

Appeal Decision

Inquiry held on 5 – 8 July 2022

Site visits made on 5, 6 and 7 July 2022

by H Porter BA(Hons) MSc Dip IHBC

an Inspector appointed by the Secretary of State

Decision date: 25th August 2022

Appeal Ref: APP/Y1110/W/22/3292721

Land off Spruce Close, Exeter, EX4 9DR

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant outline planning permission.
 - The appeal is made by Salter Property Investments Ltd. against the decision of Exeter City Council.
 - The application Ref 20/0538/OUT, dated 22 May 2020, was refused by notice dated 12 October 2021.
 - The development proposed is for up to 93 residential dwellings (approval sought for details of access only, with scale, layout, appearance and landscaping all reserved for future consideration).
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Decision

1. The appeal is allowed and planning permission is granted for up to 93 residential dwellings (approval sought for details of access only, with scale, layout, appearance and landscaping all reserved for future consideration) at Land off Spruce Close, Exeter, EX4 9DR in accordance with the terms of the application, Ref 20/0538/OUT, dated 22 May 2020, subject to the conditions set out in the schedule at the end of this decision.

Application for costs

2. An application for costs was made by Salter Property Investments Ltd. against Exeter City Council. This application will be the subject of a separate decision.

Preliminary Matters

3. Exeter Greenspace Group (EGG) sought and was granted Rule 6 status under the Inquiry Procedure rules. In addition to a general planning Statement of Common Ground (SoCG), a Transportation and Highway SoCG; Housing Land Supply SoCG; and Character and Appearance SoCG were agreed by the Appellant and Council; a further SoCG was agreed between the Appellant and EGG. The Inquiry sat for four days between 5 and 8 July 2022. I undertook unaccompanied site visits at the end of the first and second sitting days and an accompanied site visit before the end of the third. Documents that were submitted during the Inquiry are listed at Annex 2 (referred to as ID1, ID2 etc).
4. A certified Planning Obligation by Unilateral Undertaking dated 25 July 2022 (UU) and a Planning Obligation by Agreement dated 25 July 2022 (S106 Agreement), made pursuant to S106 of the Town and Country Planning Act 1990 (as amended), were submitted after the Inquiry had closed and in

accordance with agreed timescales. The UU contains various planning obligations securing provision of affordable housing; the management and maintenance of the New Valley Park and formal and informal Open Space including a local area of play (LAP) and local equipped area of play (LEAP); sustainable urban drainage systems; and a Travel Plan. It also secures financial contributions for GP surgeries; secondary education provision; implementing Traffic Regulation Orders (TROs) and a Travel Plan; the Valley Park; E4 Cycle Route Phase 4; upgrading facilities at local multi-use games areas (MUGAs); and Royal Devon University Healthcare NHS Foundation Trust (NHS Foundation Trust) healthcare services. The S106 Agreement secures a financial contribution for the creation and maintenance of a landscape buffer along the proposed access route on land owned by the Council.

5. The extent to which the provisions within the UU and S106 Agreement meet the tests set out in the National Planning Policy Framework (the Framework) and Regulations 122 of the Community Infrastructure Regulations 2010 (as amended), and the weight I attach to any necessary provisions they contain, are dealt with later in this decision.
6. The outline application was submitted with all matters reserved except for access. Notwithstanding the need for reserved matters approvals, it was confirmed at the Inquiry that the Land Use Parameter Plan, Density Parameter Plan, Scale Parameter Plan, Access and Movement Parameter Plan, Open Space Parameter Plan, and Landscape Strategy Parameter Plan have been submitted for approval at the outline stage. I have considered the appeal on this basis and on the basis that up to 93 dwellings could be provided.

Background and Main Issues

7. The development plan comprises saved policies from the Exeter Local Plan First Review, 2005 (ELP) and the Exeter City Council Core Strategy, 2012 (CS). The Council's single reason for refusing to grant outline planning permission cites conflict with its spatial approach and ELP Policy H1 and CS Policy CP16, through development on an area identified for protection¹. The Appellant and Council are in agreement that: there would be no actual harm in respect of landscape; that the site is in a sustainable location; and that the proposals meet the Council's policy requirements for the provision of open space². Nevertheless, EGG has submitted evidence and maintains harm in respect of these matters.
8. With all this in mind, I consider the Main Issues in this appeal to be:
 - Whether the appeal site offers an appropriate location for the proposed development, having regard to the development plan and whether services and facilities could be accessed by sustainable modes;
 - The effect of the proposed development on the character and local distinctiveness of the area, including Exeter's 'Landscape Setting'; and
 - Whether loss of open space would be replaced by equivalent or better provision.

¹ CD-DD8

² CD-ID4 paras 6.9, 6.16, 6.17

Reasons

9. Comprised of two fields laid to semi-improved grassland, the site has a developed edge to the west (Celia Crescent) and south (Spruce Close); an area of open space (Juniper Green) lies just beyond the site's southern boundary. In addition to the two fields within the appeal site's 'red line' boundary (Fields 1 and 2), three further sloping fields with mature tree and hedgerow boundaries (Fields 3, 4 and 5) extend beyond it and are within the 'blue line' boundary. Collectively these fields form part of the rolling open countryside that unfolds at the northern outskirts of Exeter, within the 'hills to the north and northwest' that are designated 'Landscape Setting'³.
10. The appeal scheme proposes the development of up to 93 residential dwellings and associated infrastructure, as well as formal and informal open space within the appeal site. One vehicular access point is proposed from the south, via a new road through Juniper Green and a realignment to Spruce Close. A second would be at the site's western boundary where an extant field entrance opens on to a short road fronted by garages leading to Celia Crescent. Although part of the 'blue line' boundary area carries Valley Park status, it is not publicly accessible. The appeal proposal would also involve the designation of Fields 3, 4 and 5 as New Valley Park and allow formal public access to it.

