

**LAND TO THE SOUTH OF FILANDS, MALMESBURY  
S78 APPEAL AGAINST THE DECISION BY WILTSHIRE COUNCIL TO  
REFUSE PLANNING PERMISSION FOR OUTLINE PLANNING  
APPLICATION**



**RULE 6 STATEMENT OF CASE FOR THE APPELLANT**

TOWN & COUNTRY PLANNING (Determination by Inspectors) (Inquiries Procedures) (England) RULES 2000 (Statutory Instrument 2000/1625); as amended by the TOWN & COUNTRY PLANNING (Hearings and Inquiries Procedures) (England) (Amendment) Rules 2009 (Statutory Instrument 2009/455) and by the TOWN & COUNTRY PLANNING (Hearings and Inquiries Procedure) (England) (Amendment) Rules 2013 (Statutory Instrument 2013/2137)

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Appellant:	Gleeson Developments Limited
Local Planning Authority:	Wiltshire Council
LPA reference:	16/07288/OUT
Site:	Land to the south of Filands, Malmesbury
Description:	Outline Planning Application (all matters reserved except means of access) for residential development, including the construction of up to 71 dwellings, the creation of new vehicular access with footways and cycleways and ancillary road infrastructure, public open space, children's play area, landscape planting, surface water attenuation and associated infrastructure.
Date:	31 January 2017

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# 1. INTRODUCTION

- 1.1 The appeal is made by Gleeson Developments Ltd (the Appellant), under section 78 of the Town and Country Planning Act 1990, against the refusal, by Wiltshire Council, of planning permission for residential development reference: 16/07288/OUT.
- 1.2 The application is for residential development (up to 71 dwellings) on land to the south of Filands, Malmesbury. The application site lies on the northern edge of the market town of Malmesbury, contiguous with the defined settlement boundary of this settlement. The adjacent site was granted planning permission for residential development and land for a primary school in March 2013. This permission was won on appeal (APP/Y3940/A/12/2183526), the Inspector then concluding that the site is a sustainable one. The adjacent site, referred to as 'Filands View', is now under construction.
- 1.3 This full Statement of Case is provided pursuant to Rule 6 of the Town and Country Planning (Inquiries Procedure) (England) Rules 2000 and has been written in accordance with Annex J of the PINS Procedural Guide (2016).
- 1.4 The statement should be read in conjunction with the draft Statement of Common Ground, also submitted with the appeal. In response to the reasons for refusal, and as a consequence of the Appellant's expectation in respect of common ground, this statement focuses on the areas of identified differences between the Council and the Appellant. It also takes into account representations submitted by interested parties in response to the application.
- 1.5 The Appellant is seeking an inquiry procedure and reserves the right to expand its evidence beyond the scope of this statement in direct response to any other matters raised by either the Council or interested parties following the submission of the appeal. In the meantime, it is anticipated that the Appellant will present planning (including housing requirement and land supply issues), and transport / highways evidence in regard to section 106 requirements with 1 - 2 witnesses as set out at section 7 below.

## 2. BACKGROUND

### The application

2.1 The outline planning application comprises:

*Outline Planning Application (all matters reserved except means of access) for residential development, including the construction of up to 71 dwellings, the creation of new vehicular access with footways and cycleways and ancillary road infrastructure, public open space, children's play area, landscape planting, surface water attenuation and associated infrastructure.*

2.2 Detailed matters for determination are means of access into the site (all other matters reserved - scale, appearance, landscaping and layout, including internal layout of roads, cycle ways and pedestrian paths).

