

# **EXAMINATION OF THE EXETER LOCAL PLAN**

## **APPENDICES**

### **MATTER 11 NATURAL ENVIRONMENT (ISSUE 1)**

PREPARED FOR  
WADDETON PARK LIMITED

April 2026



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## **APPENDIX 1**

The following Appeal and High Court Judgements are appended to this Hearing Statement:

- **Appendix 1a** – Appeal Decision for Home Farm, Pinhoe (A/14/2215771)
- **Appendix 1b** - High Court Decision for Home Farm, Pinhoe (*Exeter City Council v Secretary of State for Communities and Local Government* [2015] EWHC 1663 (Admin))
- **Appendix 1c** – Appeal Decision land north of Exeter Road, Topsham (W/15/3005030)
- **Appendix 1d** - Appeal Decision for land west of Clyst Road, Topsham Phase 1 (W/18/3202635)
- **Appendix 1e** – Appeal Decision for land west of Clyst Road, Topsham Phase 2 (W/22/3296946).

**Appendix 1a** – Appeal Decision for Home Farm, Pinhoe (A/14/2215771)

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## Appeal Decision

Inquiry held on 9,10 & 11 September 2014

Site visit made on 11 September 2014

**by Lesley Coffey BA(Hons) BTP MRTPI**

**an Inspector appointed by the Secretary of State for Communities and Local Government**

**Decision date: 29 October 2014**

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**Appeal Ref: APP/Y1110/A/14/2215771**

**Land at Home Farm, Church Hill, Pinhoe, Exeter, Devon EX4 0AY**

- 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 Waddeton Park Ltd & The R B Nelder Trust against the decision of Exeter City Council.
  - The application Ref 13/4802/01, dated 6 November 2013, was refused by notice dated 24 January 2014.
  - The development proposed is outline planning permission for about 120 residential dwellings (C3) along with associated infrastructure and openspace (means of access only to be determined).
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### Decision

1. The appeal is allowed and planning permission is granted for 120 residential dwellings (C3) along with associated infrastructure and openspace at Land at Home Farm, Church Hill, Pinhoe, Exeter, Devon EX4 0AY in accordance with the terms of the application, Ref 13/4802/01, dated 6 November 2013, and the plans submitted with it, subject to the conditions in the attached schedule.

### Application for costs

2. At the Inquiry an application for costs was made by Waddeton Park Ltd & The R B Nelder Trust against Exeter City Council. This application is the subject of a separate Decision.

### Procedural Matters

3. The proposal is an outline application for 120 dwellings with all matters except the access reserved for subsequent approval. The Appellant submitted a plan showing how the development might be accommodated, but the plan is for illustrative purposes only and there could be alternative layouts for the site. It nevertheless provides a useful guide when considering the proposal before me.
4. The Appellant submitted an agreement under s106 of the Act which covenants to provide 35% of the proposed dwellings as affordable housing in accordance with policy CP7 of the Core Strategy. The Council is satisfied that this would overcome its second reason for refusal. I have no reason to take a different view and I have taken this obligation into account in reaching my decision.
5. The Appellant also submitted a Unilateral Undertaking which covenants to provide mitigation works as agreed with the Highway Authority. These works

are set out in a Statement of Common Ground between the Highway Authority and the Appellant. Whilst the Unilateral Undertaking addresses the concerns of the Highway Authority, local residents remain concerned that the proposal could have an adverse effect on traffic and highway safety. I will address this matter below.

6. Following the close of the inquiry the Appellant submitted a further Unilateral Undertaking. This covenants to provide and maintain an equipped play area in accordance with a scheme to be approved by the Council. It also covenants to provide a scheme for the specification and maintenance of the informal openspace. I am satisfied that the undertaking would deliver the intended benefits and I have taken it into account in reaching my decision.
7. Prior to the exchange of Proofs of Evidence, the parties agreed a Statement of Common Ground which addressed a number of matters. These included an agreement that the most up-to-date housing supply and delivery information was set out within the Revised 2013 Strategic Housing Land Availability Assessment (2013 SHLAA). In July 2014 the Council produced the Draft 2014 SHLAA, and its Proof of Evidence relies upon the information within it. The 2014 SHLAA has not been published by the Council. The Appellant subsequently submitted a Draft Addendum Statement of Common Ground identifying the differences between the Draft 2014 SHLAA and the 2013 SHLAA. Although this was not signed by the Council it provides a useful explanation of the differences between the 2013 and 2014 SHLAA.

### **Main Issues**

8. Taking the above matters into account and the matters raised by local residents, I consider the main issues to be:
  - The effect of the proposal on the landscaped setting of Exeter;
  - The effect of the proposal on highway safety and traffic;
  - Whether in the light of the development plan, national guidance and other material considerations, including the housing land supply position, the appeal proposal would be a sustainable form of development; and
  - Whether the proposal would set a precedent for other development which could harm the character of Exeter City.

### **Reasons**

9. The appeal site is located adjacent to the existing residential area of Pinhoe. It extends to about 7.7 hectares and comprises two areas of land, one either side of Church Hill. The larger part of the site is located to the north-east of Church Hill and falls from about 92m AOD to around 50m AOD towards the south-east. The southern part of this area is bound by the rear of the properties at Church Hill, Broadparks Avenue, Bindon Road and Danesway. It wraps around Home Farm which is a Grade II listed building. The development on this part of the site would be served by a single vehicular access from Church Hill.
10. The smaller part of the site is situated to the south-west of Church Hill, to the rear of Bickleigh Close, Harringcourt Road and Harrington Drive. Access to this part of the scheme would be from Bickleigh Close

11. It is proposed that the upper part of the site would remain free of built development, and would be used to provide a pond which would form part of the Sustainable Urban Drainage System (SUDS). A linear park extending the length of the site is proposed to link the central, southern and north-eastern fields. The proposal would provide about 3 hectares of open space including the two play areas and the linear park. The illustrative plan includes pedestrian and cycle links across both parts of the site as well as with the surrounding area of Pinhoe.

### ***Landscaped Setting of Exeter***

12. The appeal site comes within an area identified as a Landscape Setting Area within policy LS1 of the Exeter Local Plan First Review (2005) and policy CP16 of the Exeter City Council Core Strategy (adopted February 2012).
13. Policy LS1 provides that development harmful to the landscape setting of the city will not be permitted. The accompanying text draws attention to the contribution of the hills to the north of the city to its landscaped setting. However, it is evident from the proposals plan that the boundary to the Landscape Setting Areas is tightly drawn around the northern edge of the existing urban area. Paragraph 113 of the National Planning Policy Framework (NPPF) advises that local planning authorities should set criteria based policies against which proposals for any development on or affecting any landscape areas will be judged. Policy LS1 effectively limits development to the existing urban areas, and is not a criteria based policy in accordance with the NPPF. Some areas safeguarded by policy LS1 have not been included within the landscape protection areas within the Core Strategy which was informed by the Exeter Fringes Landscape Sensitivity and Capacity Study (2007). As such the evidence base on which policy LS1 relies is not up-to-date. For these reasons I accord policy LS1 little weight.
14. Amongst other matters, Core Strategy policy CP16 aims to protect the character and distinctiveness of a number of defined areas, including the hills to the north and north-west of the City. These areas are identified on the key diagram and include the area in which the appeal site is located. The parties agree that the Key Diagram shows broad areas rather than precise boundaries. Accordingly, Core Strategy policy CP16 does not seek to prevent all development within the areas shown on the Key Diagram, but strives to ensure that development protects the character and distinctiveness of these areas.
15. The Council consider that the Fringes Study, the Visual Land Parcel Evaluation for Potential Residential Sites in Exeter, 2013 (the CEC Study) and more recently the Housing Land Review (November 2013) clearly indicate that the development of the appeal site for housing would be likely to harm the landscaped setting of the City.
16. The Fringes Study sought to assess the capacity of the landscape around Exeter to accommodate development and to identify landscapes that should be protected from change. It found that the area in which the appeal site is located (Zone 8) had limited capacity for housing due to its visual prominence, rural character and intrinsic sensitivity. It advised that only single properties in very carefully located positions should be allowed within this zone.
17. The visibility analysis within the Fringes Study was based on landform and did not make any allowance for existing buildings or vegetation. Zone 8

encompasses a comparatively large area that varies in terms of elevation and the extent to which it is visible in medium and distant views. Since there would be a range of visibility and sensitivity within this zone, the Fringes Study provides only a general guide as to the suitability of the areas within it for development.

18. The CEC Study evaluates the suitability of a number of specific sites within Exeter for residential development. It assessed the appeal site and the Appellant's adjoining land on the basis of two separate areas. The larger area on the north-eastern side of Church Hill was identified as site 100-1 and the smaller area was identified as 100-2. The latter was considered to have few visual receptors and the assessment concluded that it had low to very low visual sensitivity. The CEC Study states that such sites are likely to be the most suitable for residential development.
19. The Study concluded that site 100-1 contributed to the perception of the urban fringe, particularly the two fields on the higher ground to the north. It found that while local views were limited by tall hedge banks and other vegetation, the more elevated areas of the site were likely to be visible within more distant views. It concluded that the site had medium visual sensitivity due to its importance as part of the urban fringe and the wider views of this part of the site. The Study states that such sites could be suitable for residential development subject to adequate design and mitigation.
20. More recently the Housing Land Review (HLR) considered 17 sites within the protected landscape areas which were rejected by the SHLAA and adjoined the urban area. Each site, including the appeal site, was assessed against 8 sustainability objectives and ranked accordingly. However, the landscape assessment within the HLR relies on the findings of the CEC Study and does not provide a more detailed analysis as to the suitability of the site for residential development.
21. The Landscape and Visual Assessment (LVA) of the appeal site and the Appellant's adjoining land was prepared prior to the publication of the CEC Study and informed the layout shown on the illustrative masterplan. It identified 10 areas, broadly based on existing field boundaries. It found that the most elevated parts of the area assessed (3, 4 and 5) make a significant contribution to the wider landscape setting of the City and should be retained in their existing undeveloped form. It concluded that development on the lower slopes would be perceived as infill development and would be compatible with the settled character of the lower slopes. The development of the areas towards the middle of the site was considered to be acceptable subject to mitigation measures to ensure that development is not seen on the skyline.
22. I consider the findings of the CEC Study and the Appellant's LVA to be broadly consistent with each other. Both identified the important contribution of the undeveloped higher land towards the landscaped setting of the City. They also both acknowledged the need for careful design and mitigation on the remainder of the site. The CEC study assessed the larger part of the site in its entirety and noted that some parts of the site were associated within the urban fringe of Exeter, whilst other areas were more closely associated with surrounding development. The LVA adopted a more detailed approach and identified specific areas of the site as either suitable or un-suitable for development.

23. The site is situated on the southern side of the Pinhoe Ridge, which forms the eastern ridgeline to the north of the city. This effectively screens views into the site from the north and north-east. To the south, the extent of medium distance views is contained by the Monkerton Ridgeline. Accordingly the most significant views are those from the south-west towards the site. The lower parts of the site are screened by development within the foreground. The Council accepts that the proposal would not interrupt the skyline. It nevertheless considers that any development towards the centre of the site could effectively screen the upper part of it from view due to the height of dwellings, and would thereby harm the setting of the City.
24. For the reasons given in the CEC Study the development on the smaller south-western part of the site would be unlikely to have a significant effect on the setting of the City or the character of the wider area. Due to the lower level of the land the dwellings proposed on the lower slopes of the larger site would be substantially screened by the surrounding dwellings. The CEC study noted that there were local views of the site from gates and gardens, as well as some views of the upper part of the site from within the local area. However, these local views would not have a significant effect on the landscaped setting of the City.
25. The Council identified a number of viewpoints which it considered to be representative of the effect of the development on the setting of the City. In views from Cumberland Way (viewpoint LVA L1) the most noticeable areas are areas 1 and 8 (as identified with the Appellant's LVA). Area 1 is identified as site 100-2 within the CEC study and is not considered to be unsuitable for residential development. Area 8 adjoins the residential properties in Bindon Way. The illustrative plan indicates that development on this part of the site would be confined to a single row of dwellings separated from other dwellings on the site by the linear park, and the poplar trees within this part of the site. Therefore these dwellings would not form a continuous belt of development and any distant views would be filtered by vegetation. Furthermore, the upper part of the site and the adjoining land would remain undeveloped.
26. In views from Hollow Lane (viewpoint LVA L4), development on some of the lower slopes would be noticeable. However part of the intervening land has been allocated for a proposed school and therefore the extent of such views is likely to diminish in the future. In the absence of the proposed school, some of the development within areas 2, 8 and 9 may be noticeable, but these views would be broken-up by significant areas of landscaping, including the linear park. Any views from this location would be distant views and the upper slopes and the ridge line would remain as distinct features within the landscape. Consequently, subject to an appropriate layout and scale, the development of these areas would not have a significant effect on the landscaped setting of the City.
27. The scope for views from Tithebarn Lane to the south-east (viewpoint LVA L5) is dependent on the height of the hedge along Tithebarn Lane, and would only be possible when the hedge is relatively low. Whilst it is possible to identify the appeal site from this location the views are of a distant nature. Subject to the upper slopes remaining free of development there would not be a significant effect on the setting of Exeter. I also viewed the site from the vicinity of the Pinhoe Trading Estate to the west. Whilst the general locality of

the appeal site could be discerned, any development on the appeal site would have a negligible effect on these views.