Policy principle of the location

11. The appeal site is undeveloped agricultural land and adjacent to but outside the 20th century residential suburb of Beacon Heath and outside the city's urban boundary. It is neither previously developed nor brownfield land and is not covered by any strategic allocation for housing.
12. Saved Policy LS1 of the ELP concerns development within Exeter's Landscape Setting and lists a limited number of development types⁴. None of these include housing development on greenfield land that lies within the hills to the north and northwest. Purely as a matter of straight-forward policy reading, there is clearly a conflict between the appeal proposal and this aspect of saved Policy LS1. However, the Council does not rely on saved Policy LS1 within its reasons for refusal and it is common ground that it is inconsistent with the Framework and should carry very little weight.
13. Saved Policy H1 of the ELP establishes a search sequence by which the Council identifies locational priorities, with development on greenfield land through urban extensions within public transport corridors the last in that sequence⁵. The explanatory text makes clear that potential sites have been assessed against criteria set out in PPG3, which has long-since been superseded. Criterion (iii) of saved Policy H1 refers to housing development on greenfield land through 'sustainable urban extensions within public transport corridors', which are not referenced in the Framework.
14. While there is no definition of either within the ELP, and the wording differs with the Framework, insofar as saved Policy H1 is prioritising development on previously developed land first and lastly on greenfield land last, but where reliance on accessibility to jobs and services by means other than by car exists, it broadly aligns with the Framework. Saved Policy H1 does not require an

³ CD-DP9

⁴ CD-DP5

⁵ CD-DP5

applicant undertake a sequential test, nor does it preclude development on greenfield land per se. Rather, my reading of saved Policy H1 is that housing development on green fields is least preferable and only acceptable where extending an existing urban area that is in a sustainable location, through being well served by public transport.

15. The appeal site is situated a little over 2.5 miles from central Exeter and immediately adjacent to the existing urban area of Beacon Heath, which is predominantly residential and where the local topography is steep. The Appellant's Design and Access Statement (DAS) indicates there are various local facilities and services within walking distance of the appeal site⁶, although EGG contend that the assessment of the site's separation and connectivity fails to reflect the 'facts on the ground' accurately.
16. To get a sense of the site's locational circumstances, I followed two suggested routes, recording times to reach various services and facilities on the way. One journey took me from the Celia Crescent site access, past the Spar store on Beacon Lane, to the entrance of Morrisons supermarket, and back. I also walked from the Spruce Close/Juniper Green access, crossing Beacon Lane to walk along Summer Lane as far as the entrance to Exeter Arena, and back.
17. In certain parts, the gradients along the routes from the appeal site are in excess of the 5% figure recommended in Manual for Streets and the hilly characteristics of the Beacon Heath surroundings do not fit with guidance for 'walkable neighbourhoods'. Personally, I found the distances, steepness and walking environs experience to be manageable, resulting in recorded timings fairly similar to those put forward by the Appellant. I accept, however, there are many factors that could influence different timings, impede or disincentivise 'active travel', particularly for those less mobile, carrying heavy shopping, accompanied by very small children, or walking or cycling during inclement weather.
18. That said, the area is also served by a local bus service (F1), which stops a short walk from the appeal site's proposed western access. A little further downhill along Beacon Lane are additional bus services with sheltered stops, travelling westwards towards the city centre, and eastwards, to Pinhoe train station, which has onward connections to Exeter St David's.
19. It has been put to me that few local residents currently use the bus service. On the other hand, EGG's evidence indicates 35% of those surveyed do use the bus, despite finding it expensive, irregular, and unreliable for onward connections⁷. The appeal scheme proposes to loop the F1 service directly through the site, providing an extension within the existing street network⁸. Consequently, not only would the appeal site be close to existing bus stops, but the public transport route would also run directly through it. There is no reason to doubt that, as the EGG survey confirms, at least some future residents of the proposed development would choose to utilise the extended bus service. It is also evident that the looping of the F1 service through the site would improve the choice, operating conditions, and availability of sustainable travel more widely.

⁶ CD-PA4

⁷ CD-GB1 para 1.4.3

⁸ CD-ID3 para 2.2.1

20. I consider that the location of the appeal site affords a genuine choice of sustainable ways to access services and facilities. Even if such choices might involve limitations, the proposed development would ensure safe and suitable access to services and facilities by a range of transport modes. Therefore, the appeal proposal would be a sustainable urban extension of Beacon Heath in an area well-served by public transport, thereby offering choice of travel modes other than just the private car and is therefore in a sustainable location. Drawing all of this together, I do not find the appeal proposal would conflict with saved Policy H1 of the ELP.

Landscape setting, character and local distinctiveness

21. Saved Policy LS1 seeks to avoid development that would harm Exeter's Landscape Setting, requiring proposals maintain local distinctiveness and character. The Council's reason for refusal relies not on saved Policy LS1 but CS Policy CP16, which likewise seeks, amongst other things, to ensure that the character and local distinctiveness of the hills to the north and northwest will be protected. This Policy aligns with the Framework, notably paragraph 174, which requires decisions contribute to and enhance natural and local environment by, amongst other things, protecting and enhancing valued landscapes and recognising the intrinsic character and beauty of the countryside.
22. For the purposes of the Exeter Fringes Landscape Sensitivity and Capacity Study, 2007 (LSCS)⁹, the appeal site straddles the southern corners of Zones 4 and 6, which cover much larger swathes of land, each assessed as having high landscape sensitivity. The capacity for housing in Zone 4 is low, indicating it is unable to accommodate development without significant adverse effects. Zone 6 has a medium-low capacity, with development accommodated only in limited situations. The LSCS provides a valuable, broad-brush, starting point by which to judge the sensitivity and capacity of Zones for housing. However, while the characteristics of the landscape described within the LSCS Zones have not obviously changed since its writing, it does not preclude development per se, nor establish degrees of sensitivity or capacity for housing at a site-specific level.
23. The Appellant's Landscape and Visual Impact Assessment¹⁰ (LVIA) has been subject to review by the Council's officers, and subsequently updated and reviewed by an independent chartered landscape architect¹¹. These assessments align with my own observations of the appeal site and its context. Indeed, I saw that the green and undeveloped nature of the appeal site fits in with the network of undulating fields, interspersed with woodland and mature vegetation, that characterise the wider rural landscape. Views to the site, and more apparently Fields 3, 4 and 5, are gained from various vantages, including country lanes, highways, residential developments, and other areas designated as Valley Park further afield.
24. Even where the green and undeveloped nature of the appeal site is perceptible from nearby and longer distances, it is read in the context of the extant urban fringe and the transition of the settlement edge into the open countryside. The appeal scheme would occupy the land that slopes alongside the settlement