2.3 The planning application was validated on 26 July 2016.

2.4 The submitted application plans are:

Title	Reference Number
Planning application boundary / site location plan	BMD.15.019.DR.P001
Proposed site access	ITB11080-GA-004 rev B
Proposed pedestrian and cycle access	ITB11080-GA-007

2.5 The following plans were also listed on the decision notice and could be used to secure the nature and quality of the development, however, these plans should be treated as an illustrative guide to development:

Parameter Plan	BMD.15.019.DR.P003 rev A
Illustrative Master plan	BMD.15.019.DR.P002

	rev A
Illustrative Master Plan – housing mix	BMD.15.019.DR.P002.2 rev A

2.6 In addition to the above, the application was accompanied by the following documents:

- Completed application form
- Completed ownership certificates
- Site survey (drawing DTSO20811-1M8, sheets 1-9)
- Parameter Plan (drawing number: BMD/15/019/DR/P003)
- Illustrative master plan (reference: BMD/15/019/P002)
- Design and Access Statement
- Planning Supporting Statement
- Landscape and Visual Impact Assessment
- Statement of Community Engagement
- Flood Risk Assessment including foul and surface water strategy
- Arboricultural survey and impact assessment
- Archaeological Desk Based Assessment
- Ecological Impact Assessment
- Waste and Recycling Audit
- Transport Assessment
- Framework Travel Plan
- Sustainability and Energy Strategy

2.7 During the course of the application a revised parameter plan, pedestrian access plan and illustrative layout were submitted with an addendum to the Design and Access Statement to respond to comments in regard to the connection between the site and neighbouring development (know as Filands View) and to respond to comments from the urban design officer. The following was submitted on the 6 October 2016:

- Revised parameter plan (drawing number: BMD.15.0198.DR.P003 rev A)
- Revised illustrative master plan (drawing number: BMD,15.019.DR.P002 rev A)
- Design and Access Statement addendum
- Updated drawing: ITB11080-GA-007 rev A

2.8 In terms of statutory consultees, council officers and non-statutory consultees, the following responses were received in respect of the principle of the development. Where no adverse comments were made, or comments were made subject to securing mitigation and/or s106 contributions, or objections were resolved during the application process, a position of no objection is recorded below:

- Wiltshire Council Archaeology – support
- Highways England – no objection
- Natural England – no objection
- Wiltshire Council Arts Services – no objection
- Wiltshire Council Highways – no objection
- Wiltshire Council Tree Officer – no objection
- Wiltshire Council Ecology – no objection
- Wiltshire Council Education – no objection
- Wiltshire Council Early Years – no objection
- Wiltshire Council Housing – no objection
- Wiltshire Council Urban Design – support
- Wiltshire Council Environmental Control and Protection – no objection
- Wiltshire Public Open Space – no objection
- Environment Agency – no comment
- Wessex Water – no objection
- Dorset and Wiltshire Fire And rescue – no objection (can be overcome by condition)
- Wiltshire Council Drainage engineer – no objection
- Ashton Keynes Parish Council – objection
- Brokenborough Parish Council – objection
- St Paul’s Malmesbury Without Parish Council – objection
- Malmesbury Town Council – objection
- James Gray MP – objection

2.9 In addition to the above, there were 44 comments from members of the public objecting to the scheme because of conflict with the neighbourhood plan, adverse impact on infrastructure including traffic and drainage, and need to protect the landscape. There were also two responses in support of the proposed development, one suggesting it was a suitable site and the affordable housing is needed urgently, the other hoping this development would be brought forward instead of the Neighbourhood Plan allocation. There was one other response providing general comments.

2.10 On the 25 October the application was refused for two reasons:

1 – The proposal is outside of the framework boundary for Malmesbury and has not been allocated for residential development within the Wiltshire Core Strategy (January 2015) or Malmesbury Neighbourhood Plan (February 2015). The development fails to meet any of the special circumstances for the creation of additional residential units in such circumstances listed under paragraph 4.25 of the Wiltshire Core Strategy and would result in harm to the character and appearance of the locality. Therefore, the proposal is contrary to Core Policies 1,2,13, 51 and 57 of the Wiltshire Core Strategy, saved policy H4 of the North Wiltshire Local Plan. The Malmesbury Neighbourhood Plan and paragraphs 14, 17, 55 and 198 of the NPPF. As such the proposal fails to promote a sustainable pattern of development and is contrary to the aforementioned local and national policies.

