the local plan could be said not to conform with the plan because it failed to satisfy an additional criterion referred to only in the supporting text”.
27. In any event, Mr Dunlop is wrong to read the supporting text to DPI6(1) as actually importing any requirement that application of DPI6 is conditional on identification in the policies map or any other condition. Mr Dunlop appears to rely on para. 6.149. That says:
- “The open spaces of which the Council is aware are shown on the Policies Map. Development Policy 16 will also apply to new spaces that come forward”.
28. Again, a clear example of words meaning what they say: that the open spaces of which the Council is aware are shown on the policies map. Those words are not purporting to import some additional requirement in the way Mr Dunlop suggests. This view of para. 6.149 is wrong as a matter of ordinary language.
29. His approach also mischaracterises the purpose of the policies map. The Plan itself tells us what the Policies Map is for. It:
- “is the geographical representation of planning policies relevant in the area contained within the Local Plan (Parts I and II). Using an Ordnance Survey base map it will detail relevant land designations as well as policy boundaries and land allocations.”<sup>9</sup> (emphasis added).
30. **Third**, whatever the Council may or may not have done with respect to this site in its SPD and other documents post-dating the Plan does not take matters any further. A document adopted some 10 years after the plan (in the case of the Greenspace SPD) does not control the correct interpretation of a policy in the plan. That is wrong in law. There is no authority to support that proposition,

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<sup>9</sup> LPPI CD4.1 pg. 3.

whether that be a decision of a court, an inspector or anything. An SPD cannot change what a development plan policy otherwise means in law.

31. In this respect, the Council fairly and rightly acknowledges to this Inquiry – after many, many attempts by PFP to put them right – that DPI6(1) is not conditional on policy map identification or anything else. To the extent that the Council’s prior misunderstanding on this point might be reflected in documents is simply nothing to the point of what the policy actually means.

32. In any event, this is a further point which does not assist the Appellant’s interpretation of the policy. The SPD (para. 4.13, CD 4.10) says:

“The Council’s default position is that public open spaces should be safeguarded from development, (LPPI 6.148) **and not all spaces may be identified on the proposals map**, particularly where these have come into existence since the preparation of the plans” (emphasis added)

33. **Fourth**, this interpretation is entirely at odds with the purpose of DPI6(1). A proper understanding of the policy’s purpose is relevant to interpreting it. There cannot be any dispute that the purpose of DPI6(1) is to safeguard open space unless, generally, it is either not needed or something at least as good is provided. That is an entirely logical purpose given that public open space has important benefits. It is, in every respect, the type of policy one would find in Local Plans across the country where open space is protected from development.

34. Mr Dunlop confirmed that, on his interpretation, if the protection was entirely contingent on a site being identified in the Policies Map, and for whatever reason the Council were not aware of an established site such that it is not in the policies map, that site now benefits from no protection in respect of DPI6(1). That would be an absurd outcome. It would be contrary to the spirit and purpose of the policy. This suggests it is wrong.

35. For all those reasons PFP submits that the correct interpretation of DPI6(1) is that it applies to existing open spaces. There is no additional requirement imposed by the supporting text to support the view that there are further conditions to be satisfied to engage the policy, such as identification in a policy map or anything else.

36. PFP's submission on this issue is therefore: that the Local Plan explains what is meant by "open space" at para. 6.141. There is no dispute between the parties that it meets that definition. Mr Dunlop is wrong to say there is some further conditionality. In the absence of any further conditions the correct approach is for the Inquiry to apply DPI6(1) to the entirety of it site as it exists today.

### **NPPF**

37. Ultimately, as Mr Dunlop accepted, the argument about DPI6(1) is academic.<sup>10</sup> Of course it is right to say that the question of whether DPI6(1) applies is relevant to the s. 38(6) duty. The Inquiry will need to take a view on that. But Mr Dunlop was entirely right to accept that the argument *is* academic in the end. That is because, even if (contrary to the case of PFP and the LPA) DPI6(1) does not apply, the Framework contains a requirement in materially the same terms as DPI6(1) (see para. 104(b)). Again, Mr Dunlop accepts that the Site is open space for the purposes of the Framework.

38. Therefore, whatever tortuous and excessively legalistic route the Appellant might contrive to seek to avoid the application of DPI6(1), national policy imports essentially exactly the same requirement. Both the LPA and the R6 Party say that the scheme gives rise to a conflict which significantly and demonstrably outweigh the benefits of granting the appeal.