⁹ CD-SPD14

¹⁰ CD-PA9

¹¹ CD-DD7

edge, where development already exists on two sides of the site, and where the local topography and mature vegetation offer relative containment. As the ground level rises beyond the upper part of the appeal site, above the 115m AOD contour, the change from the urban fringe becomes more evident. In my judgement, the value and sensitivity of this part of the Landscape Setting increase as the City's green landscape backcloth becomes more obvious, beyond the 115m contour and into Fields 3, 4 and 5.

25. At this stage there are various Parameters Plans for approval, which would contain the developable area to below the apex of the urban fringe and the 115m AOD contour. Building in the upper portion of that developable area would be lower density, detached, and not higher than 9.5m. A landscape 'buffer' would be retained, and stretches of undeveloped green space, and existing mature tree and hedgerow planting supplemented. Jointly, the proposals would concentrate development on parts of the appeal site that are already influenced by built form and would retain and supplement natural boundaries and a landscape 'buffer'.
26. In my judgement, all of this, plus the detail that would come through reserved matters, would ensure the development would not appear as piecemeal but relative to the urban fringe, low on the hillside, and well contained and softened by mature vegetation. Additionally, the sensitive and visually prominent tracts of open land within Fields 3, 4 and 5 would now be secured as New Valley Park¹² in perpetuity, preventing their future development.
27. And yet, the development of up to 93 dwellings and associated infrastructure would inescapably cause an urban intrusion onto the appeal site, weakening its open, verdant and undeveloped character. There are factors that would mitigate the impact of the development, facilitating a successful assimilation in views from further afield, and increasingly so over the years. Inevitably, however, the scheme would push the city's urban fringe into the open countryside that is part of Exeter's Landscape Setting. The urban intrusion onto the appeal site would be unmistakable from nearby, as for example residential dwellings, Juniper Green, and Fields 3, 4 and 5.
28. I note the findings of the independent landscape architect in respect of CP16, and the Council's endorsement of that assessment. However, even if extremely localised and affecting a very small proportion of the area identified for protection, for the forgoing reasons I find some harm to the character and local distinctiveness of the hills to the north and north west would arise. I judge there would be conflict with CS Policy CP16 as a consequence. While not relied on by the Council, conflict with the spatial element of saved Policy LS1 also arises. Such policy conflicts must be considered against consistency with the Framework and other material considerations.

Open Space

29. Juniper Green lies immediately to the south of the appeal site and is designated an Open Space within the ELP Proposals Map. Saved Policy L3 of the ELP only permits development on open space in certain circumstances, including when the loss of open space is outweighed by its replacement in the area by open space of at least equivalent recreational, community, ecological or amenity value (including, in particular, the provision and enhancement of equipped play

¹² CD-PA22, CD-PA23, CD-PA24, CD-PA26

space). Similarly, paragraph 99 of the Framework seeks to ensure the loss [of existing open space] resulting from the proposed development would be replaced by equivalent or better provision in terms of quantity and quality in a suitable location¹³.

30. The latest design iteration has sought to reduce the impact of the site's southern access road on Juniper Green, realigning it further to the north-east away from the widest portion of the open space. Nevertheless, the road itself would bisect the currently uninterrupted and undeveloped Juniper Green, causing a quantitative loss of that open space. Moreover, the introduction of a vehicular route through the space would change the way it is currently enjoyed by residents, including necessitating extra vigilance for playing children and dog walkers, thereby having a qualitative as well as quantitative impact. However, the proposals would provide informal open spaces within the appeal site, including at its southern edge immediately adjacent to Juniper Green that would more than make up for the quantitative loss at Juniper Green due to the access road.
31. I accept the point that the additional open space within the site would be bisected by the new road. I also recognise that the proposals would change the nature of Juniper Green and the way the space is used by some residents. And it would be reasonable to expect existing users of Juniper Green to take some time to adapt to the new open space. However, I consider the proposals will ensure a large area of open space with separation from the road and passing vehicles and a logical physical linkage between Juniper Green and the compensatory open space. Furthermore, while landscaping is a reserved matter, the S106 Agreement would secure additional landscaping along the proposed new access road that, in my judgement, would reduce its visual impact and create a natural barrier to influence play and activities away from it.
32. Saved Policy L3 supports proposals, such as in this appeal scheme, which would include provision of equipped play space. The proposal would enable existing residents to access the proposed LAP and LEAP. Although it has been used by some residents for their recreation and enjoyment, the appeal site is private land with no formal rights of way across it and is not public open space. I do not consider that those currently using Juniper Green would be either unwilling or unable to use the open spaces within the appeal site. Even if they were, the open space provision at Juniper Green, with the supplementary space to the south of the appeal site, would be equal in a qualitative, as well as quantitative, sense to the existing provision. The appeal scheme would also offer enhanced access to open space provision for residents who live further up the hill and would enter off Celia Crescent. I therefore see no conflict between the proposals and saved Policy L3 of the ELP, nor paragraph 99 of the Framework.

Housing Land Supply (HLS) and The Planning Balance

33. The proposal would not be in accordance with the development plan's location aspect of Saved Policy LS1 insofar as it seeks to avoid housing development within Exeter's Landscape Setting. However, this policy is not up-to-date and carries very little weight. Even if the proposed development would not be in accordance with the development plan, a significant material consideration is

¹³ Framework para 99 b)

the Framework's presumption in favour of sustainable development. The Council is unable to demonstrate a 5-yr supply of housing land. While the extent of the shortfall does not affect the operation of footnote 8¹⁴ and the HLS agreed matters, a sizable gulf exists between the Council and Appellant's respective shortfall positions. The Council contends its HLS is 4.69 years, a shortfall of 213 homes; the Appellant, however, argues HLS is just 3.17 years¹⁵.