2 – The proposed development does not make any provision for securing affordable housing on site, financial contributions towards primary and secondary school provision, public rights of way; the on-going provision and maintenance of open space and waste facilities. The application is therefore contrary to Core Policies 3, 43, 45 and Saved Policy CF3 of the Wiltshire Core Strategy.

2.11 As reflected in the reasons for refusal, there are no technical reasons that would merit a refusal, such as flood risk, nature conservation or infrastructure issues,

subject to the satisfactory resolution of a s106 agreement, as described further below.

- 2.12 Heads of terms for the s106 legal agreement were not agreed before the application was refused but the intention is to continue discussion to agree these before the appeal is heard at Inquiry. A final signed version will be presented before the commencement of the Inquiry addressing the second reason for refusal. A CIL compliance statement will support the s106 and it should be noted that Wiltshire Council has an adopted CIL charging schedule, which will also address infrastructure requirements.
- 2.13 It is therefore anticipated that the main case for the evidence will focus on the principle of the development, covered by reason for refusal no.1.

### 3. DESCRIPTION OF THE APPELLANT'S EVIDENCE

#### Introduction and Context

3.1 The Appellant will set out the scope and structure of the evidence as a whole.

3.2 The Appellant will identify a number of key references relevant to the evidence. For example briefly setting out key references (including context and timescales) to the NPPF and NPPG as well as the development plan, such as the following:

- Wiltshire Core Strategy, saved policies of the North Wiltshire local plan, and the Malmesbury Neighbourhood Plan
- Current status of the emerging site allocations plan and updated evidence base including the Strategic Housing Market Assessment (SHMA)
- Council's position on five-year housing land supply; together with
- Any other published evidence base documents that the Appellant will rely upon during the course of the inquiry.

3.3 The Appellant will set out the general approach to the evidence, including setting out the government's priority to deliver housing and the Appellant's case in summary with reference to the presumption in favour of sustainable development. The Appellant will demonstrate that the second bullet, first sub point, of the NPPF paragraph 14 under 'decision taking', is engaged and that:

- The development plan is not absent, because of the Wiltshire Core Strategy and saved policies of the North Wiltshire Local Plan and the development is contrary to the development plan in so far as it lies outside the defined settlement framework boundary and is not allocated for development, but
- The settlement boundaries set in the North Wiltshire Local Plan and relied upon in the Malmesbury Neighbourhood Plan are out-of-date and inconsistent with the NPPF,
- There is a need to release land outside the settlement framework boundaries if the housing requirements across the housing market area are to be met,

- Malmesbury is not immune from the need to meet housing needs and the Neighbourhood Plan has failed to bring forward deliverable housing sites, which comply with the Neighbourhood Plan, to help meet requirements.
- The weight to be attached to saved policy H4, in respect of development outside settlement boundaries, is significantly diminished, if any weight can be given to it at all (irrespective of whether the Council can or cannot demonstrate a five year housing land supply)
- The development of the site is in broad accordance with the distribution strategy set within the Wiltshire Core Strategy (Core Policy 1 and Core Policy 2) and the policies therein
- Although the site is not allocated, the proposal does not directly conflict with any of the policies of the made Malmesbury Neighbourhood Plan and therefore paragraph 198 of the NPPF and the Written Ministerial Statement (12 December 2016) are not engaged.
- Irrespective of the lack of conflict with the Neighbourhood Plan the appellant will demonstrate that the Council can not demonstrate a five year housing land supply
- The site is in a sustainable location
- The harm to countryside is inevitable and limited but the Landscape and Visual Impact Assessment submitted with the application demonstrates only limited harm from the development in landscape terms
- The benefits of the proposal are significant
- The benefits of housing provision, including affordable housing provision are enhanced as a consequence of the five-year housing land supply shortfall and lack of affordable housing in the locality
- The harm, including non-compliance with the development plan, does not significantly or demonstrably outweigh the benefits of this development

3.4 As noted above the Appellant will confirm that the Council cannot demonstrate a five-year housing land supply, which would engage the presumption in favour of sustainable development, and will demonstrate the extent of that shortfall to inform the weight to be given to the social benefits of the scheme.

