

Review of Inspector's decision

(Paragraph references refer to those from the appeal decision)

5. Should the Inspector have gone further in explaining the degree to which the intrinsic beauty of countryside would be eroded. How did he properly weigh this consideration in his decision when he failed to characterise the harm or to explain the weight he attributes to this.

7. The Inspector argues that the erosion of local landscape quality '*does not fully accord with the aforementioned policies*'. Has the Inspector misdirected himself here, the policies clearly prohibit development which harms local landscape character. The development is in conflict with the policy in terms.

10. Reliance has been placed on an indicative plan to argue coalescence with Lipyeate will not be a particular problem. Layout is a reserved matter so it was flawed to rely on an indicative plan.

He argues that Lipyeate would retain a more rural and low-density character which would appear distinct from the proposed development. There is no evidence that this would be the case.

11. The proposed landscaping and retention of existing, it is argued, would mitigate the effect of the development. Details of landscaping were reserved and should not have been afforded significant weight as the details presented were indicative only.

16. The Inspector says the development doesn't fully comply with DP1, DP4 and DP7, it appears contrary on its terms to these policies, did he mis-direct himself here?

28. The Inspector acknowledges that there may be improvements in the near future in housing and acknowledges the imminent adoption of the Local Plan Part 2. The Inspector in attributing weight to the various considerations did not have any

technical way of assessing the weight to afford to the shortfall and did not seek to understand the circumstances further. The reasons for the shortfall are material and the steps the Council has taken to resolve it are all material considerations.

Reasoning was presented through the appeal to explain the reasons why more than limited weight can be attributed to the housing policies but the Inspector does not explain why he rejects these arguments.

28. The Inspector argues that the impacts of the need for nutrient/phosphate neutrality with developments connected to the Somerset Levels RAMSAR site, would be likely to have an impact on housing delivery for some time. This statement is not supported with evidence. There is no clarity on the extent of shortfall which may result in regards to this issue or indeed how swiftly it will be resolved. The Inspector's should not have given weight to this.

30. The Inspector acknowledges the relative inaccessibility of services and facilities in Coleford. He notes some services and facilities are adequate, *'even if some would need a longer walk or cycle through the village, for example'*. He also acknowledged that the bus service in the area was infrequent. Representations were made to the appeal (and during the processing of the planning application) about the significant walking distances from the site to services and facilities and the impracticability of this for a proportion of future residents.

The Public Sector Equality Duty (PSED) (contained within the Equality Act 2010) applies to appeal Inspectors. It was manifestly clear, given the remote location of the site, those prospective occupants with protected characteristics (particularly 'age' and 'disability') who are likely to be less mobile, would be disadvantaged should they occupy the development.

In respect of the affordable housing element in particular, prospective residents may have little choice other than to accept an offer of accommodation on the development despite it being unsuitable. Those with protective characteristics, without access to a private car, would be isolated and significantly disadvantaged.

The Inspector failed to have 'due regard' to the PSED under section 149 of the Act. There is no evidence that the Inspector considered the potential impact of the development on those with protected characteristics despite recognising that '*some would need a longer walk of cycle*' to facilities and that the bus service was infrequent.

Even in cases where there is only a possibility that protected characteristics could be material, the decision maker has a responsibility to address this consideration. In failing to do so arguably the Inspector erred.

34. The Inspector argues that there is no substantive evidence to demonstrate that issues on the highway network cause significant congestion or result in unacceptable highway safety consequences. The Inspector however acknowledges at para 33 that '*I am aware from evidence provided by interested parties that there have been a number of traffic collisions and other incidences in the roads near the site*'. These two conclusions are contradictory and his logic potentially irrational?

36. The Inspector argues that because the highways authority have not objected on visibility grounds and that this coupled with his observations on the ground indicates that the access would be safe. Evidence was presented through the application and appeal demonstrating that the correct southern visibility splay relied upon third party land (owned by an objector) and so these were not deliverable. The appellant incorrectly plots the visibility splay set in the road off the nearside carriageway edge. Manual for Streets advises the splay should be taken from the nearside carriageway edge. The Inspector fails to take into account the dispute over the plotting of the visibility splay.