34. A number of disputed sites were discussed at the Inquiry, including sites with planning permission, where the onus is on the Appellant to provide clear evidence that homes will not be delivered within five years (Category A sites), as well as various sites with outline planning permission, where the onus is on the Council to provide clear evidence that housing completions will begin on site within five years (Category B sites). Additionally, two sites for 'co-living' units were discussed. I turn to these first.

Co-living sites

35. Ostensibly, co-living is a relatively new development model and a sui-generis use. Anecdotally, large metropolitan cities such as Manchester and Liverpool count co-living units on a one-for-one basis. However, there is no apparent national or local policy guidance, nor obvious local authority consensus on how co-living units should be counted in HLS figures.
36. The Harlequin Centre and the Ambulance Station are co-living developments in which co-living studios (271 and 133 respectively) have been counted towards the Council's HLS on a one-to-one basis. 107 bed-spaces in cluster flats at the Harlequin Centre are counted as 59 dwellings. Owing to the short-term nature of the accommodation they offer, the Appellant contends all dwellings from these sites should be discounted from the Council's supply; a reduction of 463. An alternative position is that a 1.8 ratio be applied to the co-living studios.
37. My impression is that the co-living studios at the Harlequin Centre and Ambulance Station would comprise small private living spaces with their own front door, kitchen and bathroom. Taking them to be similar to the co-living examples provided, the studio units would be supplemented with shared and fully equipped social and living areas¹⁶. It seems to me that the co-living studios at the Harlequin Centre and the Ambulance Station would provide smaller individual living quarters and less autonomy than more standard rented accommodation.
38. To my mind, the co-living offer could attract a range of persons beyond students, and for tenancy rates longer than three months. I therefore do not consider they warrant wholesale deduction from HLS figures. Yet, even if future occupiers were liable to pay Council Tax, the specific nature of the accommodation type makes co-living studios, unlike standard rented studio apartments, more akin to other communal living accommodation, such as provided by a House in Multiple Occupation (HMO). On this basis, it seems logical and reasonable that a similar ratio be applied. By my calculation, this equates to a reduction by 120 units at the Harlequin Centre and 59 at the Ambulance Station.

¹⁴ That the policies which are most important for determining the application should be considered as out-of-date

¹⁵ CD-R1 p. 7

¹⁶ CD-R3 Appendix E pp. 21 - 25

Category B sites

39. The Planning Practice Guidance (PPG) gives examples of what evidence may demonstrate deliverability. The PPG is also clear that this should be done using the latest available evidence. The Council's approach has been to rely on responses to a standard pro-forma. The exercise may not be intended to obtain 'cast-iron certainty, but to take a realistic view'¹⁷ and I accept the 'draft' watermark may be an error. However, more crucially, where pro-formas are undated, it casts doubt over whether the information is up-to-date. In the absence of a clear indication of who completed the form or their relationship to the development, I find the pro-formas deficient as evidence of a written agreement between Council and site developer confirming delivery intentions and timescales.
40. Land east of Cumberland Way gained outline consent for 80 dwellings. The site has been sold to a housing association and the Council has recently received a reserved matters pre-application and held a meeting. However, the Council had been assured that a reserved matters application would be submitted in 2022 and, by the time of the Inquiry mid-way through that year, one had not been submitted. Nor, as far as I understand, have pre-commencement or other conditions attached to the outline permission been discharged. This site may be similar to other greenfield developments where housing schemes have been delivered successfully, but the evidence available to me falls short of the requisite 'clear evidence' established in the PPG. Thus those 80 dwellings should be removed from the HLS figures.
41. A similar scenario applies at Land at Redhills, where no reserved applications have been made, no developer identified, and no written agreement exists between them and the Council. Indeed, the Council was unable to gain any response to its pro-forma. I do not agree that a Statement of Case for an appeal satisfies the test of clear evidence. Thus the 62 dwellings counted towards the Council's HLS should be deducted.
42. Although a reserved matters application for the site at Aldens Farm West was submitted in early 2022, there are outstanding objections, including in respect of flood risk and drainage. The Council suggested amended plans were expected to resolve these issues, but none were in at the time of the Inquiry and, once submitted, would be subject to consultation. I understand none of the pre-commencement or other conditions attached to the outline consent have been discharged. All of this, plus the absence of a written agreement with the developer, casts doubt over whether there is a realistic prospect that housing will be delivered on the site within five years. On this basis, I agree with the appellant that 96 dwellings be removed from the HLS figures.
43. Phase 2 at the Old Coal Yard site is yet to have reserved matters application approval, and timescales given by an agent in September 2021 are out of date. There is no written agreement between the Council and the developer, and while the site could be developed rapidly if modular homes were to be built, but I have seen no evidence of this. Phase 3 is subject to a full planning application for 89 dwellings, to be decided under delegated powers. However, at the time of the Inquiry, no planning officer report nor completed S106 agreement was available to support the Council's indication that there is an officer's resolution to grant permission, and the Appellant indicates the proposal is subject to

¹⁷ ID18 para 12

objection. I therefore find the Council's evidence does not reach the high bar of 'clear evidence' and so the 62 dwellings for each phase (124 in total) should not be counted.

44. The tilted balance is already in play, and the land supply circumstances before me are not comparable to those when the Pennsylvania Road Appeal¹⁸ was decided. I am also not required to pinpoint a precise HLS figure. But, even if I were to accept the Council's position in respect of the 57 dwellings at Bricknell's Bungalow as well as all 376 Category A dwellings, it pushes the Appellant's figure up by some 433 dwellings but the Council's down by at least 541. Crucially, the above indicates that the shortfall is not as 'modest' as purported by the Council, but materially worse.