39. Therefore, notwithstanding the considerable attention the Appellant has paid to the history of this Site and how SCC/Mendip DC have treated it, it takes the case nowhere unless the Appellant can persuade the Inquiry that the replacement space is equivalent or better (such that there is essentially no harm) or (b) the weight given to that harm in the planning balance is such that does not overcome the tilted balance.

40. These submissions now turn to those substantive issues.

### **2. Equivalent or better**

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<sup>10</sup> Mr Dunlop XX LPA

41. PFP say (a) the whole of the Site should be treated as open space for the policy of DPI6 and the NPPF and (b) the question is therefore whether the proposed replacement is equivalent or better than site is currently as open space.
42. Despite all the Inquiry time that has been spent on the genealogy of DPI6 and the Site owner's intentions, **this is ultimately a question of pure planning judgement for the Inspector.**
43. Mr Dunlop accepted that if the public had a right to this site, the proposed replacement would not be equivalent or better.<sup>11</sup> Mr Paley suggested that if the site *was* open space, it would be not suitable for development at all.<sup>12</sup> And this is telling as to why the Appellant says you should close your eyes to what is *actually* happening on site.
44. The means by which the Appellant says you should close your eyes to the actual use of the site is this: Mr Dunlop says you should not give any weight to what is said to be the "unlawful" use of the Site by the public and that it is, in practice, only the impact to the permissive footpath that really needs to be accounted for. That point is used both to undermine the benefit that should be afforded the existing site, and to justify the very development of the site and its design.
45. PFP say that is wrong.
46. **Firstly**, the premise of the argument is wrong. Mr Dunlop says that because he cannot point to an express grant of permission to the public to enter onto this site, the use is unlawful.<sup>13</sup> As we said in Opening, that is wrong as it overlooks the simple point that a legal right to enter on to and use land may arise by implication (that is, by the conduct of a landowner viewed in context)<sup>14</sup>. Therefore, it does

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<sup>11</sup> Mr Dunlop XX R6

<sup>12</sup> Mr Paley XX R6

<sup>13</sup> Ibid.

<sup>14</sup> The law describes this as a "bare licence". The position is described by the editors of Megarry & Wade, *The Law of Real Property* (10th Edition) in the following terms at 33-003 "This is the simplest form of licence. A bare licence is a licence which is not supported by any contract, and includes a gratuitous permission to enter a house or to cross a field. Such a licence may be given expressly or it may be implied from the surrounding circumstances. Thus a person with lawful business may enter a householder's gate and proceed to the door of the house, or he or she may go into a shop that is open" (citations omitted).

not follow that the mere absence of an express right means that anyone not on the footpaths is trespassing.

47. There is ample, undisputed evidence of the public using this site for 50+ years. The landowner knows about that use. It is not taking action to prevent it happening. That is consistent with the position when SCC was the owner. Between 2003 and the creation of the unitary authority, the Appellant is only able to point to two instances of SCC taking any action to stop access (a notice in 2003 and fencing in 2007). That did not stop people and as Mr Dunlop accepted SCC continued to be aware of the use. According to Mr Jones, the Council (now as both LPA and landowner) does not regard it as a trespass.
48. Critically, there is no determination by a Court (obtained by the Council as claimant landowner) that the existing use is unlawful and is not pursuant to an implied right of access. It is obvious why that is: the Council do not consider it to be a trespass and are perfectly content for the public to use the site.
49. Mr Dunlop's view was that the facts of this case do not support the implication of such a licence.<sup>15</sup> PFP disagree, and drew Mr Dunlop's attention to all of the facts which plainly support the implication of a licence. Ultimately, however, and with no disrespect intended, his view on that does not matter for the purposes of the Inspector's decision. Mr Dunlop is not a lawyer and rightly accepted that he cannot reach a professional judgement on whether there is an implied licence. His view on the legal issue of access rights and his evidence that it is "unlawful" cannot be given any weight whatsoever by this Inquiry.
50. As set out in opening PFP entirely accept that this Public Inquiry determining this s. 78 appeal is categorically not a trial of the nature of the public's right to use the site. We are interested in the planning merits of the appeal scheme. It is the Appellant who has put this in issue via Mr Dunlop's evidence. That is why it has been challenged and that is why it has taken up so much Inquiry time.
51. Where this all ends up is that the Inquiry cannot proceed on the assumption (made by a witness who does have the professional expertise to do so) that the public's

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<sup>15</sup> XIC

use of the site beyond the footpath is a trespass. That is a question of law for a court. It has not been answered, and this Inquiry is not a substitute for that.