28. The Council also submit that the current undeveloped form of the site provides a 'Green Finger' within the landscape, the loss of which would be harmful to the character of the area. The separation the site provides between different areas of residential development within Pinhoe is discernable in aerial views of the locality. However, the north-eastern part of the site is situated at a much higher level than Church Hill and is bound by high banked hedgerows. Therefore other than in the medium distance views considered above, any separation that the site provides within the surrounding area is predominantly confined to private views. Due to the sloping nature of the site and the screening provided by the mature trees and hedgerows, individual views from the surrounding properties are generally confined to small areas of the site and some of these views are limited to views from upper floor windows. Accordingly, when viewed in the context of the local topography and existing development in the locality the proposal would not result in the loss of a 'Green Finger' of land.
29. Although it may perhaps be possible to identify residential development on the appeal site in medium distance views, such development is not intrinsically harmful to the setting of the City. Only limited areas of the proposal would be noticeable from any particular location. The considerable areas of openspace in the form of balancing ponds, play areas, a linear park and other areas of landscaping would ensure that the proposal would not form a continuous band of development across the site. Provided the significant trees and hedgerows on the site are retained, and the arrangement and height of the proposed dwellings reflect the topography of the site, the proposal would not have an adverse effect on the landscaped setting of the City, or the outlook from the surrounding properties. I therefore conclude that the proposal would not harm the landscaped setting of Exeter and would comply with Core Strategy policy CP16.

### ***Highway Safety and Traffic***

30. At the time of the application, the Highway Authority was concerned that in the absence of mitigation the additional traffic arising from the proposal, in conjunction with other previously permitted development within the surrounding area, could give rise to queuing on the B3181. Following the refusal of planning permission the Appellant submitted two alternative mitigation schemes. Scheme A proposes a one-way operation of Langaton Lane into the mini-roundabout. However, the delivery of this scheme is dependent on a Traffic Regulation Order and there is no certainty that this would be agreed. The alternative scheme proposes amendments to the junction geometry to accommodate right turning traffic. Both schemes have been subject to a road safety audit and no safety issues were raised. The Highways Unilateral Undertaking covenants to provide either scheme A, or scheme B, in conjunction with the traffic calming measures in the vicinity of Danesway that comprise scheme C.
31. The Unilateral Undertaking would also provide a travel plan to encourage future residents to use sustainable transport. The Highway Authority is satisfied that the proposal would not have an adverse effect on the highway network subject to the implementation of the measures specified within the Unilateral

Undertaking. No persuasive evidence has been submitted to convince me that this would not be the case.

32. Notwithstanding this, local residents raised a number of concerns in relation to traffic and highway safety. In places Church Hill is very narrow (about 3.3 metres wide), meaning that there is insufficient room for cars to pass each other, and that cars pass very close to pedestrians. Due to the hedges on either side of the road there are few places where pedestrians can safely wait for cars to pass. Church Hill is subject to a constant flow of traffic throughout the day. Local residents suggest that it is used by about 330 cars a day during morning peak hour and are concerned that the appeal proposal could exacerbate the existing situation.
33. The appeal proposal would be likely to give rise to some increase in the number of vehicles using Church Hill. However, when considered in the context of the existing traffic flows the increase would not be significant. Due to the proposed pedestrian links with the other areas of Pinhoe, and the information provided as part of the travel plan, it could be that the number of vehicle movements emanating from the appeal site would be lower than anticipated within the Transport Assessment.
34. The appeal proposal would provide a formalised priority system. This would involve narrowing part of Church Hill to a single lane, and widening part of it to allow vehicles to wait for those with priority to pass. There was concern that there was insufficient visibility along the length of the priority scheme, but it was confirmed at the site visit that this was not the case. These changes would also provide some benefits for pedestrians in terms of footpaths close to the appeal site, and adjacent to the area where the road would be narrowed. The priority scheme, together with the proposed traffic calming measures close to the site, and those that comprise scheme C, would be likely to reduce traffic speeds on this part of Church Hill. Overall, when considered together with the pedestrian links which form part of the appeal proposal, the scheme would be beneficial for pedestrians.
35. Some residents living towards the southern end of Church Lane advise that cars use their private access to wait for other vehicles to pass. There is no evidence to suggest that the appeal proposal would exacerbate this situation and the proposed priority scheme may help to alleviate this problem.
36. I therefore conclude that subject to the implementation of the measures within the Unilateral Undertaking and the provision of a priority scheme, the proposal would not have an adverse effect on highway safety or traffic.

### ***Housing Land Supply and Sustainability***

37. The parties differ as to the level of previous housing completions and the extent of the housing land supply within Exeter. The essential difference between the parties is their approach to the inclusion of student housing. The number of students within Exeter has increased from about 13,369 in 2006/2007 to about 19,325 in 2013/2014 and students currently comprise about 16.5% of the population.
38. Core Strategy policy CP1 requires the delivery of at least 12,000 dwellings over the plan period 2006 - 2026. This figure was derived from the evidence base of the Draft Regional Spatial Strategy for the South West (2006) (RSS).

Although the RSS did not progress to adoption, following an Examination in Public (EIP) the panel proposed a figure of 12,000 dwellings for Exeter City. The parties agree that the housing requirement within the Core Strategy did not include provision for the accommodation needs arising from the growing number of university students within Exeter.

39. At the time of the RSS there were about 1,184 homes within Exeter City entirely occupied by students. The Council explained that although the housing requirement did not include specific provision for student housing, it projected the future housing needs of those students within market housing based on the household formation rate for their age demographic. Due to the majority of students falling within the 18-22 age group there would be a relatively high household formation rate throughout the plan period. As such, the adopted housing requirement includes an element of growth in relation to those students resident within general market housing in 2006.

### *Student Accommodation*

40. The NPPF sets out the national planning policy context in relation to housing. Amongst other matters it seeks to significantly boost the supply of housing and deliver a wide choice of high quality homes. Paragraph 47 is clear that local planning authorities should identify and update annually a supply of specific deliverable sites sufficient to provide five years worth of housing against their housing requirements. The intention is to provide a realistic prospect of achieving the planned supply and to ensure choice and competition in the market for land.
41. Paragraph 50 of the NPPF requires local planning authorities to plan for a mix of housing based on current and future demographic trends, market trends and the needs of different groups in the community. In particular, they should identify the size, type, tenure and range of housing that is required in particular locations, reflecting local demand. Thus there is a qualitative as well as a quantitative requirement for housing.
42. The Council submits that the figures within the Draft 2014 SHLAA provide the most accurate assessment of housing supply and delivery in that they are based on the most recent and up-to-date information available. The principle difference between the 2014 SHLAA and previous SHLAAs is that it includes all student accommodation schemes within the housing delivery and housing land supply figures. It therefore shows 914 additional historic completions over the period 2009/2010 and 2013/2014. As a consequence it demonstrates an oversupply of 169 dwellings for the period up to 2013/2014, whereas the 2013 SHLAA showed a shortfall of 749 dwellings over the same period. These additional dwellings primarily comprise student schemes previously excluded from the housing supply. The Council's decision to include these dwellings (and to adjust the housing supply retrospectively) was prompted by the publication of the Planning Practice Guidance (PPG) in March 2014. It considers that the approach within the 2014 SHLAA is consistent with the advice within the PPG and that within the Core Strategy Inspector's Report.
43. Paragraph 3/38 of the PPG advises that all student accommodation, whether it consists of communal halls of residence or self-contained dwellings, and whether or not it is on campus, can be included towards the housing requirement, based on the amount of accommodation it releases in the housing market.

44. The Council submit that the provision of student accommodation releases housing that would otherwise be occupied by students and thereby indirectly releases accommodation within the housing market. For this reason it believes that all student accommodation should be included within the housing delivery and housing land supply figures. This view is not consistent with the PPG because it is not based on any assessment of the extent to which the provision of student accommodation has released general market housing.
45. The number of fulltime students within Exeter has increased substantially in recent years. Based on the figures within *SPD Houses in Multiple Occupation* (amended January 2014) the number of general market dwellings identified as exempt from Council Tax (predominantly student housing) increased by about 1527 in the period between 2006 and May 2013. The SPD explains that this figure includes about 750 private student cluster flats and studios. The Council state that the more recent evidence indicates that purpose-built student accommodation only comprises about 637 of these dwellings. By May 2014 the number of Council Tax exempt dwellings had increased to 2984, and the Council suggest that 1096 of these comprise purpose-built student accommodation.
46. Whilst it would seem that there has been a reduction in the number of general market dwellings occupied by students between May 2013 and May 2014, the growth in the number of students in recent years has significantly exceeded the provision of student accommodation. As a consequence there are at least 700 additional general market dwellings occupied by students by comparison with the commencement of the plan period.
47. Where the student population is relatively stable, and the number of general market dwellings occupied by students declines as a consequence of the provision of student accommodation, I consider the inclusion of such accommodation as part of the housing supply would be consistent with the guidance within the PPG. However, within Exeter, due to the considerable increase in the number of students relative to the provision of purpose-built student accommodation, there has not been a reduction in the number of general market dwellings occupied by students. On the contrary, there has been a significant increase. I acknowledge that this situation may change in the future should the delivery of student accommodation significantly exceed the increase in the size of the student population. However, that is not the case at present and there is no evidence to show that the provision of student accommodation has released general market housing within Exeter. Therefore the inclusion of purpose-built student accommodation as part of the housing supply is not consistent with the advice at paragraph 3/38 of the PPG.
48. The Council refer to paragraph 21 of the Core Strategy Inspector's Report. This states that it was debateable whether or not the new privately developed student units should be counted towards the City's housing land supply. The Inspector concluded that clusters of self-contained student accommodation should be counted towards housing supply, whereas communal accommodation should not. It is however, apparent that the Inspector understood that the University intended to meet most of its future student housing needs on University owned land on and off campus. She also anticipated that the Council's approach to student accommodation would be refined within the emerging Development Management DPD.

49. On the basis of the submitted evidence the reason for the Core Strategy inspector's view in relation to the inclusion of student housing is unclear. Based on the Council's approach 4969 dwellings have been delivered to date and of these 1510 comprise student accommodation. The Council submitted no evidence to show how this high proportion of student accommodation would reflect local demand for housing in accordance with paragraph 50 of the NPPF. Furthermore, the Inspector's Report pre-dates the publication of the NPPF and the PPG. The NPPF represents up-to-date Government planning policy and must be taken into account where it is relevant to a planning application or appeal. Paragraph 47 of the NPPF requires local plans to meet the full, objectively assessed needs for market and affordable housing in the housing market area. Since student accommodation requirements did not form part of the objectively assessed need, the provision of such accommodation would not contribute towards meeting the identified housing requirement. Therefore to rely upon student accommodation as a component of housing supply would not be consistent with paragraph 47 of the NPPF.
50. I therefore conclude that student accommodation should not be included as part of the housing land supply.

#### *Housing Land Supply*

51. The 2013 SHLAA identified 4051 completions for the period up to 2013/14 against a target of 4800. This includes about 596 purpose-built student dwellings. The higher figure within the 2014 SHLAA in relation to completions is due to the inclusion of additional student accommodation. If student completions are removed from the 2013 SHLAA the number of dwellings delivered falls to 3455 and there is a residual requirement for 8545 dwellings for the remainder of the plan period.
52. The Council's housing land supply comprises sites where construction has commenced; sites with planning permission where construction has not yet commenced and sites subject to a resolution to grant planning permission; sites without planning permission identified within the 2014 SHLAA, and an allowance for windfall sites.
53. Based on the figures within the 2013 SHLAA, sites with planning permission, or a resolution to grant planning permission, would deliver 2281 dwellings (excluding student accommodation) within the next five years. The more recent evidence within the 2014 SHLAA provides a figure of 2436. The Appellant considers that not all of these sites are likely to be viable and that no allowance has been made for non-implementation of these permissions, or for resolutions that may not be converted into planning permissions. He therefore suggests that a lapse rate of 10% should be applied to such sites.
54. In arriving at the figures within the 2014 SHLAA the Council contacted the applicants/agents in relation to each of the sites for 5 or more dwellings to obtain information on the first and final dwelling completions. On smaller sites about 50% of applicants/owners were contacted. On the basis of this information a number of sites with planning permission were excluded from the five year housing land supply.
55. Although there is no certainty that all of the sites identified by the Council will be delivered, I consider that its approach to the assessment of these sites to be reasonably robust. Footnote 11 to paragraph 47 of the NPPF states that sites

with planning permission should be considered deliverable until permission expires, unless there is clear evidence that schemes will not be implemented within five years. In the absence of such evidence, and bearing in mind the Footnote 11 advice, there does not seem to be justification for applying a discount of 10% as suggested by the Appellant.

56. Turning to sites without planning permission, but within the SHLAA. The Council assessed 8 of the 119 sites within the SHLAA as being deliverable either wholly, or in part, in the next five years. This assessment took account of discussions with the landowners/agents and pre-application discussions with the Council. The Council suggest that these sites have the potential to yield 416 dwellings over the next five years.
57. Paragraph 3/31 of the PPG advises that sites without planning permission can be included in the five year housing land supply. However, local planning authorities are required to provide robust, up-to-date evidence to support the deliverability of sites, ensuring that their judgements on deliverability are clearly and transparently set out. Footnote 11 states that to be deliverable, sites should be available now, offer a suitable location for development, and be achievable with a realistic prospect that housing will be delivered on the site within five years and in particular that the development is viable.
58. It is anticipated that a planning application for the residential development of the Exmouth Junction/Prince Charles Road site (site 23) will be submitted in the near future, however, a replacement depot will be necessary to facilitate this scheme. Whilst I do not doubt the Council's evidence in relation to the planning application, it would seem that proposals for the depot are less advanced. Therefore on the basis of the available evidence I am not persuaded that these dwellings will be delivered within the next five years.
59. Sites 40 (North and South of Harts Lane), 41 (The Land west of Pilton Lane) and 46 (Hill Barton Farm, Hill Barton) all form part of the Monkerton/Hill Barton Strategic Allocation within the Core Strategy. Site 40 is the subject of a current full planning application and is expected to deliver 160 dwellings during the next five years. Although the delivery of these dwellings is dependent on the provision of the Tithe Barn link road, this work is currently in progress, and it is anticipated that it will be complete by March 2015. Therefore the provision of the link road will not be a constraint on the future development of the site. I therefore consider that there is a reasonable prospect that the dwellings on this site will be delivered within the next five years.
60. Although there is an appeal in relation to 41 retirement dwellings at site 41, the Council does not seek to include these as part of the housing land supply. However, there is a full planning application in relation to another part of the site. Given the allocation of the site for housing within the Core Strategy and the developer's stated intention of commencing work in late 2014, I consider that there is a realistic prospect of these dwellings being delivered in the next five years. Site 46 is also part of the strategic allocation and is anticipated to make a modest contribution of 9 dwellings.
61. Site 60B (Land East of Railway, Old Rydon Lane) was considered by the SHLAA panel not to be achievable until years 11-15. The site forms part of the Newcourt Strategic allocation and the owner has recently submitted an outline application for the site. The Council expect the site to deliver 62 dwellings in the next five years.