3.5 In regard to the Written Ministerial Statement of the 12 December 2016, the Appellant will demonstrate that the relevant policies for the supply of housing in

the Malmesbury Neighbourhood Plan relating to the proposed development are limited to those contained in the design code, part II. As such,, the proposed development is not in conflict with the plan and the Written Ministerial Statement does not change the consideration of the appeal.

### **The appeal site**

- 3.6 The Appellant will explain where Malmesbury sits within the settlement hierarchy of Wiltshire. The Appellant will discuss the site's location and its characteristics, placing the site in context in terms of the existing urban edge and proximity to local services, employment opportunities as well as its relationship with the surrounding landscape. Reference will be made to topography, built form, vegetation, landscape character, drainage and accessibility and transport.
- 3.7 The Appellant will confirm the sustainability of the location of the site and highlight the lack of technical obstacles to development, confirming the suitability of the site for development.

### **Site suitability**

- 3.8 The Appellant will describe the extensive evidence base submitted with the application, making reference to the application documents and the officer's report, demonstrating site sustainability and suitability in respect of the general scale, form and location of residential development as proposed. The lack of technical obstacles to the development as proposed will be highlighted, confirming the overall suitability and deliverability of the site for residential development. Reference will be made to the consultation responses, including drawing on the response from the Urban Design Officer and Transport Officer.
- 3.9 The Appellant will submit evidence demonstrating the acceptability of the access arrangements proposed, drawing on the response from the Highways Authority.
- 3.10 With reference to the Design and Access Statement, the Appellant will describe how the site's constraints and opportunities have been considered to establish the amount of development sought. The Appellant will demonstrate how the housing,

open space, children's play area and green infrastructure, as proposed, can be accommodated successfully, within the site boundaries. Therefore, that the grant of planning permission would establish the principle of a high quality development that would be compatible with the scale, character and distinctiveness of the local vernacular and landscape and with the design principles set out in the Malmesbury Neighbourhood Plan Volume II.

- 3.11 The Appellant will demonstrate, with reference to landscape evidence, how the master plan has been landscape-led and will demonstrate the limited harm in terms of landscape impact and character.
- 3.12 With reference to the application's supporting technical reports, the Appellant will describe how the development can accommodate the necessary on-site mitigation, for example in response to ecology and drainage matters.
- 3.13 In this context, and with reference to agreed conditions, the Appellant will demonstrate that, because (other than means of access into the site) the application is in outline, reserved matters can be controlled so as to ensure compliance with best practice and high quality design and to ensure that certain key elements of proposals are retained as part of the comprehensive development of the site.
- 3.14 With reference to development timescales, and subject to the grant of planning consent, the evidence will confirm that the development could deliver the full 71 dwellings in the five-year period. This would assist in enabling the Council to demonstrate a five year housing land supply in the immediate five-year term.
- 3.15 In respect of the Malmesbury Neighbourhood Plan, the Appellant will demonstrate that this development does not undermine the allocations made in the neighbourhood plan. Further, whilst the site was considered but not allocated through the Neighbourhood Plan process the Appellant will provide the background to this and the future position to demonstrate that the site in its current form (including with reference to the adjacent development and expansion of the nearby Dyson facility) was not considered.

3.16 In respect of this section of the evidence the Appellant will conclude:

- The site is in a sustainable location
- The site is suitable for development in technical terms
- The application, including its supporting information, provides the framework for a high quality residential scheme
- There are no technical obstacles to the development of the site as proposed

### **The development plan: Weight to be Attached**

3.17 The application site is located in Wiltshire. The development plan for the site comprises saved policies from the North Wiltshire Local Plan, the Wiltshire Core Strategy (adopted 2015) and the Malmesbury Neighbourhood Plan (made 2015).