52. PFP respectfully submit that you should consider the actual use of the Site by the public right now and take into account the full extent of the planning benefits which derive from that use. That is entirely consistent with the Court of Appeal's decision in **Renew**. There is no merit whatsoever in the suggestion that you should turn away from the actual full extent of the use in assessing impact on a completely unfounded and legally unsupported contention that the public are trespassing.
53. Secondly, and in any event, there is no basis in authority whatsoever to support the proposition that open space which is being used "unlawfully" should not be given weight. Mr Dunlop could not point to any authority of any kind for that and we wait to see if any will be cited in the Appellant's Closing Submissions.
54. Third, in planning terms, the lawful use of the site is informal recreation/open space.<sup>16</sup> Regardless of the private law rights of access, that is what the site may be lawfully used for as a matter of planning law. That would be lost with the implementation of the proposed development.
55. We therefore say that when you are assessing the impact of the Appeal Scheme on the availability of public open space, you should take full account and give full weight to how this site is actively being used by the public.

***Is the proposal equivalent or better for the purpose of local and national policy?***

56. The evidence before the Inquiry clearly and demonstrably suggest that it would not be. The starting point is that the Appellant has not approached the design of the on site open space with the intention of it being equivalent or better than the

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<sup>16</sup> The facts of this case, which are not really in dispute, is that there has been 50+ years continuous use as public open space. It follows that least 10 years use elapsed some considerable time ago. That means that the right to use the site for the purpose of open space in planning terms has accrued and is immune from enforcement. That can only be lost thereafter by the right either being abandoned or a material change of use taking place after the use has become immune: see *R. (on the application of Ocado Retail Ltd) v Islington LBC* [2021] P.T.S.R. 1833 para 162. In disputing this point, the only issue Mr Dunlop took was the use of the site for grazing in 2023. But if the use had already become immune by then via 40 years continuous use, the use of land for agricultural purposes in 2023 would not be a material change of use within the meaning of the 1990 Act (see s. 55(2)(e)), and therefore would not affect the accrued planning right to use the site for informal recreational purposes.

existing 3.6ha.<sup>17</sup> Moreover, it is not actually clear of how much of the 0.8ha is actually *usable* by the public.<sup>18</sup>

57. We will not repeat the detailed account the Inquiry has on the value the public derive from this site. But in light of that evidence, the proposal is not equivalent or better in quantitative terms. The proposal is for substantially less open space than that which currently exists on site, and would exacerbate the shortage of open space in Frome.
58. It is also not equivalent or better in qualitative terms (i.e. how it will look, how it will be experienced etc.). As Mr Dingle says, 3.6ha high-quality amenity space well-used by the public would be replaced with almost exclusively “typical ‘estate’ open space”. We note again that, but for the absence of a right of access, Mr Dunlop would not consider the proposed replacement to be equivalent or better.<sup>19</sup>
59. In terms of the other factors Mr Dunlop relies upon in para. 7.50 of his Proof to say that the proposed 0.8ha of on site space is equal or better to the status quo:
  - a) “The visual amenity will be adversely impacted but the site will remain attractive”. The fact that the proposed replacement would be *less good* than the status quo self-evidently shows that the proposal would not be *equal or better* in quality.
  - b) “The proposals will provide at least 0.8ha of public open space which can be used by the general public”. The current site comprises 3.6ha of open space which the landowner does not prevent the general public from using. The additional point that it is said to be 0.4ha more than policy requires is nothing to the point. It is still significantly less than what the public are currently using. In any event, as we heard today, it is not clear how much of that 0.8ha is actually usable.
  - c) “The open space will be maintained and secured in perpetuity for the people who use it”. That is not what the s. 106 provides for. It provides that the open

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<sup>17</sup> Mr Paley appeared to accept this in XIC but then suggested otherwise in XX R6. The Inspector will have a note.

<sup>18</sup> XX Mr Paley LPA.

<sup>19</sup> XX R6.

space will be maintained and secured for “the lifetime of the development”. Therefore, if this site is redeveloped in future, there will be no obligation on the landowner to maintain and secure the open space. Mr Dunlop therefore cannot rationally give this matter any weight.

d) That “the Right of Way” across the site will be maintained for all members of the public to use”. It is not clear at all how, 2.8ha of open space is being lost, this has any material impact on what is left being as good or better.