Planning balance

45. The Council's HLS position confirms that relevant policies for determination should be considered out-of-date in accordance with paragraph 11d) and footnote 8 of the Framework. I have noted conflict with the spatial element of saved Policy LS1, and localised harm to character and local distinctiveness would be contrary to CS Policy CP16. In light of this, I must consider the weight attributed to these conflicts and against material considerations, including the presumption in favour of sustainable development in the Framework.
46. There are key social and economic benefits associated with the provision of up to 93 dwellings. I attribute significant weight to the delivery of market housing in the context of a national policy objective to significantly boost the supply of homes and a less-than-modest HLS shortfall in Exeter, even if it is capable of being rectified in the short term. The proposal would also provide affordable dwellings at a full policy-compliant level and with a mix of dwellings that would contribute to the choice of homes in the City. Given the context of a demonstrably acute and persistent under-delivery of affordable housing¹⁹, the affordable housing the appeal scheme would realise carries substantial weight in its favour.
47. The provision of open space within the appeal site would be in mitigation and necessary to make the proposal acceptable in planning terms. However, the proposal would also secure Fields 3-5 in their entirety as Valley Park, formalising public access to them. This is a benefit that carries moderate weight in the scheme's favour.
48. In economic terms, jobs and spending would arise during the development's construction, and its future residents would contribute to the local economy. Furthermore, an existing bus service would be extended and enhanced, offering an improved choice of sustainable modes of travel, not just to future occupiers of the proposal, but also to existing local residents. This aspect of the proposal goes above and beyond the provision of opportunities to access a range of services and facilities by a range of sustainable modes and is a benefit to which I attribute moderate weight.
49. Highway works would also involve relocating on-street parking from the inside of a bend. However, as the volume of traffic on the existing road network would be increased, I attribute very little weight to this specific element of the

¹⁸ CD-A14

¹⁹ Indicating just 6 affordable homes were provided in Exeter last year

scheme in the balance in its favour. The absence of harm otherwise in respect of highways or flood risk is a neutral factor that carries no weight either for or against the proposals. Landscaping, open space provision within the site, and financial contributions for off-site infrastructure would not carry any weight as benefits, rather I consider them to be necessary mitigation and neutral in the overall planning balance.

50. I am acutely aware of the strong opposition to the appeal scheme and have carefully considered any parallels with the Pennsylvania Road appeal decision²⁰. However, there are significant differences in terms of my findings on HLS and the quantum of market and affordable housing being delivered against the shortfall.
51. I appreciate that the local community and EGG may be dismayed and frustrated by the outcome of this appeal, especially given their investment of time and personal effort in presenting evidence to the Inquiry. Ultimately, the thrust of government policy is to significantly boost the supply of homes and in this appeal a balance must be struck between the need for housing, the preservation of undeveloped green fields, the prevailing development plan and other material considerations. In this light, and notwithstanding development plan conflict, the adverse impacts of granting planning permission would not be of such magnitude that they significantly and demonstrably outweigh the benefits.

UU and S106 Agreement

52. Regulation 122 of the Community Infrastructure Levy (CIL) Regulations 2010 requires that, if planning obligations contained in s106 Agreements and UUs are to be taken into account in the granting of planning permission, those obligations must be necessary, directly related, and fairly and reasonably related in scale and kind to the development in question.
53. The Royal Devon University Healthcare NHS Foundation Trust (NHS Foundation Trust) has submitted evidence in support of a request for financial contributions to provide additional healthcare services to meet patient demand in light of increasingly severe funding and capacity issues. However, the evidence before me does not indicate the Council agrees in respect of the methodology and policy support, nor precisely what those contributions will be spent on and how they will relate to the development specifically, nor that the methodology avoids the potential lag between consent and occupation. The evidence before me does not provide sufficient justification that the health care service contributions meet the Regulation 122 tests. Accordingly, I have afforded no weight to this element of the UU and take no account of them in the overall planning balance.
54. Other than in respect of the NHS Foundation Trust contributions, the UU planning obligations and financial contributions are supported by the CIL compliance statement²¹. I am satisfied those obligations would secure 35% of the proposed dwellings as affordable housing units, 70% of which would be Social Rented and the remainder Intermediate; provision of open space (LEP and LEAP) and the Valley Park, their management and maintenance of the Valley Park; formal and informal Open Space including SUDS; a Travel Plan as

²⁰ CD-A14

²¹ CD-ID14

necessary to render the proposal acceptable in planning terms. I am also satisfied that the financial contributions towards youth facilities, GP Surgery, secondary education, walking and cycling, bus service, travel plan and TRO are proportional to the scale of the development and justified in terms of mitigating the potential effects of the development on local services and facilities. I have taken these into account in reaching my decision.

55. The s106 Agreement would secure £15,000 to enable ECC to create a 'landscaped buffer' on land outside that within the appellant's control along Juniper Green. I consider such a contribution necessary to ensure suitable mitigation for loss of open space and creation of a safe and attractive environment at Juniper Green. The contribution would therefore be proportionate, directly related, and fairly and reasonably related in scale and kind to the development in question. I have taken it into account in reaching my decision.

Other Matters

56. Interested parties have raised concerns relating to additional vehicular movements, increased pressures on the local road network and parking. Concerns over the potential impact on living conditions, through loss of privacy and outlook, have been put to me, as have the potential for a legal covenant to restrict any development on Juniper Green. Points were also made regarding wider environmental and biodiversity impacts associated with the provision of housing on green fields in the context of a global climate crisis.
57. Interested parties have raised additional concerns, including in respect of highway safety, the practicalities of the new bus route and the impacts on the highway network and parking; biodiversity and ecological impacts; and harm to local residents' living conditions through disturbance and loss of privacy. However, these matters have been assessed by the Council's officers, the Highway Authority, and independent professionals, none of whom have raised any objection. Consequently, I see no reason to doubt or deviate from their professional judgement. In the absence of any written evidence, the potential for a covenant is a matter of conjecture. Even if one did exist, it would be a legal matter that sits outside of my consideration of the planning merits of the appeal.
58. Part of the appeal site, notably the vegetation north west of Spruce Close and to the field to the north west of Celia Crescent, is covered by a local nature conservation designation, and the latter is also designated as a Valley Park. The parameters plan shows movement by way of public foot access through Fields 3, 4 and 5 as part of the New Valley Park. However, it is supposition that any formal hard-surfaced routes would be created or that they would make any material harm to Landscape Setting. Rather, the proposals would be formalising public accessibility to those fields, which I understand has historically been assumed without express landowner consent.
59. I do not wish to minimize the threat of climate change, including through unsustainable housing development and the loss of green fields. However, I have found the appeal site is located where future occupiers would have a choice of travel by sustainable modes, and there would be improved choice through the extension of the bus service to existing streets. Additionally, the detailed energy performance and construction of the proposed dwellings would be dealt with as part of the reserved matters. Detailed considerations relating