62. I acknowledge that the Council has sought to make a robust assessment of sites and identify those with a realistic prospect of delivery within the next five years. It has set out its judgements on deliverability of these sites in a clear and transparent manner. However there is insufficient evidence to be confident that the dwellings on sites 23 and 60 will be built within the next five years. On the available evidence, I consider that these 99 dwellings should not be included in the five year supply and the contribution from sites without planning permission should be reduced to 317.
63. The NPPF provides that local planning authorities may make an allowance for windfall sites in the five year supply if they have compelling evidence that such sites have consistently become available in the local area and will continue to provide a reliable source of supply.
64. The Appellant submits that the introduction of a CIL charging regime in December 2013 and the increase in the proportion of affordable housing required from 25% to 35% on sites with 3 or more dwellings is likely to have an impact on the viability of potential windfall sites and may therefore reduce the number of sites coming forward.
65. The Council's evidence in relation to windfall sites relies on the inclusion of historic student accommodation completions. The 2014 SHLAA suggests that windfall sites will deliver 763 dwellings over the next five years compared with 497 within the 2013 SHLAA. The Council's assessment includes an allowance for development on garden land although the inclusion of such land conflicts with paragraph 48 of the NPPF.
66. There is no justification within the 2014 SHLAA for the inclusion of windfall sites, it simply states that the text to support the prediction has yet to be completed. Table 2 of Ms Smith's evidence aims to analyse previous windfall completions. It shows that just over 50% of all completions since 2004/2005 have occurred on windfall sites and have delivered an average of 313 dwellings a year. I have some serious concerns as to the accuracy of Table 2 since it refers to the number of completions on sites identified within a published SHLAA for the entire period from 2004/2005 onwards, despite the fact that the Council's first SHLAA was published in 2009. It also relies on the contribution of student accommodation to housing delivery, which for the most part has been assessed as development on windfall sites. Moreover, no evidence was provided to persuade me that sites would continue to come forward at the rate predicted by the Council.
67. The 2013 SHLAA includes a windfall allowance of 497 for the five year period up to 2018/19. It differs from the 2014 SHLAA in that it does not include development on garden land or historic student completions. Although there is limited evidence that such sites will continue to be available, the projected contribution of windfall sites to housing supply is based on a detailed analysis of past trends. It therefore provides a considerably more reliable assessment of the potential of such sites by comparison with the 2014 SHLAA.

#### *Conclusions on housing land supply*

68. I consider that sites with planning permission, or a resolution to grant planning permission, will deliver 2436 dwelling within the next five years. Sites within the SHLAA but without planning permission could deliver a further 317 dwellings. In addition windfall sites could potentially deliver a further 497

dwellings. On this basis, the five year housing land supply would be sufficient for about 3250 dwellings.

69. The residual housing requirement of 8545 dwellings would require the delivery 712 dwellings a year, of which 3560 should be delivered in the next five years, assuming that the shortfall is spread over the entire plan period. However, if the shortfall is added to the housing requirement for the next five years it would require the delivery of 4345 dwellings (869 dpa). Such an approach is favoured by the Appellant and would be consistent with the NPPF and its key objective to significantly boost the supply of housing. It is also favoured by the Planning Practice Guidance and also the Secretary of State in most appeal decisions because it deals with the issue of past delivery failures promptly over the short-term.
70. In addition to five years worth of housing against their housing requirements, paragraph 47 of the NPPF also requires local planning authorities to provide an additional buffer of 5% (moved forward from later in the plan period) to ensure choice and competition in the market for land. It also states that where there has been a record of persistent under-delivery of housing, local planning authorities should increase the buffer to 20% (moved forward from later in the plan period).
71. The Core Strategy period dates back to 2006 and the target of 600 dwellings per year has only been exceeded for one year since the start of the plan period. However, between 2006 and the adoption of the Core Strategy in 2012 the Devon Structure Plan was the relevant development plan. It established an annual requirement for 447 dwellings and this was met in all but two years, and was substantially exceeded in 2006/2007.
72. The Council would have been aware of the housing requirements within the emerging Draft RSS and following the EIP in 2007 the emerging figure of 600 dwellings a year carried considerable weight. It was the figure put forward to the Core Strategy EIP in 2011. Although the Council would have been aware of the higher targets within the emerging Core Strategy, these did not carry the same weight as the development plan policies. When assessed against the development plan targets in place, it is debateable whether there has been a record of persistent under-delivery in that the Council failed to meet the relevant target in four out of the eight years of the plan period. However, taking account of the over-supply relative to development plan targets in some years I consider that on balance this does not amount to a persistent record of under-delivery and the 5% buffer should apply. This would increase the five year housing land supply requirement to 4495. On this basis the Council has a housing land supply sufficient to deliver 3.6 years of housing. Even if the shortfall was spread across the remainder of the plan period the Council would still not have a five year supply of housing land. The current deficit in housing provision and the contribution that the appeal proposal would make in addressing it is a strong material consideration in favour of the appeal proposal.

### *Sustainable Development*

73. At the heart of the NPPF is a presumption in favour of sustainable development, which should be seen as a golden thread running through both plan-making and decision-taking. There are three dimensions to sustainable development, economic, social and environmental. Paragraph 49 of the NPPF

states that relevant policies for the supply of housing should not be considered up-to-date if the local planning authority cannot demonstrate a five-year supply of deliverable housing sites. It also requires housing applications to be considered in the context of the presumption in favour of sustainable development.

74. Local Plan policy LS1 is a policy relevant to the supply of housing in so far as it limits the areas where development will be permitted. Although Core Strategy policy CP16 may restrict the areas where housing development can occur, it is primarily concerned with the protection of areas for their landscape quality, as such it requires an assessment of the effect of any proposals on the character and distinctiveness of a number of defined areas. I therefore do not consider it to be a policy for the supply of housing.
75. The proposal would be socially sustainable in that it would provide 120 new dwellings, 35% of which would be affordable dwellings. It would also benefit the local community through the provision of pedestrian links through the site, the linear park and the surface water mitigation scheme. Economically, the development would bring short-term advantages in respect of jobs, and in the longer term it would ensure that housing is provided to meet identified housing needs and support growth of Exeter.
76. The appeal site occupies an accessible location within walking distance of bus services to and from Exeter City centre, and some local services. The proposal would not harm the landscaped setting of the city. Through the proposed links with the surrounding area it would encourage walking and cycling. It would also contribute to the green infrastructure sought by Core Strategy policy CP16 through the provision of the linear park and openspace. Overall, I conclude that the proposal would be socially, environmentally and economically sustainable.

### ***Precedent***

77. With the exception of Local Plan policy LS1, I have found above that the proposal would not conflict with national or local planning policy, including policies intended to safeguard the landscaped setting of Exeter. I also found that the appeal proposal would be sustainable development. For the reasons given above, policy LS1 is out of date and I have accorded it little weight. Therefore in accordance with the guidance at paragraph 14 of the NPPF the proposal should be approved. Consequently the appeal proposal would not set an undesirable precedent for other development that would conflict with the relevant national and local planning policies.
78. The HLR ranked the appeal site ninth out of seventeen sites on the basis of a number of sustainability criteria. The Council consider that if the appeal is allowed it would be difficult to resist the development of any sites identified in the HLR as being more sustainable by comparison with the appeal site. Any future proposals in relation to these other sites would need to be considered on their own merits in the light of the prevailing national and local planning policies and any other material considerations, including any potential harm to the surrounding landscape.

## **Other Matters**

### *Biodiversity & Ecology*

79. The appeal site is not covered by any specific designations in relation to wildlife or habitats. The Appellant submitted a Preliminary Ecological Appraisal and Extended Phase 1 Habitat Survey. Surveys to identify the extent to which bats and reptiles were present on the site were also conducted. Eight species of bats flying across the site were identified.
80. Some local residents were critical of the survey in that it did not include a dormouse survey, despite the fact that dormice have been noted within an area 1-1.5km to the south of the appeal site. Paragraph 99 of *Circular 06/2005: Biodiversity And Geological Conservation – Statutory Obligations And Their Impact Within The Planning System* advises that the presence or otherwise of protected species on a site should be established before planning permission is granted. It also states that bearing in mind the cost and delay that might be involved, developers should not be required to undertake surveys unless there is a reasonable likelihood of species being present and affected by the proposed development.
81. The Phase 1 Habitat Survey found an absence of records in relation to dormice within the Devon Biodiversity Record Centre. The Appellant's ecologist also undertook recent surveys at Pinhoe Quarry to the west and Old Park Farm to the north two sites, both of which are situated close to the appeal site. Neither of these surveys found any evidence of dormice. Therefore the likelihood that dormice are present on the appeal site is low. The majority of the appeal site is grazed by cattle, therefore the most likely location for any dormice would be within the hedgerows, which it is intended to retain. Therefore there would be minimal potential for disturbance and should there be any dormice present on the site, they would be unlikely to be affected by the development. In these circumstances I do not consider that a survey is necessary. Nevertheless I consider that a condition requiring the retention of the hedgerows would safeguard any potential dormouse habitat.
82. It is also suggested that the bat surveys were inadequate due to their duration. The bat surveys were carried out by licensed bat workers and noted at least eight bat species including the common pipistrelle, soprano pipistrelle, noctule, *Myotis spp.*, serotine, long-eared (*Plecotus spp.*) barbastelle and lesser horseshoe. Whilst the walked transect surveys lasted for about two hours, the survey included automated static detector surveys which were of longer duration. I am therefore satisfied that the surveys provide a reasonable indication as to the extent of bat activity on the appeal site.
83. In the light of the survey results the Appellant proposes a Biodiversity Mitigation and Enhancement Plan. This will include a method statement in relation to the removal of the buildings; the retention of mature oak trees within hedgerow boundaries to retain features for potential roosting sites and foraging habitat; the retention of hedgerows within the site (or compensation where impacts are unavoidable); a lighting plan designed to minimise disturbance to bat species which avoid areas of artificial illumination; the creation of areas of new habitat for foraging bats and a management plan which includes appropriate long-term management of retained and created

ecological features such as hedgerows. Subject to these measures the proposal would be likely to have a minimal effect on the bats on the appeal site.

84. Despite suggestions to the contrary, a reptile survey was conducted. It found a small population of grass snakes and slow worms on the site, and noted that their distribution was restricted to the boundaries with gardens. The Appellant proposes the erection of a reptile fence along specified boundaries, followed by a programme of intensive trapping on the site side of the boundaries. Therefore having regard to the proposed mitigation measures, including the Biodiversity Mitigation and Enhancement Plan, I conclude that the proposal would be unlikely to have a significant effect on the reptiles on the appeal site.
85. The provision of substantial areas of landscaping, including the proposed park would be likely to provide an enhanced habitat for wildlife over that which exists at present. I am therefore satisfied that subject to a Biodiversity Mitigation and Enhancement Plan the proposal would not significantly harm wildlife in the vicinity of the appeal site.

#### *Flooding*

86. At present surface water run-off from the highway and the surrounding fields flows down the highway, and is then diverted through the residential properties on the western side of Church Hill. In the past, the extent of the flows has been considerable, particularly during times of heavy rainfall. A previous scheme to alleviate this flooding was permitted in 2011, but was not implemented.
87. The appeal scheme proposes a Sustainable Urban Drainage Scheme (SUDS) which will include three attenuation ponds to manage surface water runoff from the site. These measures would reduce the extent of surface water run-off at times of heavy rainfall to allow a controlled discharge into the drainage system. South West Water confirm that the downstream sewers have sufficient capacity to accommodate the proposed dwellings and considers that the proposal would have a significant beneficial effect on surface water flows in the area. The scheme would allow for the management of the existing surface water problems and would ensure that the proposal would not lead to any increased pluvial flood risk in the locality. In addition the scheme would help to alleviate the problems currently experienced by residents on the western side of Church Hill.

#### *Setting of listed buildings*

88. The appeal site is adjoined by two listed buildings, Home Farm and Jonas Pyne. Section 66(1) of the Planning (Listed Buildings and Conservation Areas) Act 1990 requires special regard to be had to the desirability of preserving listed buildings or their setting or any features of special architectural or historic interest which they possess. Paragraph 132 of the NPPF requires great weight be given to the conservation of heritage assets, including listed buildings. It advises that the significance of the asset can be harmed or lost through development within its setting.
89. Home Farm adjoins the north-eastern part of the site and is accessed from Church Hill. It is a cob farmhouse dating from the 16 century. The existing curtilage buildings within Home Farm largely screen the house in views from the north and east. Due to the height of the hedges and banks, views from the

west are limited to the access point. The land to the south of the access does not form part of the appeal site and would be retained in its current open form. The illustrative plan shows an area of openspace to the north of the existing access. Therefore the existing open aspect that contributes to the setting of Home Farm in views from the west would be retained. The illustrative layout shows the proposed dwellings to the south of Home Farm would be separated from it by about 70 metres. Due to the change in levels these dwellings would occupy considerably lower land by comparison with the listed building and would not have a significant effect on the setting of Home Farm.

90. Jonas Pyne fronts onto Church Hill. It dates from the early 19 century. It has a roughcast finish with thatched roof. Views of this listed building are confined to Church Hill and the appeal site does not make a significant contribution to its setting. Consequently the appeal proposal would not harm the setting of this building.
91. The Appellant and the Council agree that the appeal site could be developed in such a way as to protect the setting of Home Farm and Jonas Pyne in a manner in accordance with the Framework. I have no reason to take a different view and conclude that there would be no significant harm to the setting of these listed buildings.