60. On its own terms Mr Dunlop’s evidence does not justify the conclusion that the proposed open space would be equivalent or better.

61. PFP submit that there is a clear and demonstrable conflict with para. DPI6(1) and NPPF para. 104.

62. This gives rise to significant planning harm which PFP says significantly and demonstrably outweighs the benefits such that the appeal should be dismissed.

**Whether the appeal site is in an acceptable location, having regard to local and national policies, including what weight can be given to any conflict with the development plan**

63. The Appeal Scheme is in a fundamentally unsuitable location. There does not appear to be any dispute over the following matters:

64. First, the Site is outside the Frome settlement boundary and is therefore in open countryside. Policy CPI(c) provides that development in the open countryside will be strictly controlled but may “exceptionally” be permitted under CP4. There is no suggestion the Appeal Scheme meets any of those exceptions. The starting point under the local plan is that the site is an unacceptable location in principle

65. Second, the Site has never been allocated for residential development by the local planning authority. Mr Dunlop places weight on “the Council” having “earmarked” the Site for development. While, in its position as a private landowner, Somerset CC may have wished to develop the site, Mendip DC, as local planning authority, never determined that the principle of residential development is acceptable by allocating it through the local plan process. That position remains unchanged since

the creation of Somerset Council (at which point it became both landowner and LPA).

### ***Weight to conflict with spatial strategy***

66. There is plainly a conflict with the spatial strategy development plan. That para. 11(d) NPPF deems the most important policies in respect of the Appeal Scheme to be “out of date” does not mean this conflict must be given no weight. Nor does it mean that any harm is necessarily acceptable in planning terms.
67. For the reasons given by Mr Dingle, this in principle conflict with the development plan should be given moderate weight as the policies are in general accordance with the NPPF.
68. Also relevant to the determination of weight given to any conflict is that Frome is in fact over delivering on its targets under the local plan.<sup>20</sup>
69. Reference has been made to the phosphates issue. As pointed out by consultee comments at application stage, progress in addressing the phosphates issue will help resolve the housing land position.<sup>21</sup> Mr Jones also explained how, in his experience as a planning officer in this authority, he was seeing solutions to the phosphates issue being deployed. The fact that other areas in the district may face temporary deliverability issues does not mean that inappropriate sites in or around Frome are somehow now appropriate. That is short termism rather than real planning for the future.

### **The effect of the proposed development on the character and appearance of the area**

70. As Mr Dingle explains, the existing character of this Site is unique and important. It derives identity and character both from its historical layout, but critically, it derives character and contributes to local distinctiveness from the very fact that it is open space.

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<sup>20</sup> See Jon Dingle’s Proof.

<sup>21</sup> CD3.1 pg. 25.

71. The existing character of the appeal site has not properly been accounted for and the harm to that unique character is not justified by the Appellant's evidence.
72. First, the value the local community place on the landscape of this site has not been properly accounted for in LVIA terms. The Landscape Institute Technical Guidance Note 02/21 ("Assessing landscape value outside national designations") provides various factors which landscape professionals should take into account when determining the value of landscapes which are not subject to national/statutory designations.
73. A number of these are relevant to the appeal scheme, such as recreational factors<sup>22</sup>, and perceptual factors, both scenic, and wildness/tranquillity. These (among others) are factors which the Landscape Institute specifically advises should be taken into account when assessing landscape value outside of designated landscapes.
74. There is no analysis or explanation in the LVIA itself of how these factors were taken into account. In cross-examination Ms Foxford could not convincingly point to that having happened or where in the LVIA these matters were expressly analysed. Instead, we have an appendix to Ms Foxford's proof produced c. 2 years after the LVIA – and purely for the purposes of this Inquiry - which seeks to suggest that this method was indeed followed and to provide "clarification".
75. It is demonstrably not apparent from the LVIA that the factors identified by TGN 02/21 were taken into account such that it is compliant with the guidance. That plainly has implications for the confidence the Inquiry has in how the LVIA has truly understood the value the local community place in this landscape.
76. Second, the design process paid no regard to the community character of this site in formulating the design of this scheme.
77. In developing this scheme, the Appellant has essentially closed its eyes to the fact that this site derives character and gives identity to the local area through its use as a public open space for the previous 50+ years. Throughout the evidence, we