to landscape, layout, scale and appearance will also be considered at the reserved matters stage. Subject to these, along with the executed legal agreements and conditions I have imposed, there is no reason to doubt that a high-quality, safe and sustainable scheme would be delivered. I therefore find no reason to refuse the development on the basis of these other matters raised. My decision stems from the planning merits and site-specific circumstances before me. Allowing this appeal therefore does not offer a precedent for further housing development at Exeter's Landscape Setting, nor would it apply further development pressure on green fields.

Conditions

60. Various suggested conditions were discussed at the Inquiry and subsequently refined and agreed (with three exceptions) with the Appellant. I have considered these against the six tests set out in paragraph 55 of the Framework. In some instances, while I have adopted the suggested conditions, I have made minor changes to wording to add clarity as appropriate.
61. Conditions setting out the reserved matters details, timescales for their approval and the commencement of the development, and the list of approved plans, are all required in the interests of providing planning certainty and clarity.
62. The appeal site falls within an area identified by Exeter Airport as requiring assessment of a development proposal to potentially conflict with its Instrument Flight Procedure (IFP). While the assessment extends beyond just building heights, matters of landscaping and layout, as well as scale, are part of the reserved matters. Therefore, the detailed plans that come forward with the reserved matters will be consulted on, subject to Exeter Airport's own IFP as required. I therefore do not find it would be reasonable or necessary to impose an IFP condition.
63. A condition requiring a written scheme of archaeological investigation is necessary to identify the site's archaeological potential and record/publish results in the interests of the historic environment. Matters of drainage and contamination are outside the scope of the reserved matters and so conditions requiring details of surface water drainage and contamination are required in the interests of managing flood risk and pollution.
64. Conditions requiring a Tree Protection Plan and Arboricultural Method Statement, as well as details in respect of nesting birds and bat boxes and dark skies, Ecological Mitigation and Enhancement, as well as a Landscape and Ecology management Plan are all required in the interests of biodiversity and ecology. A condition requiring the details of rapid charge electric vehicle charging points and cycle parking provision, as well as requiring dwellings be constructed in accordance with Energy Performance Standards, are necessary in the interests of mitigating climate change and contributing to sustainable development.
65. The conditions requiring details of a 'wearing course', a vehicle/pedestrian/cycle route, as well as implementation of access arrangements, link roads and car parking within the site are all required in the interests of highway safety and the efficient operation of the local highway network. Safeguarding the living conditions of future residents in respect of air quality, noise and the disturbance associated with the development, as well as

ensuring waste and pollution arising from the development are appropriately dealt with justifies the condition for a Construction and Environmental Management Plan.

Conclusion

66. In view of the absence of a 5-year housing land supply and the engagement of the 'tilted balance', in my judgement, the adverse impacts of granting planning permission would not significantly and demonstrably outweigh the benefits of the proposed development.
67. For the reasons given above and having regard to all other matters raised, I conclude that the appeal should be allowed.

H Porter

INSPECTOR

APPEARANCES

FOR THE LOCAL PLANNING AUTHORITY

Ms Kate Olley of Counsel

Instructed by Mr Simon Curran LLB

She called:

Mr Simon Curran LLB

Service Lead, Legal Services ECC

Ms Katharine Smith

Principal Project Manager, Local Plans Team ECC

Mr Robin Upton MRTPI

Director, Tetra Tech Planning

FOR EXETER GREENSPACE GROUP:

Ms Namia Allcock

Exeter Greenspace Group

She called:

Reverend Steven Hanna

Dr Gillian Baker

Mr Michael Bennett

FOR THE APPELLANT:

Mr Zack Simons of Counsel

Instructed by Dr Thomas Rocke

He called:

Dr Thomas Roche BA (Hons) PHD BTP (DIST) MRTPI	Rocke Associates
Mr Ben Pycroft BA (Hons) Dip TP MRTPI	Emery Planning
Mr James Stacey BA (Hons) Dip TP MRTPI	Tetlow King Planning
Mr Nick Bunn BA (Hons) PG Dip MA CMLI	Redbay Design Landscape Consultants
Ms Caroline Waller	Clarke Willmott LLP

INTERESTED PARTIES:

Dr Peter Stott, local resident in opposition

Mr Dawkins, local resident in opposition

Annex 1

DOCUMENTS SUBMITTED AT THE INQUIRY

- ID1 Appellant Opening Statement
- ID2 LPA Opening Statement
- ID3 Rule 6 (EGG) Opening Statement
- ID4 Mr Dawkins (Interested Party) Summary Statement of Opposition
- ID5 Dr Peter Stott (Interested Party) Summary Statement of Opposition
- ID6 A3 Hard copies of Appellant Photographic Evidence
- ID7 A3 Hard copies of Appendix II Rule 6 Viewpoints Rev A
- ID8 Suggested Draft Conditions (Version 1)
- ID9 Suggested Draft Conditions (Version 2)
- ID10 BSI Biodiversity Code of Practice
- ID11 Cover email (Robin Upton) 6.7.22 explaining wording of suggested LEMP condition 27
- ID12 Suggest Draft Conditions (Version 3 – including Rule 6 (EGG) comments)
- ID13 Schedule of Drawings for Approval
- ID14 Cover email (Tom Roche) 6.7.22 confirming drawings for which approval is sought as at suggested condition 3
- ID15 Appeal Decision APP/Y1110/W/21/3278148 7 February 2022 (Land at Redhills, Exwick Lane, Exeter)
- ID16 Appellant's written costs (full) application
- ID17 Hard copy Suggested Draft Conditions (Version 3)
- ID18 Closing Submissions on Behalf of Exeter City Council
- ID19 Council written costs rebuttal
- ID20 Rule 6 (EGG) Closing Submissions
- ID21 Appellant's Closing Submissions