### *Conditions*

92. The Council put forward a number of conditions which I have considered in the light of advice at paragraphs 203 and 206 of the NPPF and the PPG. I agree that reserved matters need to be submitted for approval. The proposal should be carried out in accordance with plan 3007/001C in order to ensure a satisfactory means of access.
93. Details of the design and appearance of the dwellings are reserved matters, therefore a separate condition requiring the submission of materials is not necessary. For the same reason, an additional condition specifying the level of detail required in respect of the landscape scheme is also unnecessary. A condition requiring the submission of cycle parking arrangements is not required because this would be addressed within the layout of the site.
94. The existing trees and hedges form an integral part of the existing landscape and I agree that they should be retained in order to ensure that the development integrates with its surroundings and in the interests of biodiversity. For the same reason protective fencing should be erected around the trees on the site in accordance with the submitted Tree Protection Plans and Arboricultural Method Statement. A Biodiversity Mitigation and Enhancement Plan should be submitted for the reasons given above.
95. In order to safeguard the amenity of surrounding residents and to limit the effect of the proposal on the highway network, construction hours should be limited and a Construction Environmental Management Plan should be submitted. Investigations found no evidence of contaminated land, however a condition detailing measures in the event that any unexpected contamination is discovered is required.
96. A condition in relation to the details of the highway infrastructure on the appeal site is un-necessary since these details will form part of the reserved matters.

Details of the proposed traffic calming measures to Church Hill should be submitted for approval.

97. I agree that the proposal should meet the Code For Sustainable Homes in accordance with policy CP15 of the Core Strategy. In order to avoid increasing the risk of flooding, it is necessary to limit the rate of surface water run-off from the development to no more than that which occurs at present. Although the Appellant proposes the use of a sustainable drainage scheme, further details are necessary and should be submitted for approval.
98. Insufficient justification was provided for a condition requiring the the provision of public art as part of the proposal.

### **Conclusion**

99. I have found above that the proposal would not harm the landscaped setting of Exeter and subject to the provisions of the Unilateral Undertaking would be acceptable in terms of its effect on highway safety and traffic. The proposal would deliver much needed housing within Exeter and would represent sustainable development.
100. For the reasons given above I conclude that the appeal should be allowed.



INSPECTOR

## **APPEARANCES**

### **FOR THE APPELLANT:**

|                 |                          |
|-----------------|--------------------------|
| David Corsellis | Stevens Scown Solicitors |
| He called       |                          |
| Chris Britton   | Landscape Consultant     |
| David Seaton    | Planning Consultant      |
| Karl Von Webber | Highway Consultant       |

### **FOR THE LOCAL PLANNING AUTHORITY:**

|                  |                                                                       |
|------------------|-----------------------------------------------------------------------|
| Richard Langham  | Of Counsel                                                            |
|                  | Instructed by Corporate Manager of Legal Services Exeter City Council |
| He called        |                                                                       |
| Roger Clotworthy | Planning Officer                                                      |
| Richard Short    | Planning Officer (Presenting Katherine Smith's Proof of Evidence)     |

### **INTERESTED PERSONS:**

Councillor Megan Williams  
Moir MacDonal  
Elizabeth Escott  
Helen Radway  
Linda Marchant

### **DOCUMENTS SUBMITTED AT INQUIRY**

- 1 Location of suggested viewpoints submitted by the Appellant
- 2 Roger Clotworthy summary of proof of evidence
- 3 Core Strategy Key Diagram submitted by the Local Planning Authority
- 4 DCLG Household projections update (April 2013) submitted by the Appellant
- 5 Neighbourhood population statistics submitted by the Appellant
- 6 E mail from local resident submitted by Moira MacDonald
- 7 Submissions in relation to flooding submitted by Moira MacDonald
- 8 Submissions in relation to highways matters submitted by Moira MacDonald
- 9 Statement of Common Ground in relation to heritage matters
- 10 Secretary of State's proposed changes to RSS dwelling numbers submitted by the Appellant
- 11 Core Strategy policy CP15 submitted by The Local Planning Authority

### **PHOTOGRAPHS**

View of appeal site from Tithebarn Lane submitted by Moira MacDonald

**Appeal Decision Ref: APP/Y1110/A/14/2215771**

**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 begins 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 three years from the date of this permission.
- 3) The development hereby permitted shall begin not later than two years from the date of approval of the last of the reserved matters to be approved.
- 4) In respect of those matters not reserved for later approval the development hereby permitted shall be carried out in accordance with the proposed access scheme shown on plan no. 3007/001 Rev C.
- 5) Any trees and hedges on or around the site shall not be felled, lopped, or removed without the prior written consent of the local planning authority.
- 6) The erection of fencing for the protection of any retained tree shall be undertaken in accordance with the tree protection plans numbered 03893 TPP, appended to the Arboricultural Impact Assessment Report dated 18/06/2013, before any equipment, machinery or materials are brought on to the site for the purposes of the development, and shall be maintained until all equipment, machinery and surplus materials have been removed from the site. Nothing shall be stored or placed in any area fenced in accordance with this condition and the ground levels within those areas shall not be altered, nor shall any excavation be made, without the written approval of the local planning authority.
- 7) Prior to the commencement of development a Biodiversity Mitigation and Enhancement Plan which demonstrates how the proposed development will be managed in perpetuity to enhance wildlife, together with a programme of implementation, shall be submitted to and approved in writing by the local planning authority. The development shall be implemented and maintained in accordance with the approved Plan and programme of implementation.
- 8) Demolition or construction works shall not take place outside 08:00 hours to 18:00 hours Mondays to Fridays and 09:00 hours to 13:00 hours on Saturdays nor at any time on Sundays or Bank Holidays.
- 9) No development shall take place until a Construction Environmental Management Plan (CEMP) has been submitted to, and approved in writing by, the Local Planning Authority. The approved CEMP shall be adhered to throughout the construction period. The CEMP shall provide for:
  - i) Timing and management of arrivals and departures of vehicles and site traffic;
  - ii) measures to control the emission of dust, dirt and noise during construction;
  - iii) the phasing and timing of work;

- iv) the parking of vehicles of site operatives and visitors;
  - v) wheel washing facilities
  - vi) a procedure for handling and investigating complaints.
- 10) If during any works contamination is encountered which has not previously been identified then the additional contamination shall be fully assessed and an appropriate remediation scheme agreed with the local planning authority. Any remediation details shall be implemented as approved.
- 11) Prior to the commencement of development a detailed scheme for traffic calming works to Church Hill, shall be submitted to and approved in writing by the local planning authority. The scheme shall be implemented in accordance with the approved details prior to the first occupation of the dwellings.
- 12) The dwellings shall achieve a minimum of Level 4 of the Code for Sustainable Homes and a level 5 if commenced on or after 1 January 2016. No dwelling shall be occupied until a final Code Certificate has been issued for it certifying that appropriate Code Level has been achieved.
- 13) The development shall not be carried out otherwise than in accordance with a surface water drainage scheme, which shall include details of the means of attenuation and disposal of surface water from the site, including through the use of sustainable drainage systems. Details of the scheme, a timetable for its implementation and details of its future management, shall be in general compliance with the principles within the Flood Risk Assessment dated June 2013, and shall be submitted to and approved in writing by the LPA prior to the commencement of development. The scheme shall be implemented in accordance with the approved details and timetable for implementation.

**Appendix 1b** - High Court Decision for Home Farm, Pinhoe (*Exeter City Council v Secretary of State for Communities and Local Government* [2015] EWHC 1663 (Admin))

Case No: CO/5738/2014

Neutral Citation Number: [2015] EWHC 1663 (Admin)  
**IN THE HIGH COURT OF JUSTICE**  
**QUEEN'S BENCH DIVISION**  
**PLANNING COURT IN BRISTOL**

Bristol Civil Justice Centre,  
2 Redcliff Street, Bristol, BS1 6GR

Date: 12/06/15

**Before :**

**MR JUSTICE HICKINBOTTOM**

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**Between :**

**EXETER CITY COUNCIL**

**Claimant**

**- and -**

**(1) SECRETARY OF STATE FOR  
COMMUNITIES AND LOCAL GOVERNMENT**

**(2) WADDETON PARK LIMITED**

**(3) THE R B NELDER TRUST**

**Defendants**

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**Stephen Whale** (instructed by **Exeter City Council Legal Services**) for the **Claimant**  
**Sasha Blackmore** (instructed by the **Government Legal Department**)  
for the **First Defendant**  
**Charles Banner** (instructed by **Stephens Scown LLP**) for the **Second and Third Defendants**

Hearing date: 8 June 2015  
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**Judgment**

**Mr Justice Hickinbottom :**

### **Introduction**

1. This claim concerns the proposed construction of dwellings on Land at Home Farm, Church Hill, Pinhoe, Exeter, Devon (“the Site”). An application for planning permission by the Second and Third Defendants (“the Developers”) was refused by the Claimant planning authority (“the Council”); but, on appeal, after a three-day inquiry, on 29 October 2014 an inspector appointed by the Secretary of State, Ms Lesley Coffey BA Hons, BTP, MRTPI (“the Inspector”), allowed the appeal and granted planning permission for 120 residential dwellings, and associated infrastructure and open space.
2. In this application under Section 288 of the Town and Country Planning Act 1990 (“the 1990 Act”), the Council seeks to quash that decision.
3. Before me, Stephen Whale appeared for the Council, Miss Sasha Blackmore for the Secretary of State and Charles Banner for the Developers. At the outset, I thank them all for their helpful contributions.

### **The Legal Background**

4. The relevant legal background is largely uncontroversial. In relation to planning determinations generally, whether made by a local planning authority or by an Inspector on behalf of the Secretary of State on appeal, the following propositions, relevant to this claim, are well-established.
  - i) Section 70(2) of the 1990 Act provides that, in dealing with an application for planning permission, a decision-maker (i.e. a local planning authority, or an inspector who conducts an appeal on behalf of the Secretary of State) must have regard to the provisions of “the development plan”, as well as “any other material considerations”.
  - ii) Section 38(6) of the Planning and Compulsory Purchase Act 2004 provides that:

“If regard is to be had to the development plan for the purpose of any determination to be made under the planning Acts the determination must be made in accordance with the plan unless material considerations indicate otherwise.”

That requires the proposed development to be in accordance with the development plan looked at as a whole, rather than with every policy in the plan, which may well pull in different directions and some of which may be more relevant to a particular application than others (R v Rochdale Metropolitan Borough Council (2001) 81 P&CR 27 at [44]-[50] per Sullivan J (as he then was), and R (Hampton Bishop Parish Council) v Herefordshire Council [2014] EWCA Civ 878 at [33] per Richards LJ). Section 38(6) thus raises a presumption that planning decisions will be taken in accordance with

the development plan, looked at as a whole; but that presumption is rebuttable by other material considerations.

- iii) “Material considerations” in this context include statements of central government policy which, since 27 March 2012, has been largely set out in the National Planning Policy Framework (“the NPPF”). On 6 March 2014, the Secretary of State launched a web-based Planning Practice Guidance (“the PPG”), which replaced a plethora of earlier guidance documents and which is regularly updated. That too is a material consideration.
- iv) Whilst he must take into account all material considerations, the weight to be given to such considerations is exclusively a matter of planning judgment for the decision-maker, who is entitled to give a material consideration whatever weight, if any, he considers appropriate, subject only to his decision not being irrational in the sense of Wednesbury unreasonable (Tesco Stores Ltd v Secretary of State for the Environment [1995] 1 WLR 759 at page 780F-G). The courts have consequently left such decisions to be taken by the appointed decision-maker on the basis of guidance promulgated by the Secretary of State (see, e.g., R (Alconbury Developments Ltd) v Secretary of State for the Environment, Transport and the Regions [2001] UKHL 23 at [60] per Lord Nolan, [129] per Lord Hoffman and [159] per Lord Clyde).
- v) A decision-maker must interpret policy properly. The true interpretation of such policy, including the NPPF, is a matter of law for the court (Tesco Stores Ltd v Dundee City Council [2012] UKSC 13, and Europa Oil & Gas Limited v Secretary of State for Communities and Local Government [2014] EWCA Civ 825 at [13] per Richards LJ). Where a decision-maker has misunderstood or misapplied a plan or other policy, that may found a challenge to his decision, if it is material, i.e. if his decision would or might have been different if he had properly understood and applied the policy. If it is immaterial – because the decision would inevitably have been the same absent the identified error(s), then the court has a discretion not to quash the decision (Simplex GE (Holdings Limited) v Secretary of State for the Environment (1989) P&CR 306 at pages 324-7 per Purchas LJ). Whether the interpretation of the PPG is the subject of the same objective assessment by the court is moot before this court: Mr Banner for the Developers contends that the guidance is akin to the supporting text of a development plan, which falls short of policy so that it is not to be the subject of objective interpretation by the court and its application can only be challenged on grounds of rationality (R (Cherkley Campaign Limited) v Mole Valley District Council [2014] EWCA Civ 567 at [16] per Richards LJ). Mr Whale for the Council and Miss Blackmore for the Secretary of State submit that the PPG is subject to the Tesco v Dundee principles, and it is for this court to construe it as a matter of law. I deal with that issue below (see paragraph 43).
- vi) An inspector’s decision letter cannot be subjected to the same exegesis that might be appropriate for a statute or a deed. It must be read as a whole, and in a practical, flexible and common sense way, in the knowledge that it is addressed to the parties who will be well aware of the issues and the arguments deployed at the inspector’s inquiry, so that it is not necessary to rehearse every argument but only the principal controversial issues (see

Seddon Properties v Secretary of State for the Environment (1981) 42 P&CR 26 at page 28 per Forbes J; South Somerset District Council v Secretary of State for the Environment [1993] 1 PLR 80 at pages 82H, 83F-G per Hoffman LJ; and South Bucks District Council v Porter (No 2) [2004] UKHL 33 at [36] per Lord Brown).