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<sup>22</sup> "Landscape offering recreational opportunities where experience of landscape is important". Ms Foxford's proof provides a summary of all the factors.

see repeated references to the “unlawful” use of the Site beyond the footpaths as a reason to discount the value that derives from that use, whether in landscape, character, or open space terms. The scheme has not been developed in the light of and with respect to the existing use of the site as open space and the character that creates (both in relation to the site and the local area). That is notwithstanding that the Appellant does not contest the long use by the public, and the significant community response to its own consultation exercise.<sup>23</sup>

78. The scheme has been developed as if the site were simply a greenfield site, albeit with some footpaths, with no real associations with the public, and no real sense of the value the public place on it. There has been no attempt to develop a scheme which respects and responds to the character of the site and the contribution it makes to local identity because the Appellant has demonstrably ignored the character that derives from its use as open space in formulating the scheme.
79. This is most clearly demonstrated by Mr Paley’s XIC. The design of this scheme has proceeded on the fundamentally mistaken belief that this site is some kind of “forgotten” overgrown site. That is manifestly inconsistent with the unchallenged evidence of the fact of the public’s long use and the evidence of the value the community places on this site. You will have been to the site yesterday. You probably did not need to do any bushwhacking to walk across it in its full extent.
80. It was also suggested that this “is a development site”.<sup>24</sup> No it is not. It is common ground in this appeal that it has never been allocated for residential development in any development plan document.<sup>25</sup> The fact that there is a planning permission from 1973 which does not appear to have ever been implemented and has not been put in evidence does not make this a “development site”. The fact that the private landowner (Somerset County Council) had development ambitions does not change that. The Appellant is fundamentally wrong on this issue and it betrays

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<sup>23</sup> Statement of Community Involvement CD 2.4 page 13. Design was not one of the features reviewed after hearing from the community.

<sup>24</sup> XIC

<sup>25</sup> The fact that there is a planning permission from 1973 which does not appear to have ever been implemented and has not been put in evidence does not change that. Nor does the subjective intention of Somerset County Council

the underlying error throughout the Appellant's case: a failure to acknowledge the profound planning benefits which arise from the actual use of the appeal site.

81. Third, there can be no credible dispute that the experience of someone using the site after the site has been developed would be significantly and demonstrably worse than as compared to the current use. Indeed, there is no real dispute between the parties that the visual impact on a person using the site post-development will be fundamental. As Ms Foxford indicated, it will feel like a housing estate.<sup>26</sup>
82. Mr Paley, it appears for the first time today, expressed the view that the replaced 0.8 Managed Area would be *better* than the status quo.<sup>27</sup> That is a point which he does not appear to make anywhere in his Proof. With respect to him, his answers justifying that were not convincing and seem largely to stem from an understanding of the site as a "leftover" development site unusable by the public.
83. It is not an answer to make the vague point that the harm caused to the character of the site and local area are the inevitable effects of development of a greenfield site. An attempt could have been made to reflect and respond to the character of the site which derives from its use as open space, thereby reducing the negative impact for people using the site after development.
84. That attempt has not been made because the Appellant has ignored the fact that the character of the site derives significantly from its use as public open space. It is a focal point for this community. None of that has been substantively accounted for in how this scheme has approached the baseline condition of the site, or how it has been designed. This all has a materially negative impact on local character and distinctiveness.
85. Finally, it cannot credibly be said that the public open space on site has been designed with the intention of it being equivalent or better than the existing site in design/character terms (on which, see above). The Appellant has always

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<sup>26</sup> CF XX R6.

<sup>27</sup> XX R6.

maintained that DPI6(1) does not apply. That speaks to the quality of the design of the scheme in its own right, but also has implications for DPI6(1).

86. The LPA before this Inquiry now recognises the distinctiveness and value of the site in the local area: Mr Jones on behalf of the LPA recognises that it is “significant that the high quality of the site as an open space is due to its open countryside nature and the access and connection it provides to the natural environment and biodiversity” (para. 3.17) and that “the length of time of the use of the land for these purposes and benefits is also significant” (para. 3.18).
87. Mr Dingle is fundamentally right to say that the existing character of the area will be “eviscerated” by the implementation of the Proposed Development. There has been no real attempt to either understand it or preserve it.