3.18 With reference to the NPPF, the timescales of the saved plan, the terms of the saving letter and the housing land supply shortfall, as well as reference to relevant case law and appeal decisions, the Appellant will demonstrate that:

- The development plan is out of date in respect of settlement boundaries, because it was drawn up on the basis of pre-NPPF housing requirements in the local plan up to 2011
- The presumption in favour of sustainable development is engaged as the Wiltshire Core Strategy and North Wiltshire Local Plan are out of date, and the Malmesbury Neighbourhood Plan does not redraw those boundaries but relies on the saved policy
- In any event, the presumption in favour of sustainable development is engaged because Wiltshire Council cannot demonstrate a five year housing land supply.
- The saved plan policies, H4 attract little, if any, weight as they are out of date
- Relevant policies for the supply of housing, comprising of policy CP1, CP2 and CP13 of the Wiltshire Core Strategy, and Saved Policy H4 of the North Wiltshire District Local Plan should not be considered up to date but in any event the proposals broadly comply with the settlement strategy.
- There is no Site Allocations Development Plan Document to update settlement boundaries. The Malmesbury Neighbourhood Plan makes

allocations but these are undeliverable in a form that complies with the policy and there is no group formed to review the plan or provide any alternative strategy.

- In other cases, the Neighbourhood Plan relies on the North Wiltshire Local Plan boundaries and there is no direct conflict of the proposals with the Neighbourhood Plan
- There would be no grounds for refusal on technical grounds and the site is a sustainable location for development.
- Sustainable development should not be constrained by time expired 'limits of development', particularly in the context of minimum requirements, OAN and the Government's mandate to "boost significantly" the supply of housing land.

3.19 Policies CP51: Landscape, and CP57: Ensuring High Quality Design and Place shaping: referenced in the reasons for refusal, will be addressed in this section, including with reference to the technical work undertaken in respect of the application, the officer response to comments, the extent of the conflict with the policies (given that they apply equally to all sites for development whether allocated or not) and the weight to be attached to the policies. There was no specific objection in terms of the effect of the proposals on landscape character and appearance of the countryside, landscape, or townscape, and there was support, subject to condition, from the Urban Design officer. The evidence will confirm consistency with the Malmesbury Neighbourhood Plan part II (design part).

3.20 The Appellant will conclude that the 'in principle' policies referenced in the reasons for refusal can only carry very little weight, at best, in the determination of this appeal.

3.21 The Appellant will demonstrate how the appeal proposals comply with the NPPF and the Wiltshire Core Strategy, except for the fact that the site is not allocated, and does not conflict with the Neighbourhood Plan. The proposals comply with the broad spatial strategy for development in Wiltshire. The Appellant will demonstrate that the proposals are sustainable and should be allowed.

### **Housing Requirements (Objective Assessment of Housing Need)**

3.22 The Appellant will confirm that the housing requirement for the Malmesbury community area is indicative, not a cap, and that sustainable development should be approved. The Appellant will also confirm that the housing figures within the Wiltshire Core Strategy do not plan for the OAN, with the inspector on adoption of the plan requiring an early review to address this issue.

3.23 In the absence of early review, the Appellant will confirm that the OAN, set out in a new SHMA and with reference to a redefined Housing Market Area, should be used as the housing requirement. Reference will be made to any published assessment of OAN, including the new Strategic Housing Market Assessment (SHMA) due to be published shortly.

#### **Five year land supply**

3.24 The Appellant will set out the implications of the NPPF and NPPG in respect to housing land supply (HLS) and the relationship with the presumption in favour of sustainable development.

3.25 The Appellant will address the following matters:

- The HLS monitoring area
- The requirement (including approach to shortfall and buffer)
- The deliverable supply

3.26 Reference will be made to relevant case law and appeal decisions as well as the Council's HLS monitoring documents.

3.27 The Appellant will conclude that the Council is unable to demonstrate a five-year HLS.

### **Affordable housing**

- 3.28 The Appellant will demonstrate the need for affordable housing in the community area, the significance of the issue and will relate this to the benefits to be derived from the appeal proposal.