40. The Inspector accepts an Appropriate Assessment (AA) is required. He fails to distinguish between mitigatory and compensatory measures noting that he can consider measures that could be delivered which would avoid harmful effects. He records that there are '*mitigation/compensation*' measures set out in the ecological appraisal. The provision of landscaping and new habitat could be mitigation or it could be compensation. Compensatory measures cannot be taken into account when reaching conclusions on the effects on site integrity (Grace and Sweetman v

An Bord Pleanála). Was the inspector clear in his own mind on how he approached the AA? Did he potentially take into account compensation measures?

40. Does the Inspector's AA go far enough in terms of meeting the guidance in NPPG (Paragraph 003 Ref ID: 65-003-20190722).

46 & 51. The Inspector notes (para 46) that being a former farmhouse, the surrounding rural landscape is an important element of its setting and contributes towards its significance. At para 51 he then reasons no harm would result, these conclusions seem incompatible given the scale of development proposed and the conclusion potentially irrational.

57. The Inspector reasons that given the lack of a 5 year housing land supply he gives the Council's housing policies limited weight. This conclusion lacks a proper assessment of the shortfall, the reasons underpinning it and the rapid progress being made to close the gap.

In this case the housing shortfall only occurs due to a Governmental change in the method of calculating housing numbers. Mendip district has historically over-delivered on its housing target. The shortfall is not long-standing and the level of shortfall is limited indicating more weight should be attached to housing policies in the Mendip Local Plan. Critically, it is being addressed through the Local Plan Part 2, with additional residential allocations which the Inspector was supplied with the Inspector's Report into the examination. Having regard to the 'Holgate judgment' the Inspector appears to have failed to consider these factors.

On a general point the Inspector is silent on the Mendip Local Plan Part 2 Inspector's report which he was furnished with, it is unclear whether he had regard to this important material consideration.

Relevant appeal decisions

Two highly relevant planning appeals were presented to the Inspector (Appendices 4 & 5 of Context Planning Ltd.'s Appeal Statement and see below extract from the statement). Both appeals; related to appeal sites within close proximity to Coleford, proposed residential development and were both dismissed within the last year despite the lack of a 5 year housing land supply (appeal decisions appended). The Inspector failed to take these important material considerations into account in allowing the appeal.

Extract from planning appeal statement

5. OTHER RECENT APPEAL DECISIONS IN MENDIP DISTRICT

- 5.1** The appellant's Appendix 25 is an appeal decision in Butleigh which was allowed for 32 dwellings. The Inspector gave significant weight to the fact that the site was proposed to be allocated in the MLPP2. He found no harm to the landscape, character and appearance of the area or the setting of designated heritage assets. He attached moderate weight to CP1 and CP2 of the MLP but allowed the appeal attaching significant weight to the emerging site allocation in MLPP2. This appeal decision is not considered to be directly relevant to this appeal given it related to a site proposed to be allocated shortly after the decision in any event.
- 5.2** More relevant to this appeal is the appeal decision (see Appendix 4) in respect of a proposal for up to 32 dwellings on the edge of Chilcompton a 'primary village' within Mendip District (like Coleford). The Inspector noted that the tilted balance was engaged on this case and gave considerable weight to the provision of market and affordable housing. Against these benefits he identified harm to the character and appearance of the area and consequent conflict with DP1 and DP4. He also ruled that the site would not be in a sustainable location.

- 5.3** He concluded the Council was unable to demonstrate a 5 year land supply but also noted that *'in the LP, Chilcompton was allocated 70 dwellings between the years 2006 and 2029 and that up to 2017 156 dwellings had already been completed or granted consent. Therefore whilst acknowledging the deficit in the Council's 5 year housing land supply and the need to significantly boost housing, I am not persuaded that there is an absolute need for the proposal to take place in this location'*.
- 5.4** He concluded that the adverse effects identified significantly and demonstrably outweighed the benefits and dismissed the appeal on the basis of conflict with MLP policies CP1, DP1 and DP4.
- 5.5** A further recent example is provided at Appendix 5 which proposed up to 10 dwellings on land adjacent to Chilcompton. The Inspector concluded that the site was in an accessible location and that it would provide a windfall benefit in terms of housing land supply. This notwithstanding, the proposal would harm the character and appearance of the area and provide inadequate open space. The Inspector concluded that when assessed against the policies in the Framework taken as a whole, the adverse impacts significantly and demonstrably outweighed the cumulative benefits and dismissed the appeal.
- 5.6** These examples illustrate that even in the absence of a 5 year housing land supply it does not necessarily follow that an appeal should be allowed, particularly where significant harm to the landscape and/or character and appearance of the area would result.