- vii) Although an application under section 288 is by way of statutory appeal, it is determined on traditional judicial review grounds.
- viii) It is only in limited circumstances in which it can be contended that a decision-maker has erred in law by reference to a point not raised before him: an argument that an inspector failed to take into account a consideration not raised at the inquiry will only be allowed if the interests of justice require it (South Oxfordshire District Council v Secretary of State for the Environment, Transport and the Regions [2000] 2 All ER 667 at pages 677g-678d per George Bartlett QC sitting as a Deputy High Court Judge, and Humphris v Secretary of State for Communities and Local Government [2012] EWHC 1237 (Admin) at [23] per Ouseley J).
- ix) Because the exercise of discretion involves a series of planning judgments, in respect of which an inspector or other planning decision-maker has particular experience and expertise, “The court must be astute to ensure that such challenges are not used for what is, in truth, a rerun of the arguments on the planning merits”: anyone who challenges a planning decision on Wednesbury grounds faces “a particularly daunting task” (Newsmith v Secretary of State for the Environment, Transport and the Regions [2001] EWHC 75 (Admin) at [6]-[8] per Sullivan J, as he then was).

### **The Issues before the Inspector**

- 5. In paragraph 5 of her decision letter, the Inspector identified four main issues for her determination, as follows.
  - i) The effect of the proposal on the landscape setting of Exeter. She considered this issue in paragraphs 12-29 of her decision letter. The Site falls within an area designated as a Landscape Setting Area within Policy LS1 of the Exeter Local Plan First Review (2005) and Policy CP16 of the Exeter City Council Core Strategy (2012). The Inspector found that the proposed development (a) was not in accordance with Policy LS1 (a blanket policy that effectively limits development to existing urban areas), but that that policy was not a criteria-based policy in terms of the NPPF and was out-of-date, so that it could be accorded little weight (paragraph 13); and (b) would not in fact harm the landscape setting of Exeter and would comply with Policy CP16 of the current Core Strategy (paragraph 29). Those findings are not challenged by the Council.
  - ii) The effect of the proposal on highway safety and traffic. The Inspector concluded that the proposal would not have an adverse impact on highway safety and traffic (paragraph 36).

- iii) Whether in the light of the development plan, national guidance and other material considerations, the proposal would be a sustainable form of development. Within that issue, there were the following two sub-issues: (a) whether the Council could demonstrate a five year supply of deliverable housing land (which turned exclusively upon how new student accommodation was taken into account), and (b) irrespective of whether the Council could demonstrate a five year supply of housing, whether, in the light of the relevant policies – and benefits and harm of the proposal, as the Inspector found them to be – planning permission should be granted. The Claimant’s grounds of challenge now focus on these issues. Briefly, the Inspector found that (a) on the evidence before her, student accommodation should not be included as part of the housing supply (paragraph 50), and the Council had not demonstrated a five year supply of housing; and (b) the proposal would be socially, environmentally and economically sustainable (paragraph 76).
- iv) Whether the proposal would set a precedent for other development which could harm the character of Exeter City. The Inspector found that the proposal would not conflict with any national or local policy (except the out-of-date Policy LS1 which was of little weight), and was sustainable (paragraph 77). She concluded that the proposal should be approved “in accordance with the guidance at paragraph 14 of the NPPF”; and would not set an undesirable precedent for other development that did conflict with relevant policies (also paragraph 77).

### **The Grounds of Challenge**

- 6. Mr Whale seeks to challenge the Inspector’s decision to grant planning permission, on two grounds.
- 7. First, he submits that the Inspector erred in three, related respects in relation to housing requirement/supply, which Mr Whale rolls up in Ground 1:
  - i) The Inspector proceeded on the basis that paragraph 47 of the NPPF “requires local plans to meet the full, objectively assessed needs and affordable housing in the housing market area”. It does not. It requires those needs to be met only “as far as is consistent with the policies set out in the [NPPF]...”.
  - ii) Whilst it was common ground that the housing requirement in the Core Strategy – of “at least 12,000” – did not include the need to provide housing for students, the Inspector failed to take into account the fact that the adopted housing requirement did include “an element of growth in relation to those students resident within general market housing in 2006” (paragraph 27(b) of the Claimant’s Statement of Facts and Grounds).
  - iii) The Inspector erred in not taking into account student accommodation as part of the housing *supply*. Whether or not student accommodation needs form part of the housing *requirement*, “new” student accommodation can be included as part of the housing *supply* in satisfaction of the identified requirement. Nothing in either the NPPF or the PPG requires or even suggests otherwise.

8. Second, as Ground 2, Mr Whale submits that the Inspector erred in adopting tests for inclusion of student accommodation in the housing supply assessed as fulfilling the identified requirement – not satisfied in this case – namely such accommodation can be included if (i) the student population is stable, and (ii) the number of general market dwellings occupied by students declines as a consequence of the provision of student accommodation. There are no such tests in paragraph 3.38 of the PPG or elsewhere.
9. The Secretary of State and Developers deny that there is any merit in any of these grounds and sub-grounds – but, even if the grounds were to be made good, the errors by the Inspector would be immaterial, in the sense that her decision would inevitably have been the same even if she had acted as the Council contend she ought to have done. In those circumstances, they submit that, even if I am persuaded that the Inspector acted unlawfully, I should exercise my discretion and not quash her decision.

### **Housing Requirements**

10. Before I turn to the grounds of challenge, it might assist to refer briefly to different concepts that each plays a part in consideration of housing requirements. I recently considered three concepts – household projections, policy off objective assessment of need for housing, and policy on housing requirement – in R (Gallagher Homes Limited and Lioncourt Homes Limited) v Solihull Metropolitan Borough Council [2014] EWHC 1283 (Admin) at [37]:

“(i) Household projections: These are demographic, trend-based projections indicating the likely number and type of future households if the underlying trends and demographic assumptions are realised. They provide useful long-term trajectories, in terms of growth averages throughout the projection period. However, they are not reliable as household growth estimates for particular years: they are subject to the uncertainties inherent in demographic behaviour, and sensitive to factors (such as changing economic and social circumstances) that may affect that behaviour. Those limitations on household projections are made clear in the projections published by the Department of Communities and Local Government from time-to-time (notably, in the section headed ‘Accuracy’).

(ii) Full Objective Assessment of Need for Housing: This is the objectively assessed need for housing in an area, leaving aside policy considerations. It is therefore closely linked to the relevant household projection; but is not necessarily the same. An objective assessment of housing need may result in a different figure from that based on purely demographics if, e.g., the assessor considers that the household projection fails properly to take into account the effects of a major downturn (or upturn) in the economy that will affect future housing needs in an area. Nevertheless, where there are no such factors,

objective assessment of need may be – and sometimes is – taken as being the same as the relevant household projection.

(iii) Housing Requirement: This is the figure which reflects, not only the assessed need for housing, but also any policy considerations that might require that figure to be manipulated to determine the actual housing target for an area. For example, built development in an area might be constrained by the extent of land which is the subject of policy protection, such as Green Belt or Areas of Outstanding Natural Beauty. Or it might be decided, as a matter of policy, to encourage or discourage particular migration reflected in demographic trends. Once these policy considerations have been applied to the figure for full objectively assessed need for housing in an area, the result is a ‘policy on’ figure for housing requirement. Subject to it being determined by a proper process, the housing requirement figure will be the target against which housing supply will normally be measured.”

### **Ground 1: The Housing Requirement Ground**

11. “Sustainable development” is at the heart of the NPPF. There is no specific definition of “sustainable development”, but it is to be defined in terms of development which meets the needs of the present without compromising the ability of future generations to meet their own needs. That is reflected in the first words of the Ministerial Foreword to the NPPF, which state:

“The purpose of planning is sustainable growth.

*Sustainable* means ensuring that better lives for ourselves don’t mean worse lives for future generations.

*Development* means growth. We must accommodate the new ways in which we will earn our living in a competitive world. We must house a rising population...”.

12. It is said in paragraph 6 of the NPPF that the policies set out in paragraphs 18-219, taken as a whole, constitute the Government’s view of what sustainable development means in practice for the planning system. “Sustainability” therefore inherently requires a balance to be made of the factors that favour any proposed development, and those that favour refusing it, in accordance with the relevant national and local policies. However, the NPPF provides for a number of presumptions as to where the balance might lie.
13. Paragraph 14 provides:

“At the heart of the [NPPF] is a **presumption in favour of sustainable development**, which should be seen as a golden thread running through both plan-making and decision-taking.

For **decision-taking** this means [unless material considerations indicate otherwise]:

- approving development proposals that accord with the development plan without delay; and
- where the development plan is absent, silent or relevant policies are out-of-date, granting permission unless
  - any adverse impacts of doing so would significantly and demonstrably outweigh the benefits, when assessed against the policies in this Framework taken as a whole; or
  - specific policies in this Framework indicate development should be restricted...”.

14. Part 6 of the NPPF deals with, “Delivering a wide choice of high quality homes”. The identification of sites for future housing provision is dealt with in paragraphs 47-50 of the NPPF, which provide as follows:

“47. To boost significantly the supply of housing, local planning authorities should:

- use their evidence base to ensure that their Local Plan meets the full, objectively assessed needs for market and affordable housing in the housing market area, as far as is consistent with the policies set out in this Framework, including identifying key sites which are critical to the delivery of the housing strategy over the plan period;
- identify and update annually a supply of specific deliverable sites sufficient to provide five years worth of housing against their housing requirements with an additional buffer of 5% (moved forward from later in the plan period) to ensure choice and competition in the market for land. Where there has been a record of persistent under delivery of housing, local planning authorities should increase the buffer to 20% (moved forward from later in the plan period) to provide a realistic prospect of achieving the planned supply and to ensure choice and competition in the market for land;
- identify a supply of specific, developable sites or broad locations for growth, for years 6-10 and, where possible, for years 11-15;
- for market and affordable housing, illustrate the expected rate of housing delivery through a housing trajectory for the plan period and set out a housing implementation strategy for the full range of housing describing how they will maintain delivery of a five-year supply of housing land to meet their housing target; and
- set out their own approach to housing density to reflect local circumstances.”

48. Local planning authorities may make allowance for windfall sites in the five-year supply .....
49. Housing applications should be considered in the context of the presumption in favour of sustainable development. Relevant policies for the supply of housing should not be considered up-to-date if the local planning authority cannot demonstrate a five-year supply of deliverable housing sites.
50. To deliver a wide choice of high quality homes, widen opportunities for home ownership and create sustainable, inclusive and mixed communities, local planning authorities should:
  - plan for a mix of housing based on current and future demographic trends, Market trends and the needs of different groups in the community (such as, but not limited to, families with children, older people, people with disabilities, serviced families and people wishing to build their own homes;
  - identify the size, type, tenure and range of housing that is required in particular locations, reflecting local demand...”
15. This guidance informs the relevant housing requirement to be used for both the strategic plan-making function of a local planning authority when (e.g.) preparing a Local Plan Review, and the function of decision-making in respect of a particular planning application when it informs the approach of the decision-maker. In the latter case, it is particularly relevant in the absence of a demonstration of a particular level of supply of deliverable housing sites. If the authority cannot demonstrate a five year plus buffer supply of housing land at the time of a planning application for housing development, then that weighs in favour of a grant of permission. In particular, in those circumstances, (i) relevant housing policies are to be regarded as out-of-date, and hence of potentially restricted weight; and (ii) there is a presumption of granting permission unless the adverse impacts of granting permission “significantly and demonstrably” outweigh the benefits, or other NPPF policies indicate that development should be restricted in any event, sometimes referred to as a “tilted balance”. However, that presumption is, again, not irrebuttable: it may be rebutted by other material considerations.
16. Turning to local policy (the development plan), Core Strategy Policy CP1 requires delivery of at least 12,000 dwellings in the plan period 2006-26. As a housing requirement, that figure was not in issue before the Inspector.
17. Exeter is a thriving university city, with a planned substantial increase in numbers of students (over 19,300 in 2013-14, compared with just over 13,300 in 2006-07). Students, of course, require accommodation, either communal (usually halls of residence restricted to student occupation) or private non-communal (usually in the form of self-contained flats with a cluster of bedrooms which, if not used as student accommodation, could and would be used as general private housing stock). Students are of generally narrow age range and, in accommodation terms, have a rapid and self-replacing turnover. However, the Council has always recognised that, in the light of the expansionist plans of the university, despite university plans for additional communal accommodation, the number of students living in private housing would

increase so that the Council need to approve and increase the stock of houses of multiple occupation (see, e.g., paragraph 3.5 of the Council Planning Member Working Group Minutes 9 February 2010).

18. Before the Inspector, it was uncontroversial as to how student accommodation had been treated in arriving at the housing requirement figure of at least 12,000. As recorded by the Inspector (in paragraph 38 of her decision letter), the parties agreed that the housing requirement figure “did not include provision for student accommodation needs arising from the growing number of university students within Exeter”. That is made clear from the Council’s Urban Capacity Study 2006-26 (September 2006), which said that the Regional Spatial Strategy target (from which the 12,000 figure was derived) “does not take into account the need to provide housing for students”. The fact that future demand for student housing was not taken into account in that figure was expressly referred to in paragraph 20 of the Report on the Examination of the Council’s Core Strategy Development Plan Document (November 2011) (“the CS Inspector’s Report”), prepared of course by a different inspector appointed by the Secretary of State.
19. Nevertheless, the housing requirement figure was informed by demographic trends, in the form of (South West) regional household formation rate projections for the relevant period. Although pan-regional, an element of the increase as a result of these projections is attributable to increased student population, at least so far as non-communal accommodation is concerned (communal accommodation not featuring in the projections). This too was properly recorded by the Inspector in paragraph 39 of her decision letter:

“... The Council explained that although the housing requirement did not include specific provision for student housing, it projected the future housing needs of those students within market housing based on the household formation rate for their age demographic. Due to the majority of students falling within the 18-22 age group there would be relatively high household formation rate throughout the plan period. As such, the adopted housing requirement includes an element of growth in relation to those students resident within general market housing in 2006.”