#### **Whether the proposed development would make acceptable provision for affordable housing**

88. There is a policy requirement for this scheme to deliver 30% affordable housing (DPI 1). The Appellant seeks to justify the lower amount on the ground of viability. Plainly, the viability evidence needs to be robust and justify that position.
89. PFP’s evidence makes clear that the Proposed Development’s viability has not been properly and thoroughly assessed using comprehensive, up-to-date and independent evidence of costs and values. The point here is not that PFP seeks less affordable housing, or that the defects identified would only result in fewer affordable units being delivered. The point is that Pfp’s review calls into question the robustness of the Appellant’s evidence overall. The Inquiry can have no real confidence that the viability evidence is robust and justifies a policy non-compliant scheme with respect to affordable housing. The lack of robust justification for the planning harm arising from this development is a theme which runs throughout the Appellant’s case.

#### **Whether it would make acceptable provision for the generation of renewable energy**

90. Local Plan Policy DP7 (Design and Amenity of New Development) provides that that proposals for new development should demonstrate that they maximise opportunities for renewable energy generation on site.
91. The Proposed Development includes air source heat pumps and solar panels on 17 of the houses. The other 57 homes and the home for children with disabilities would be built to current building regulations. The overwhelming majority (77%) of the proposed homes would not include any renewable energy generation measures. Mr Dingle is therefore right to conclude that the proposals have not “maximised opportunities” for the generation of renewable energy on site. This results in a conflict with Policy DP7 and with the Framework.
92. The reason given in the RTS as to why there is not more provision was essentially cost. It is not that it is not feasible to do more, simply that it would cost more.

### **The effect on biodiversity**

93. As Mr Dingle explains, the construction of the Appeal Scheme would result in an immediate, significant, harmful impact to the long-established biodiversity of the Site. The acceptability of the Appeal Scheme, in relation to the Framework and Development Plan policy, is dependent upon the increase in biodiversity that may follow if the proposed on and off-site measures are successfully delivered and maintained over time.
94. Given that off-site measures are allowed by Policy DP5 as an exceptional circumstance, the cost of and mechanism for the delivery and long-term maintenance of the on and off-site biodiversity measures should be clear and robustly justified.
95. The Appellant’s evidence, like landscape impact and viability, is not robustly justified or transparent. There is no real explanation of if/how this mitigation land will be secured, and consequently, that the increase in biodiversity can be achieved. In short, this is another point on which you cannot be satisfied that Appellant’s case is robust and justified.

### **Conclusion**

96. Mr Dingle arrives at the following view on the weight that should be afforded to the benefits and the harm arising from the scheme:

<b>Benefits</b>	<b>Weight</b>
57 market units	Significant
17 affordable units	Significant
Accommodation for Children with disabilities	Limited – No weight
Economic benefits during construction	Very limited
Economic benefits long term	Very limited

97. Mr Dingle is right to give the children with disabilities home limited/no weight. The Appellant has been candid that there is no need for this facility other than the fact the Council have requested it.<sup>28</sup> The Council have now confirmed, however, that there is no budget for this facility and therefore any need case that might have been dependent on the Council's position no longer exists: see Mr Dingle's evidence. Delivering something for which there is no evidenced planning need cannot rationally be given any weight in the planning balance.
98. More broadly, this goes to the fundamental point that a development of a community greenfield site in conflict with the material provisions of the local and national policy should not utilise a significant portion of the site where there is no need for that development.
99. Against those benefits, he identifies the following harms:

<b>Harms</b>	<b>Weight</b>
Open space	Very significant
Asset of Community Value	Very significant
Character and Appearance	Significant
Landscape	Limited
Biodiversity	Moderate - Significant
Carbon reduction	Moderate

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<sup>28</sup> Mr Dunlop XX R6.

100. No one disputes the benefits that new housing brings in a context of a national shortage. Seeking to address that at the cost of essential community open space is short termism.
101. On the facts of this case, PFP submits that the evidence shows that the harm which would arise from granting permission to develop this important site of community value would significantly and demonstrably outweigh the benefits. Although there are differences in the case made by the R6 Party, that overall conclusion is shared by the LPA.
102. We invite you to prefer the majority view of professional judgement before the Inquiry and to conclude that the adverse impacts of permitting this scheme to proceed would significantly and demonstrably outweigh the benefits and to dismiss this appeal.

**HARLEY RONAN**

Landmark Chambers

15<sup>th</sup> August 2025