Annex 2

SCHEDULE OF CONDITIONS

- 1) Details of the appearance, landscaping, layout, and scale (hereinafter called "the reserved matters") shall be submitted to and approved in writing by the local planning authority before any development takes place and the development shall be carried out as approved.
 - 2) Application for approval of the reserved matters shall be made to the local planning authority not later than 3 years from the date of this permission.
 - 3) The development hereby permitted shall take place not later than 2 years from the date of approval of the last of the reserved matters to be approved.
 - 4) The development hereby permitted shall be carried out in accordance with the following approved plans: Site Location Plan (1000 Rev E); Parameter Plan Land Use (1150 Rev F); Parameter Plan Density (1151 Rev F); Parameter Plan Scale (1152 Rev F); Parameter Plan Access and Movement (1153 Rev F); Parameter Plan Open Space Provision (1154 Rev G) Parameter Plan Landscape Strategy (1155 Rev A); Preliminary Road Design Celia Crescent Access (04268-A-SK110-P4); Spruce Close Access and Parking (04268- A-SK124-P4); Spruce Close Bus Stop Locations (04268-A-SK125-P4).
 - 5) Concurrent with the submission of the reserved matters, a Lighting Design Strategy shall have been submitted to and approved in writing by the Local Planning Authority. The Lighting Design Strategy shall include the following details:
 - a) A plan indicating where 'dark areas' will be maintained on the development site;
 - b) Assessment of light levels arising from the development (including from building, vehicles, street lighting and any other external lighting sources)
 - c) Plans annotated with isolines to show predicted illuminance and light spill in relation to the 'dark areas';
 - d) Evidence to demonstrate light spillage arising from the development shall not exceed 0.5lux within 'dark areas' and be maintained in perpetuity.
- The development shall be carried out and maintained in accordance with the Lighting Design Strategy, and thereafter be retained as approved.
- 6) No demolition/development shall take place within the site until a Written Scheme of Archaeological Investigation has been submitted to and approved in writing by the local planning authority. The scheme shall include an assessment of significance and research questions and:
 - a) the programme and methodology of site investigation and recording;
 - b) the programme for post investigation assessment;
 - c) the provision to be made for analysis of the site investigation and recording;

- d) the provision to be made for publication and dissemination of the analysis and records of the site investigation;
 - e) the provision to be made for archive deposition of the analysis and records of the site investigation;
 - f) the nomination of a competent person or persons/organization to undertake the works set out within the Written Scheme of Investigation.
- 7) Concurrent with the submission of the reserved matters, details of surface water drainage system shall be submitted to and approved in writing by the local planning authority. The details shall include:
- a) a programme of soakaway and groundwater tests that have been carried out in accordance with BRE 365, and the results submitted to and approved in writing by the local planning authority;
 - b) a detailed drainage design based upon the Flood Risk Assessment (Land off Spruce Close Exeter 0777 Rev C, 18 June 2021) and the soakaway and groundwater test submitted in relation to a);
 - c) a management and maintenance plan for the lifetime of the development, which shall include the arrangements for adoption by the relevant public authority or statutory undertaker (South West Water) and any other arrangements to secure the operation of the scheme throughout its lifetime;
 - d) the method employed to delay and control the surface water discharged from the site and the measures taken to prevent pollution of the receiving groundwater and/or surface waters;

No dwelling hereby permitted shall be occupied until the works associated with the surface water drainage system have been implemented in accordance with the approved details and shall thereafter be managed and maintained in accordance with those approved details.

- 8) No development shall take place, including any works of demolition, until a Construction and Environmental Management Plan (CEMP) has been submitted to, and approved in writing by the local planning authority. The CEMP shall provide for:
- a) the provision of site accesses haul routes, parking of vehicles for site operatives and visitors;
 - b) loading and unloading of plant and materials;
 - c) storage of plant, materials or other equipment used in constructing the development;
 - d) the erection and maintenance of security hoarding;
 - e) the supply of water for damping down and wheel washing;
 - f) wheel washing protocols and facilities;
 - g) a timetable of dust generating activities and details of measures to control the emission of dust and dirt during construction (include prohibiting burning of any materials or vegetation on site);

- h) a Waste Audit Statement for recycling/disposing of waste resulting from demolition and construction works in accordance with the waste audit template in Devon County Council's Waste Management and Infrastructure SPD
- i) measures to minimise noise/vibration disturbance to nearby residents from plant and machinery
- j) delivery, site clearance, piling and construction working hours;
- k) Detailed proposals for the management of surface water and silt run-off from the site during construction
- l) Air quality monitoring objectives and protocols, including site log book and procedure by which to notify the Environment and Safety Services Department of any air quality objectives being exceeded or other exceptional incidents;
- m) the name, role and contact details of the authorised personnel responsible on site for fulfilling the CEMP including the Air Quality Monitoring Log Book during the course of construction works

The approved CEMP shall be adhered to throughout the construction period for the development.