20. However:
  - i) The household formation projected rate is a background rate, which does not reflect any particular increase in student population in a university city such as Exeter; and, especially, does not reflect the increase in student population in such a city as a result of known expansionist plans of the university. The objective assessment of need for housing (and thus the housing requirement) in this case did not therefore take into account the fact that, for Exeter, the unmodified housing projection figure would be inappropriate as it would not reflect the peculiar circumstances of the student population in Exeter.
  - ii) Before the Inspector, the Council did not attempt to calculate how that demographic trend was reflected in the housing requirement figure in quantitative terms, i.e. it did not rely upon a specific proportion of the housing

requirement being attributable to student accommodation because of the demographic input.

21. Before the Inspector, the parties' respective positions with regard to the inclusion of student accommodation units within the housing supply figure (as contributing towards satisfaction of the housing requirement figure of at least 12,000) were as follows.
22. The Council submitted that all non-communal student accommodation schemes for the relevant period should be included: it accepted that communal accommodation ought not to be included both on principle and because (as I understand it) there was in fact no new communal student accommodation in the period. This was a change in approach by the Council, which had not included any student accommodation in the supply figures prior to 2012-13, with the result that the 2013 Strategic Housing Land Availability Assessment ("SHLAA") showed a shortfall of supply against requirements of 749 dwellings. By retrospectively including 914 historic completions of private student accommodation units, the 2014 Draft SHLAA before the Inspector showed a surplus of 169 dwellings.
23. It made this accounting change because it considered the inclusion of student accommodation in this manner was in line with the PPG, which had been first published in March 2014. Paragraph 3.38 of the PPG, alongside the side note "Related policy [NPPF] Paragraph 47", and under the heading "How should local planning authorities deal with student housing?", provides:

"All student accommodation, whether it consists of communal halls of residence or self-contained dwellings, and whether or not it is on campus, can be included towards the housing requirement, based on the amount of accommodation it releases in the housing market. Notwithstanding, local authorities should take steps to avoid double counting."
24. The Council also relied upon the CS Inspector's Report which, having expressed support for the requirement figure of at least 12,000, said (at paragraph 21):

"... It is debateable whether or not the new privately developed student units should be counted towards Exeter's 5 year housing land supply. Clusters of self-contained accommodation, perhaps with individual studio units and a shared kitchen, should be counted in the housing supply, whereas communal accommodation (e.g. traditional halls of residence) should not. More certainly, growing student numbers add to arguments for the plan to provide sufficient new land for housing for the 5 years and secure the maximum housebuilding for the full plan period."
25. Thus, the Council submitted that all non-communal student accommodation should be included in the supply figure.
26. On the contrary, the Developers submitted that none should, or indeed, could be included, because there was no specific provision for student accommodation in the

housing requirement figure – and to include any such accommodation in the supply figure would undermine the whole purpose of the requirement of the NPPF that housing needs are generally met, and would mask the need for general housing in Exeter. It would be irrational to exclude student housing for requirement purposes, but to include it in the figures used for housing supply in satisfaction of that requirement.

27. The Inspector dealt with this issue in paragraphs 37-50 of her decision letter. She did not agree fully with the contentions of either party.
28. She clearly understood that the adopted housing requirement reflected an element of growth in relation to student accommodation because of the demographic projections used, as explained above – she expressly makes that point at paragraph 39 of her decision letter – but it was agreed that student accommodation requirements did not form part of the objectively assessed need for housing; and, in the absence of any evidence as to the proportion of the adopted requirement that reflected student accommodation simply because of the demographic trends that had been taken into account, the Inspector was not satisfied that the provision of student accommodation in itself contributed to any specific extent to meeting the identified housing requirement (paragraph 49).
29. However, nor was she convinced by the Developers’ submission that that was the end of the matter.
30. Consistent with paragraph 3.38 of the PPG, she went on to consider whether, on the evidence in this particular case, it was appropriate to count any part of the supplied student accommodation as housing supply against the adopted housing requirement, because the provision of student accommodation had (e.g.) released housing that had been used by students into the general housing market. She found that there was no evidence of such release; and, indeed, since the commencement of the plan period, 700 additional general market dwellings were now occupied by students (paragraph 46 and 47). There appeared to be no other justification for the inclusion of any of the student accommodation. She therefore considered the inclusion of student accommodation as part of housing supply in this case would not be consistent with paragraph 3.38 of the PPG.
31. Furthermore, she was not persuaded by reliance on the CS Inspector’s Report, because (i) the basis for that inspector’s view in relation to the inclusion of student accommodation was unclear, although that inspector had understood that the university intended to meet most of its future student housing needs in communal accommodation on university-owned land; and (ii) it pre-dated the NPPF (paragraph 47 of which, she said, “required local plans to meet the full, objectively assessed need...” ) and the PPG (paragraphs 48-49).
32. For those reasons, the Inspector concluded that “student accommodation should not be included as part of housing land supply” (paragraph 50).
33. As I have indicated, Mr Whale submits that the Inspector erred in three respects.
34. First, he says that the Inspector erred in proceeding on the basis that paragraph 47 of the NPPF “requires local plans to meet the full, objectively assessed needs and

affordable housing in the housing market area” (paragraph 49 of her decision letter, referred to in paragraph 31 above), whereas paragraph 47 requires a plan to meet those full, objectively assessed needs for market only “as far as is consistent with the policies set out in this Framework...”.

35. There is nothing in this complaint. Paragraph 47 reflects two different concepts, namely the “policy off” objectively assessed housing need and the “policy on” housing requirement, which I have explained above (see paragraph 10). It is clear that the policy off need and policy on requirement will be the same if there are no policies that impact upon the policy off figure. In this case, none was suggested. The words in paragraph 47 omitted by the Inspector – about which Mr Whale makes complaint – therefore had no relevance in this case. The Inspector did not arguably err by omitting (and/or not taking into account the import of) words in the NPPF that were immaterial to the issues before her.
36. Second, Mr Whale complains that, whilst it was common ground that the housing requirement in the Core Strategy – of “at least 12,000” – did not include the need to provide housing for students, the Inspector erred in failing to take into account the fact that the adopted housing requirement did include “an element of growth in relation to those students resident within general market housing in 2006”.
37. However, as I have described, it is clear that the Inspector was well-aware that, by taking account of the projection inherent in the regional demographic trend, the adopted housing requirement figure did reflect, to an extent, an increase in student accommodation during the plan period: she expressly set out that point at paragraph 39 of her decision letter (see paragraph 19 above). But, there was no evidence as to the extent that it did so: and, indeed, the Council did not rely upon any specific extent that it did so. It simply relied upon paragraph 3.38 of the PPG in support of its proposition that, irrespective of the extent (if any) that student accommodation was included in the housing requirement figure adopted, all non-communal student accommodation was properly included in the housing supply figure. In the circumstances, the Inspector was entitled to proceed on the basis that she was not satisfied that any specific proportion of the adopted housing requirement figure could be properly attributable to student accommodation.
38. Before me, the Council seek to repair this evidential deficit before the Inspector, by requesting permission to rely upon a further statement of Richard Short (a Planning Officer with the Council) dated 19 February 2015 in which he seeks to identify the proportion of the Council’s identified housing requirement of at least 12,000 attributable to student population by using more recent projections for the period 2013-33. He accepts that the proportion cannot be identified from the earlier projections.
39. However:
  - i) The new evidence of Mr Short is controversial. If it is admitted, the Developers seek to rely upon further evidence of David Seaton (a planning consultant instructed in their behalf), in the form of a statement dated 19 May 2015.

- ii) In any event, it is much too late for this evidence to be deployed. Before the Inspector, as I have described, the Council did not rely upon a particular proportion of the housing requirement being attributable to student accommodation, and there was no evidence before the Inspector from which she could have assessed that attribution. It cannot be said that she erred in law in not making the attribution; and it is not arguably in the interests of justice to allow the Council to take this new point now.
  - iii) In any event, even if the Council were able to show that a specific proportion of the adopted housing requirement figure was attributable to student accommodation, for the reasons given below, that would not be determinative of this application.
40. For those reasons, I formally refuse the Council's application of 6 May 2015 to admit this further evidence, and also the Developers' application of 21 May 2015 to adduce evidence in response.
41. That leads to Mr Whale's third and final subground. He submits that, whether or not student accommodation needs form part of the housing requirement, the Inspector erred in not taking into account student accommodation as part of the housing supply. Paragraph 3.38 of the PPG requires (or, at least, permits) it to be counted.
42. That argument appears to be counterintuitive, particularly in the light of the principles set out in the NPPF. It would mean, for example, that if the adopted housing requirement excluded student accommodation altogether, despite the terms of paragraph 50 of the NPPF, that requirement could be satisfied by student accommodation alone. I accept Mr Banner's submission that it would be irrational to include student accommodation in housing supply as meeting an adopted housing requirement, where such accommodation does not feature in that requirement.
43. But the foundation of the argument is in any event false. Paragraph 3.38 does not allow – let alone require – all new student accommodation simply to be included towards the housing requirement, as Mr Whale suggests: rather, it allows an authority to reflect the release of accommodation units onto the general housing market as a result of new student accommodation (although, of course, in the unlikely event that the provision of student accommodation releases unit for unit to the general market, then the whole of the accommodation may effectively go to satisfy the requirement). That is clear from the words used; but also from the reference to communal student accommodation, which is not included in the housing requirement figure and (Mr Whale accepts) was in this case properly not included within the housing supply figure either. The moot point as to the proper approach to interpretation of the PPG (see paragraph 4(v) above) does not arise, because the words of paragraph 3.38 are unambiguously clear and the Secretary of State does not suggest otherwise. Leaving aside the argument on discretion below (paragraphs 50-53), whatever approach to construction is adopted, the result is consequently the same.
44. Far from the Inspector's approach to student accommodation and housing supply in this case being wrong in law, in my view it was eminently correct. She was correct not to accede to the Council's submission that all student accommodation supplied should or could be set off against the housing requirement. She was correct not to be persuaded by the Developers' contention that she could not under any circumstances

take into account student accommodation. She was correct to look at the facts of this case and determine whether, on the evidence before her, there was any basis for taking any of the new student accommodation into account. Given the evidence that a substantial number of additional general market dwellings had been occupied by students, she was clearly entitled to find that there was not. She properly accepted (in paragraph 47) that, although there was currently no evidence to show that the provision of student accommodation has released housing into the general market in Exeter, the situation may in the future change if (e.g.) the delivery of student accommodation significantly exceeded the increase in student population.

45. For those reasons, none of the separate strands of Ground 1 succeeds.

**Ground 2: The Unlawful Adoption of Tests for Inclusion of Student Accommodation in the Housing Supply**

46. Having said that student accommodation could be taken into account in the supply figure to the extent that that accommodation released housing to the general market (paragraph 44 of her decision letter), in paragraph 47 of her decision letter, the Inspector continued:

“Where student population is relatively stable, and the number of general market dwellings occupied by students declines as a consequence of the provision of student accommodation, I consider the inclusion of such accommodation as part of the housing supply would be consistent with the guidance within the PPG. However, within Exeter, due to the considerable increase in the number of students relative to the provision of purpose-built student accommodation, there has not been a reduction in the number of general market dwellings occupied by students. On the contrary, there has been a significant increase...”.

47. Mr Whale submits that the Inspector proceeded on the basis that the inclusion of student accommodation as part of the housing supply would be consistent with paragraph 3.38 of the PPG if (and only if) (i) the student population is relatively stable and (ii) the number of general market dwellings occupied by students declines as a consequence of the provision of student accommodation. He submits that the Inspector erred in law in positing these tests, which are not posited in paragraph 3.38 of the PPG or elsewhere.
48. I consider this ground misconceived. If the Inspector’s decision letter is read fairly and as whole – as it must be – paragraph 47 does not set out tests which must be satisfied if student accommodation is to be included with the supply figure; rather, the Inspector is considering how it might be appropriate to include student accommodation in the supply figure. The passage relied upon does not seek to establish a “test”, but rather exemplifies ways in which it might be established that student accommodation releases dwellings into the general housing market and thus, in line with paragraph 3.38 of the PPG, might properly be included in the housing supply figure. However, that possible example was not this case. The Inspector found that, however one might consider the evidence, there was no way of appropriately including any of the student accommodation in housing supply in this

case. That finding is unimpeachable; and, on the evidence, I would have thought all but inevitable.

49. In his skeleton argument, for the first time Mr Whale seeks to rely upon paragraph 27 of the Secretary of State's Consultation Paper, "Section 106 Planning Obligations – Speeding up Negotiations: Student accommodation and affordable housing contributions" (February 2015). Paragraphs 27 and 28 read as follows:

"27. Many of our university towns and cities purpose built accommodation provides affordable housing for students. Local authorities are rewarded through the New Homes Bonus for the provision of such accommodation, and planning guidance already allows them to count the provision of all student accommodation towards meeting their local housing requirement.

28. Student housing provided by individual private landlords is a low-cost form of housing. Therefore encouraging more dedicated student accommodation will help free up low-cost properties in the private rented sector and help address problems associated with the cheaper end of the private housing market and with homes in multiple occupation..."

Mr Whale submits that paragraph 27 supports his view that paragraph 3.38 of the PPG permits all student accommodation to be counted as against an adopted housing requirement.

50. However:
- i) The Consultation document was not before the Inspector: indeed, it post-dates her decision.
  - ii) It also post-dates the NPPF and PPG, and so cannot be used in interpreting those documents, in particular paragraph 3.38 of the PPG.
  - iii) But in any event the passage relied upon is consistent with the interpretation of paragraph 3.38 I prefer: paragraph 3.38 does allow authorities to include student accommodation towards meeting their housing requirement, e.g. by releasing accommodation into the private sector, where that is justified on the evidence. Indeed paragraph 28 of the consultation document strongly suggests that that is what is being referred to in paragraph 27.

51. Ground 2 therefore also fails.

### **Discretion**

52. Therefore, both grounds fail on their merits, and I must dismiss this application.
53. However, although now not determinative, it is only right that I refer to another ground of opposition relied upon by Miss Blackmore and Mr Banner. They each submitted that, even if I were to find that the Inspector had acted unlawfully as Mr Whale contended, I ought to exercise my discretion and not quash the decision

because the errors were immaterial, i.e. even if the Inspector had not erred as suggested, she would inevitably have come to the same conclusion and allowed the appeal.