### **Material considerations and benefits**

- 3.29 Other material considerations will be identified, including the substantial benefits of the development across all three strands of sustainable development, such that these support the development of the site.

### **Sustainable development, planning balance: benefit's v harm**

- 3.30 In respect of this part of the evidence, the Appellant will conclude that, contrary to the Council's position, the evidence supports this appeal proposal as sustainable development, which should be granted planning permission in order to boost the supply of housing and meet a shortfall in delivery of affordable and market dwellings. Beyond the inevitable loss of a greenfield site and change to the character of the site itself, the Appellant will reconfirm the distinct lack of adverse impacts, and certainly no level of harm that could reasonably be said to significantly and demonstrably outweigh the benefits of development, that are required by paragraph 14 of the NPPF, before permission can be refused.
- 3.31 The Appellant will refer back to the circumstances under which paragraph 14 of the NPPF is engaged. The Appellant will conclude that those circumstances exist in relation to the application and will go on to conclude that, according to the planning balance, the proposals do represent sustainable development.
- 3.32 Specifically, the Appellant will outline the benefits of the proposal. The Appellant will conclude that whilst the development would lead to the loss of a greenfield site, on balance, the limited adverse impacts of the development would not significantly and demonstrably outweigh the substantial benefits.

3.33 The Appellant will conclude that, in accordance with the presumption in favour of sustainable development and the cost / benefit analysis required by that presumption, planning permission should be granted without delay.

#### **4. CONDITIONS/S106**

- 4.1 The Appellant will set out the opportunities for imposing conditions to mitigate any impact of the development or positively influence reserved matters details, in the context of policy requirements.
- 4.2 A list of suggested conditions, should the Inspector be minded to allow the appeal, will be prepared jointly with the Council based upon those provided in the committee report, and will be submitted with the final Statement of Common Ground.
- 4.3 In accordance with NPPF paragraphs 203 and 204, s106 planning obligations will be used to mitigate the direct impact of proposed development. Among other matters, the affordable housing provision will be secured through this approach.
- 4.4 Through these measures, the Appellant is expecting to agree, in common ground, that reason for refusal no. 2 has been overcome. A CIL compliance statement will be sought from the Council.

## 5. RELEVANT DOCUMENTS

5.1 The Appellant currently intends to refer to at least the following documents at Inquiry. These documents either form part of the appeal submission or are Core Documents as set out in the draft Statement of Common Ground.

- Town and Country Planning Act 1990 & the Planning and Compulsory Purchase Act 2004
- National Planning Policy Framework (2012)
- National Planning Policy Guidance (2016)
- Government statements on housing and growth
- Written Ministerial Statements
- The anticipated White Paper
- Saved policies from the North Wiltshire Local Plan 2011
- Wiltshire Core Strategy
- Inspector's report on Wiltshire Core Strategy
- Council's SHMA and SHLAA
- Topic Paper 3: Settlement Strategy (Wiltshire Core Strategy Consultation 2012)
- Topic Paper 3: Settlement Strategy Addendum (Wiltshire Core Strategy Consultation 2012)
- Malmesbury Neighbourhood Plan (2015)
- Any relevant emerging policy documents published at the time of the appeal
- Planning officer report in respect of the application
- Relevant officer reports and council decisions in respect of other sites
- Relevant appeal decisions and court judgements
- The planning application, together with its supporting documents, drawings and other materials

5.2 The Appellant reserves the right to add or to amend the above list upon receiving the pre-inquiry Statements of other parties to the Inquiry.

## **6. CONCLUSION**

- 6.1 The Appellant will provide evidence to address all matters referred to in the Council's reasons for refusal.
- 6.2 The evidence will demonstrate the proposals, whilst not allocated, accord with up to date national objectives and requirements in respect of spatial strategy and housing delivery.
- 6.3 The Appellant will conclude that the development is sustainable and should be approved.

## **7. WITNESSES**

- 7.1 The appellant intends to call the following witnesses with respect to the following:
  - 1. Planning / Policy / Housing Land Supply
  - 2. Highways