- 9) No development shall commence until an assessment of the risks posed by any contamination shall have been submitted to and approved in writing by the local planning authority. This assessment must be undertaken by a suitably qualified contaminated land practitioner, in accordance with British Standard BS 10175: Investigation of potentially contaminated sites - Code of Practice and the Environment Agency - Model Procedures for the Management of Land Contamination (CLR 11) (or equivalent British Standard and Model Procedures if replaced), and shall assess any contamination on the site, whether or not it originates on the site.
- 10) In the event of there being evidence of contamination as the development proceeds, the development shall cease pending the carrying out of an investigation of the extent and nature of contamination, the risks that it poses, together with the preparation of a remediation strategy, that shall be submitted to and approved in writing by the local planning authority. The development shall subsequently be carried out in accordance with the approved details.
- 11) No site vegetation clearance or works to trees or hedgerows on site shall take place until a scheme for the protection of trees and hedgerows has been submitted to and approved in writing by the local planning authority. The scheme shall include:
 - a) A Tree Protection Plan showing the position of every tree or hedgerow on the site and on land adjacent to the site that could influence or be affected by the development, indicating which trees are to be removed; any proposed pruning, felling or other work;
 - b) An Arboricultural Method Statement in relation to every existing tree or hedgerow identified to be retained on the plan referred to in a) above, details of any proposed alterations to existing ground levels, and of the position of any proposed excavation,

that might affect the root protection area; and, all appropriate tree or hedgerow protection measures required before and during the course of development (in accordance with paragraph 5.5 and 6.1 of British Standard BS 5837) (or in an equivalent British Standard if replaced);

- c) A Nesting Bird Method Statement that shall include timetable for carrying out works to trees outside bird nesting season, protocols in the event nesting birds are found or suspected during works, and the name and contact details of a suitably qualified ecologist overseeing those works.

The vegetation clearance or works to trees or hedgerows shall subsequently be carried out in accordance with the approved details.

- 12) The application for approval of landscaping as a reserved matter shall include the following details:
 - a) A full specification of all proposed tree and hedgerow planting to be approved in writing by the local planning authority. The specification shall include the quantity, size, species, and positions or density of all trees to be planted, how they will be planted and protected and the proposed time of planting. The tree planting shall be carried out in accordance with the approved specification;
 - b) Details of soft landscape works shall include planting plans; written specifications (including cultivation and other operations associated with plant and grass establishment); schedules of plants noting species, plant supply sizes and proposed numbers/densities where appropriate;
 - c) An Ecological Mitigation and Enhancement Strategy (EMES) for the operational phase of the development that shall have been prepared in accordance with BS 42020:2013 ('Biodiversity – Code of practice for planning and development'), or any superseding British Standard, and take into account the mitigation and enhancement measures in section 5.0 of the submitted Ecological Impact Assessment.

The EMES and landscaping works shall be implemented as approved.

- 13) No development shall take place on any phase of the development until a Landscape and Ecology Implementation and Management Plan (LEMP) for that phase has been submitted to and approved in writing by the local planning authority. The LEMP shall include a timetable for implementation of the landscaping and ecology work and details of the management regime. The LEMP shall be implemented in accordance with the approved details.
- 14) Concurrent with the reserved matters application details of a Standard Assessment Procedure (SAP) calculation of the dwellings hereby approved, which demonstrates that a reduction in CO₂ emissions necessary to meet the requirements of Part L of the 2013 or Part L of the 2022 Building Regulations as appropriate. The measures necessary to achieve the CO₂ emissions saving shall thereafter be implemented on site and within 3 months of completion of any dwelling hereby approved, an

'as-built' SAP calculation report from a suitably qualified consultant submitted to an approved in writing by the local planning authority.

- 15) Concurrent with the reserved matters application details of provisions for nesting birds and roosting bats within the development hereby approved shall be submitted to and approved in writing by the local planning authority. Those details shall show locations of built-in next/roost sites across the appeal site and demonstrate a minimum overall average ratio of 1 built-in next/roost site per dwelling. The provisions for nesting birds and roosting bats shall be implemented in accordance with the approved details and maintained thereafter.

The provisions for nesting birds and roosting bats shall subsequently be carried out in accordance with the approved details and retained thereafter.

- 16) Concurrent with the reserved matters application details and specification of a vehicular/pedestrian/cycle route from Celia Crescent to Spruce Close/Pinwood Meadow Drive shall have been submitted to and approved in writing by the local planning authority.
- 17) Concurrent with the reserved matters application, details, specification and a timetable for application of the 'wearing course' to be applied to the estate roads and access arrangements as per the Preliminary Road Design Celia Crescent Access (04268-A-SK110-P4) shall be submitted to and approved in writing by the local planning authority. The 'wearing course' shall be constructed in accordance with the approved timings and details and maintained thereafter.
- 18) Concurrent with the reserved matters application, details of rapid charge electric vehicle charging points specification within the development hereby approved shall be submitted to and approved in writing by the local planning authority. Those details shall show locations of rapid charge points and demonstrate a provision of 1 per 10 spaces of unallocated parking and 1 per 10 dwellings with allocated parking (subject to network capacity). The rapid charge points shall be provided in accordance with the approved details and maintained (or subsequently upgraded) thereafter.
- 19) Concurrent with the reserved matters application, details of cycle parking provision within the development hereby approved shall be submitted to and approved in writing by the local planning authority. Those details shall demonstrate the cycle parking provision satisfies the design and minimum parking standards guidance set out in the Sustainable Transport SPD. The cycle parking provision shall be provided in accordance with the approved details and maintained thereafter.
- 20) The application for approval of layout as a reserved matter shall include details of car parking provision within the site. No dwelling hereby approved shall be occupied until the carparking for the dwelling and access to it has been provided and made available for use in accordance with the approved details and maintained thereafter available for the purpose of carparking.
- 21) Notwithstanding condition 4, not more than 50 of the dwellings hereby approved shall be occupied until the access arrangements on Spruce Close/Pinwood Meadow Drive and link road through Juniper Green open

space as per Spruce Close Access and Parking (04268- A-SK124-P4) shall have been provided and laid out. The access arrangements and link road shall be maintained thereafter.

- 22) Notwithstanding condition 4, not more than 50 of the dwellings hereby approved shall be occupied until the vehicular/pedestrian/cycle route from Celia Crescent to Spruce Close/Pinwood Meadow Drive has been provided and laid out in accordance with the details required by Condition 16 and 17. The vehicular/pedestrian/cycle route shall be maintained thereafter.