54. That submission is based on the following propositions:

- i) The proposed development undoubtedly had planning benefits: as the Inspector said (at paragraph 75 of her decision latter), whatever the position with regard to land supply, it created “much needed” housing including 35% social housing and supported growth generally; it benefited the local community by providing pedestrian links through the site, a linear park, a playground and a surface water mitigation scheme; and it provided the short-term economic benefits of construction.
- ii) The Inspector found that the proposal was in accordance with all relevant policies, except Policy LS1. Furthermore, it caused no landscape setting, highway safety and traffic, or other harm. The only planning detriment was therefore the breach of Policy LS1. However, that policy was out-of-date, and not criteria-based; and could therefore only be given little weight. The policy concerned landscape setting, and the Inspector expressly found that (a) the proposal would in fact cause no harm to landscape setting, and (b) the proposal complied with the current Core Strategy Policy CS16 on landscape setting (paragraph 29).
- iii) The Inspector found that there was no five year supply of housing, and thus the relevant policies for supply were deemed out-of-date by paragraph 49 of the NPPF, with the result that the presumption in favour of development in the second bullet point in paragraph 14 of the NPPF applied.
- iv) However, if she had not found an absence of five year supply, she would nevertheless have had to have balanced the benefits of the proposal against the harm. The only harm was the breach of Policy LS1, but
  - a) Policy LS1 was out-of-date, thus arguably triggering the presumption in the second bullet point of paragraph 14 in any event.
  - b) If she had considered the issue, she could only have concluded that that breach of Policy LS1 did not mean that there had not been compliance with the development plan as a whole. She would therefore have been required by the first bullet point of paragraph 14 to have approved the proposal.
  - c) In any event, even if neither a) nor b) applied, the Inspector found the proposed development to be sustainable, so that there would be a presumption in favour of development. On the basis of her uncontested findings, the Inspector could not have concluded that the harm (of the technical breach of Policy LS1) outweighed the benefits of the development. Indeed, those benefits patently outweighed that “harm” by a very considerable margin.

- v) Therefore, even if the Inspector did err in law as the Claimant contends, it was immaterial: had she have not have so erred, she would in any event have been bound to have come to the same conclusion, and granted the appeal by granting the planning permission sought.
55. In my judgment, whilst my conclusions in favour of the Defendants on Grounds 1 and 2 are very firm, this argument on discretion would be overwhelming. Given the Inspector's findings on harm (which the Council does not, and could not, dispute), whichever way the Inspector had proceeded, she would inevitably have come to the conclusion to which she did in fact come, i.e. that planning permission should be granted.

### **Conclusion**

56. However, in my judgment, the Council does not get as far as that. For the reasons I have given, I do not find any ground pursued made good; and I dismiss this application.

**Appendic 1c** – Appeal Decision land north of Exeter Road, Topsham  
(W/15/3005030)

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## Appeal Decision

Inquiry held on 24 November 2015 and 23-26 February 2016

Site visit made on 10 March 2016

**by Jonathan Bore MRTPI**

**an Inspector appointed by the Secretary of State for Communities and Local Government**

**Decision date: 27 April 2016**

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**Appeal Ref: APP/Y1110/W/15/3005030**

**Land north of Exeter Road, Topsham, Exeter EX3 0LX**

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a failure to give notice within the prescribed period of a decision on an application for outline planning permission.
  - The appeal is made by Waddeton Park Ltd against Exeter City Council.
  - The application Ref 14/2066/01, is dated 15 September 2014.
  - The development proposed is a 60 bed residential care home, 47 assisted living apartments and 55 age restricted dwellings.
- 

### Decision

1. The appeal is allowed and outline planning permission granted for a 60 bed residential care home, 47 assisted living apartments and 55 age restricted dwellings on land north of Exeter Road, Topsham, Exeter EX3 0LX in accordance with the terms of the application, Ref 14/2066/01, dated 15 September 2014, and the plans submitted with it, subject to the conditions set out in Appendix 1.

### Application for costs

2. At the Inquiry an application for costs was made by Waddeton Park Ltd against Exeter City Council. This application is the subject of a separate Decision.

### Main Issues

3. The main issues in this appeal are:
    - (a) Whether there is a 5 year supply of housing land within the Exeter City Council area;
    - (b) The effect of the development on the setting and separate identity of Topsham;
    - (c) The benefits of the development;
    - (d) The policy context of the scheme;
    - (e) The concluding balance to be struck in respect of the above issues.
-

## Reasons

### *(a) Housing land supply*

4. The development plan relevant to this appeal comprises the Exeter Core Strategy (adopted February 2012) and the saved policies of the Exeter Local Plan First Review 1995-2001 (adopted March 2005). Policy CP1 of the Core Strategy indicates that over the plan period 2006 to 2026, provision is made for at least 12,000 dwellings.
5. The National Planning Policy Framework ('The Framework') states that local planning authorities should identify a supply of specific, deliverable sites sufficient to provide 5 years' worth of housing against their housing requirements. Whether or not such a supply exists in Exeter depends on whether the provision of purpose built student accommodation (PBSA) is included in the calculation. If PBSA is included, predicted completions for the period 2105/16 to 2019/20 amount to 3,190 against a total 5 year requirement of 2,997, leaving a supply in excess of 5 years. If PBSA is excluded, predicted completions amount to 2,745 against a total 5 year requirement of 5,548, leaving a serious shortfall. These figures are common ground (Document 11) .
6. Planning Practice Guidance (PPG) says that all student accommodation, whether it consists of communal halls of residence or self-contained dwellings, and whether or not it is on campus, can be included towards the housing requirement, based on the amount of accommodation it releases in the housing market; local authorities should take steps to avoid double-counting.
7. The approach to be taken towards release on to the housing market is disputed by the parties. On this subject, there is some relevant history on a site in Exeter. At the appeal in respect of Home Farm, Church Hill, Pinhoe (Ref No APP/Y1110/A/14/2215771, allowed in October 2014) the Council argued that the provision of all student accommodation releases housing that would otherwise be occupied by students, and should therefore be counted towards meeting the housing requirement. The Inspector considered this approach to be inconsistent with the PPG because it was not based on any assessment of the extent to which the provision of student accommodation had released general market housing. There was no evidence of such release. A shortfall against the 5 year supply was found. In the subsequent High Court Judgment Mr Justice Hickinbottom found the Inspector's approach to be correct. This appeal case is more directly relevant than appeal decision APP/A0665/W/14/3000528 put forward by the Council; I cannot know all the circumstances of that case but the precise meaning of release into the housing market does not appear to have been discussed.
8. In the present appeal the Council say that they have changed their position since Home Farm and that there is no need to demonstrate that housing occupied by students is being returned to the general housing market (which they term indirect release) because they believe that student net in-migration is included in the 2003 ONS figures on which the CS figure of 12,000 is based (which they call direct release). They believe that the population projections included 261 additional students per year between 2006 and 2026; that this equates to 151 dwellings a year, or 28% of the total dwelling requirement, a figure comparable to the future housing requirement for students over the period 2013 to 2033. It was put to the inquiry by the Council that, in effect, every unit of PSBA built in Exeter makes a direct contribution towards the

housing supply and that PSBA ought to be included in the calculation up to a cap of 28%. However, there are a number of serious deficiencies in the Council's approach.

9. Firstly, the PPG does not use the terms 'direct release' or 'indirect release' for which there is no definition; it uses the expression 'based on the amount of accommodation it releases in the housing market'. The wording is quite clear, as observed by Mr Justice Hickinbottom, and must be read on its face. There needs to be evidence of accommodation being released in the housing market. Simply suggesting that student in-migration is included in the ONS figures that underpin the housing requirement does not in itself demonstrate the release of accommodation in the housing market. Even if the ONS figures had taken into account a substantial amount of student net in-migration (which itself is doubtful – see below), that would still not show that accommodation had been released in the housing market.
10. Secondly, it was clear even at the time of the Core Strategy examination in 2011 that growing student numbers were of concern and would contribute to the demand for general housing, as acknowledged at paragraphs 20 and 21 of the Inspector's report. Since then there has been no on-the-ground evidence to demonstrate that the provision of student accommodation has directly released accommodation on to the housing market. On the contrary, the Council tax exemptions graph, which is an indicator of student incursion into the housing market, continues to suggest a strong student presence.
11. Thirdly, the migration figures for 2003 are not available. It is not disputed that an element of student in-migration may be incorporated in the 2003 ONS figures, but the evidence that it constitutes a substantial component is unconvincing. The email trail between the Council and the Migration Statistics Unit of ONS, submitted by the Council to support their case, highlights the weakness of the evidence. ONS used registrations with the Student Health Centre to calculate student migration data, but these contain inherent unreliability, especially around subsequent de-registration at the end of the study period. International migration is an admitted area of uncertainty. There is a big unaccounted-for difference between population estimates and the 2011 Census result. ONS improvements in methodology since 2003 testify to the deficiencies of the earlier methodologies. The April 2015 paper by Edge Analytics and the work carried out by Devon County Council deal primarily with forward projection related to the 2015 SHMA, and although it is stated that the previous increases in student numbers are reflected in the mid-year population estimates, there is little direct evidence regarding the degree to which student net in-migration was included in the 2003 ONS figures. Although mid-year estimates are available, those projections are based on the assumption that historic flow rates can be projected forward; they may not therefore recognise the impact of accelerated growth arising from the policy changes that sought to expand higher education and the growing national and international reputation of Exeter University.
12. Fourthly, there is strong evidence to indicate that student net in-migration was substantially underestimated in the migration statistics. The 2003-based population projection for Exeter, broken down into age groups, sourced from the Government's Actuary's Department (Document 20), shows a bulge in the key age groups of 15-19, 20-24 and 25-29, reflecting the number of students in Exeter, but predicts remarkably little growth in these age groups from 2006

to 2026. Yet the University has expanded greatly during that period. The University of Exeter student headcount has increased by nearly 6,000 between 2006/2007 and 2013/2014, and there are currently about 17,000 Exeter University students in Exeter. Had that level of student net in-migration been provided for in the calculations, it ought to be evident in the projected growth for these age groups. It is not, and this supports the appellant's argument that ONS trend-based projections failed to pick up the acceleration in student in-migration. The Council's suggestion that underlying demographic changes in the model might have masked the allowance for student in-migration is unconvincing given the known level of growth in the number of students.

13. The evidence falls well short of demonstrating that the Core Strategy housing requirement included student housing at the level at which it would have kept pace with the growth in the student population, let alone the level that would have been required to actually release any accommodation into the market.
14. Thus neither the PSBA that has been constructed over the plan period, nor the PSBA that is planned to be built within the plan period, can be counted towards meeting the housing requirement. This means that there is a serious shortfall in the 5 year housing land supply as agreed between the parties and as set out in paragraph 5 above.

*(b) The effect of the development on the setting and identity of Topsham*

15. Topsham's strong separate identity comes mostly from its history, its old buildings, its streets, its waterside setting, and its community spirit. The relatively flat fields of which the appeal site forms a part, between the western fringes of the town and the M5, also contribute to its sense of separation. This area is referred to generally as the Topsham Gap, and is protected by Core Strategy Policy CP16 (dealt with in more detail below) as the strategic gap between Topsham and Exeter. The Exeter Fringes Landscape Sensitivity Study identified the area as valuable in separating Topsham from Exeter. This wider area extends well beyond the appeal site and it is common ground that it does not have high landscape quality. Indeed, it is notable that the Council have already granted planning permission for development in the gap on the opposite side of Exeter Road. Nonetheless, the large number of representations in respect of this appeal, and the many interested local people attending the inquiry, attest to the strongly-held local view that the open area between Topsham and the M5 has considerable importance as an open break in development on leaving Exeter and entering Topsham.
16. The scheme would result in the development of part of this gap, and consequently harm the character of part of it. However, in this particular case the degree of harm would be relatively modest. The reasons for this are to do with the location of the site towards the eastern part of the gap, and the character of its surroundings. The built up area of Exeter, with housing development in progress and permission for a new Aldi, will soon extend up to the M5. The M5 forms a very strong boundary to the city's developed area. So the first open land seen after the M5 when travelling towards Topsham is, and will be, very important in maintaining the separate character of Exeter and Topsham. This land includes the University Sports Ground and two or three fields of agricultural and nursery land separated by hedges, but not the appeal site. The appeal site is not immediately apparent at this stage, being much nearer to Topsham. It only becomes properly noticeable when further east

along the road. Even allowing for the presence of the Rugby Club field, it is clear that the character of the appeal site is more strongly influenced by the suburban fringes of the Topsham built up area than is the open land to the west. Nearing the appeal site, the view is of suburban development on Newcourt Road to the north, suburban development on the south side of Exeter Road, the Rugby Club clubhouse to the east, vehicles parked in the Rugby Club car park, and development beyond the Rugby Club. In this context, the development would tend to be read against the backdrop of existing suburban and urban fringe development.

17. The development would reduce the width of the gap, but it would still leave a large amount of open land between the western edge of the proposed development and the M5 and, as indicated above, this remaining open land is more important than the appeal site in maintaining visual separation and separate identity. Enough openness would remain to provide a more than adequate appreciation of leaving one settlement before entering another. The scheme would not contribute to the coalescence of Topsham and Exeter. The integrity and purposes of the gap would not be harmed. It is clearly possible to distinguish the character of the appeal site from the land further to the west, since the appeal site has development both north and south and is bounded to the east by the Rugby Club clubhouse and its car park, whereas the land to the west, even allowing for the M5 and the recently permitted housing south of Exeter Road, has a more open setting. For these reasons, and those in the preceding paragraph, the development would not set a precedent for development further west in the gap. In any event, all proposals must be dealt with on their own merits.
18. The indicative plans show a low rise development which would be seen against, and fit in with, the backdrop of the existing development in Topsham. There would be views over the development from Exeter Road, and from a higher level in Newcourt Road, but overall the visual impact of the scheme would be modest. The development would not be especially prominent in views from the village and the character and appearance of the conservation area would be preserved. Enough space would be available within the development site to allow for strong landscaping along the western boundary to reduce its impact on the gap and protect and enhance the ecological interest of the site. The scheme would affect private views from some houses towards open countryside, but not to the extent that harm would be caused to residents' living conditions.

*(c) The benefits of the scheme*

19. It is government policy to boost the supply of housing, and the National Planning Policy Framework states that housing applications should be considered in the context of the presumption in favour of sustainable development.
20. In this case the proposed development would provide a significant amount of housing that would help in part to address the serious shortfall in Exeter's housing land supply. This should be given great weight.
21. Moreover, the proposed development would provide a mix of care home and assisted living and age restricted dwellings, together with 19 affordable housing units. The National Planning Policy Framework indicates that local planning authorities should plan for a mix of housing based on current and future

demographic trends, market trends and the needs of different groups in the community. The PPG recognises that the need to provide housing for older people is critical, and that older people have a wide range of housing needs. Policy CP5 of the Core Strategy states that the supply of housing should meet the needs of all members of the community. A number of reports recognise the need to improve the choice of accommodation for older people, who in the future will form an increasingly large proportion of the overall population; within the Exeter area, there are predicted to be over 7,500 additional people over 65 by 2033. The scheme would help to meet the growing need for such accommodation as recognised by the Framework, the PPG and Policy CP5 of the Core Strategy, and this also carries significant weight.

22. The scheme would provide new walking and cycle links from Newcourt Road to Exeter Road, improving access to the bus and cycle facilities along Exeter Road. It would also afford the opportunity of improving biodiversity through new planting, especially along its western edge.

*(d) The policy context of the scheme*

23. The National Planning Policy Framework states that relevant policies for the supply of housing should not be considered up-to-date if the local planning authority cannot demonstrate a five-year supply of deliverable housing sites. Having regard to the conclusions on the first issue, that statement is directly relevant here.
24. The Council sought to argue at the inquiry that the scheme would conflict with Core Strategy Policies CP1 and CP3, which identify the housing requirement and assign housing numbers to locations, because the site lies outside the locations to which development is assigned. However, Policies CP1 and CP3 are positive policies, not prohibitive policies, and do not indicate that development outside the identified locations would be unacceptable. Whilst it might be argued that a very substantial development would jeopardise the spatial strategy encapsulated in those policies by pulling the plan strongly in a different direction, the appeal scheme is much too small for that to be the case. The development does not therefore conflict with Policies CP1 and CP3. But in any event, both are policies for the supply of housing; the spatial distribution of housing embedded in those policies cannot now be considered to be up-to-date since the need to remedy the shortfall may well require the provision of other sites and locations not envisaged by those policies.
25. Core Strategy Policy CP16 seeks to protect the character and local distinctiveness of certain identified areas, which includes the 'strategic gap between Topsham and Exeter'. The strategic gap itself is not defined; instead, the Key Diagram includes the site and the gap between Topsham and Exeter within a wider area referred to as 'landscape setting'. Notwithstanding this ambiguity, there can be no doubt that the site's location places it firmly within the strategic gap. By building on part of the gap and thus reducing some of its openness, the development would not protect the character of its particular part of the gap and is therefore contrary to Policy CP16, although the impact on character and settlement separation would be modest, as indicated above.
26. The position in respect of saved Policy LS1 of the Exeter Local Plan First Review 1995-2011 is similar to that of Policy CP16. It seeks to restrict development within the defined landscape setting of the city, and the development would not comply with the policy. At the inquiry, the appellant argued that Policy LS1 is

out of date and carries less weight because it was framed to reflect former PPS7, and, having regard to *Colman v SSCLG* [2013] EWHC 1138, because it restricts development even where its overall net effect may be beneficial. It certainly is the case that it reflects former PPS7 rather than the Framework and is therefore outdated in the terms it uses, but it remains part of the development plan and I return to the issue of weight in paragraph 28 below.

27. After the close of the inquiry, the parties' comments were sought on the implications of the effect of the judgment given in the Court of Appeal (Civil Division), ref [2016] EWCA Civ 168, dated 17 March 2016, in respect of Suffolk Coastal District Council and Hopkins Homes Ltd and SSCLG Richborough Estates Partnership LLP and Cheshire East Borough Council and SSCLG. In the light of the judgment, both parties accepted that both Policies LS1 and CP16 are relevant policies for the supply of housing and that if a 5 year supply could not be demonstrated, they should be considered out of date, but the Council made the point that they would continue to command weight and the statutory presumption in favour of the development plan would remain.
28. I consider that, given the comprehensive geographical area to which these two policies apply, and their objectives which seek to protect the character of the mostly open setting of Exeter, they can be considered relevant policies for the supply of housing and are out of date. But in fact that makes no difference to the balance of my conclusions. The scheme would be of very considerable importance in delivering housing in the context of the serious housing shortfall. The development would cause limited on-the-ground harm for the reasons given above. It would not cause coalescence or jeopardise the purposes or objectives of the gap. It would cause a localised, not a widespread, change of character. Thus, even if both policies are afforded full weight, the balance of considerations (see paragraphs 35 to 39 below) still indicates a decision otherwise than in accordance with the development plan.
29. The Council point out that a number of appeals elsewhere, some in areas with a shortfall in the 5 year housing land supply, have been dismissed because of the impact of the development on strategic green gaps designed to prevent coalescence (ref nos APP/R0660/A/13/2209335, APP/R0660/W/15/3010061, APP/N1730/A/14/2226609, APP/J1860/W/15/3129997, APP/C2708/W/15/3134174, APP/P1560/W/15/3124764). In particular, a number of references in the inquiry were made to the first of these, land at Gresty Lane, Crewe. In that case however both the Inspector and the Secretary of State recognised the prematurity of allowing the appeal in advance of the resolution of an extended Green Belt through the Cheshire East Local Plan. It is also clear from the site plan that the development site formed a much greater proportion of the distance across the relevant green gap than does the appeal site in the present case. This simply goes to show that each set of circumstances is different.
30. Saved Policy H1 of the Exeter Local Plan First Review applies a sequential approach to proposals for housing development with previously developed land within urban areas being sought first, then previously developed land on the urban fringe, and finally sustainable urban extensions within public transport corridors. The Framework does not however promote a sequential approach to land use as pointed out in the Secretary of State's decision in respect of Burgess Farm, Worsley (APP/U4230/A/11/2157433) and, whilst development on previously developed land is desirable and indeed is promoted by the

Framework, there is no question that the scale of housing development required in Exeter will require development that is not on brownfield land; urban extensions are required, and indeed are under construction.

31. There was some discussion at the inquiry about whether or not the scheme constitutes a sustainable urban extension. The term is not defined in the glossaries of either the Exeter Local Plan First Review or the Core Strategy but (even allowing for the intervening presence of the Rugby Club grounds) the scheme would be an extension to an urban area, not an island of isolated development, being well-related to Topsham; it would contain a mix of housing for which there is an acknowledged need, and would be in a sustainable location not far from the centre of Topsham. It would be on good bus and cycle routes and the scheme would improve connections across the site, improving access to those facilities. It is also sustainable development within the terms of the Framework: see Paragraph 39 below. It can therefore be regarded as a sustainable urban extension. The scheme thus complies with Policy H1, although again this policy clearly relates to the supply of housing and is out of date.
32. Saved Policy H2 reiterates the preference for previously-developed land and then sets out a series of approaches for development to achieve high densities whilst protecting local amenity. The issue of previously-developed land is the same as in Policy H1 and the scheme makes good use of the site having regard to local amenity.
33. The Council published a draft version of its Development Delivery DPD in July 2015. It has not progressed far towards adoption; its submission for examination has been put on hold pending the outcome of this appeal. Policy DD29 places restrictive requirements on the landscape setting areas, including the requirement that development must not contribute towards the urbanisation of these areas; given the comprehensive coverage of the protected areas, this would appear to be a relevant policy for the supply of housing. It also restricts development even where the net effect is beneficial. For all these reasons it carries very little weight.
34. 'Topsham: a Framework for a Local Plan' was produced by the Topsham Society in 2012. It is an expression of the Society's views (following consultation) on a range of matters concerning Topsham and it indicates that it will press Exeter City Council to resist development in the gap north of Exeter Road. The work that went into this publication has not so far been taken forward as a neighbourhood plan. It carries some weight as an expression of the views of the local society but not as a policy document. The community's views have been taken fully into account in this appeal decision.

*(e) The concluding balance*

35. The scheme would not conflict with Policies CP1 or CP3 of the Core Strategy or saved Policies H1 or H2 of the Local Plan; in any case these are policies for the supply of housing and are out of date. It would however conflict with Policy CP16 of the Core Strategy and Policy LS1 of the Local Plan because of its incursion into the strategic gap between Topsham and Exeter and that conflict brings the scheme into conflict with the development plan as a whole.
36. However, the extent of the incursion into the gap would be relatively modest and the impact on the gap would be limited. Land which is more important to

the perception of separation would remain open. The gap would retain its integrity and would continue to fulfil its purpose. In notable contrast to recent permissions granted for the southern side of Exeter Road, the scheme would not cause coalescence, and clear and adequate separation would remain between Topsham and Exeter north of Exeter Road.

37. The proposed development would, most importantly, add significantly to the supply of housing in a situation where a substantial shortfall exists in the 5 year housing land supply. It would also provide a mixture of housing types for older people, for which there is an acknowledged need, and would improve local connections.
38. Despite the conflict with Policy CP16 and Policy LS1, the circumstances of a significant housing shortfall, the need to boost the supply of housing, and the contribution that the appeal scheme would make to housing supply, are very important material considerations which significantly outweigh the conflict with the development plan and the limited harm caused by the scheme including the modest incursion into the Topsham Gap.
39. Having regard to paragraph 7 of the Framework, the development would fulfil a very important social role by assisting towards the provision of housing to meet the needs of present and future generations (paragraphs 14 and 19 to 21 above); its environmental impact would be limited and in some respects beneficial (paragraphs 15 to 18, 22 and 31 above); and it would have a beneficial economic impact during the construction period and in respect of additional local custom (paragraph 47 below). It would amount to sustainable development.
40. I conclude that permission should be granted.

#### *Other matters*

41. A number of matters not referred to above were raised by local objectors but not by the Council. The more significant of these include drainage, the potential impact on the RSPB reserve and the estuary, the effect on traffic, pressure on medical services and the relationship between health and access to greenspace, the operation of the Rugby Club, the effect on the town's historic nature, its independent community and its traders, and the existence of a previous refusal on appeal.
42. Drainage: some criticism was made at the inquiry regarding the methodology of the appellants' drainage study and flood risk assessment submitted with the application, including the manner in which trial investigations had been carried out. However, the site lies on porous geology and there is no indication from any of the submitted information that a satisfactory drainage solution cannot be implemented for the site. I note that there is no objection from the Environment Agency or from Devon County Council as Local Lead Flood Authority. This is a matter that can be dealt with through a condition requiring further details; see Condition 13 and paragraph 50 below.
43. Ecology: a Habitats Regulations Assessment has been carried out which indicates that the project would not adversely affect the integrity of nationally and internationally designated sites. Exeter City Council has identified land at Exe Riverside Valley Park to mitigate visitor impact on the Exe Estuary Special Protection Area. The ecological survey carried out for the application also

indicated that the development would not have an impact on any statutory or non-statutory designated sites, which includes the estuary. The hedging was considered to be a potential habitat for nesting cirl bunting but subsequent field surveys found no cirl bunting on the site.

44. Traffic: the development would generate additional traffic, and vehicles would feed into the busy Exeter road network, but the volume of vehicles from this scheme would be relatively small compared with those generated by the urban extensions to Exeter. A detailed traffic assessment was submitted with the application which indicated that the increase in traffic from the site could be accommodated on the highway network and would not have a detrimental effect on the free flow of traffic. There is no objection from the highway authority and this issue does not weigh against the scheme.
45. Health issues: no health service objection has been raised to the scheme on the grounds of pressure on services, and the development would meet an important need for housing for older people. The development of this site would have no detrimental effect on access to greenspace since it is a private field which does not afford general public access. A substantial proportion of the Gap would remain and its existing sports and recreational facilities would be untouched. Access across the site for walking and cycling would be improved.
46. The Rugby Club: the rugby ground would feel more enclosed as it would have development on four sides, but this in itself does not mean that the development would be harmful to the club. There is no reason why the presence of the proposed housing development would affect the ordinary running of the club any more than the development on the other three sides. The fact that the appeal site is used by the club for fireworks on Bonfire Night is a private matter.
47. The effect on the town's historic nature, its independent community and its traders: the relationship of the site to the Gap and the separate identity and historic independence of Topsham are dealt with in paragraphs 15-18 above. The scheme would not be of such a scale that it would dilute the character of Topsham. Topsham is not a large town, but this is not a particularly large development in comparison with the town's existing size, and there is no reason why the number of residents from the development could not be assimilated into the community. A substantial amount of the gap would remain and the scheme would preserve the character and appearance of the conservation area so there is no reason why the development should have a detrimental impact on Topsham's tourism. The construction phase and the additional residents would instead provide some additional support for local services.
48. The previous appeal scheme: a scheme was dismissed in 1991 for 4 houses adjacent to 35 Newcourt Road (T/APP/Y1110/A/91/180051) partly on the grounds of incursion into the gap, but the scheme only related to part of the site, and the policy context and position regarding housing need were then very different; the current circumstances warrant a different decision.

#### *Planning obligation and conditions*

49. A unilateral undertaking has been made by the applicant to provide 35% of the age restricted dwellings as affordable housing. This is in accordance with Core

Strategy Policy CP7 and the Council's Affordable Housing SPD. The obligation leaves it open to me as to whether the affordable housing should be in the form of affordable rented or social rented dwellings. Policy CP7 seeks 70% social rented and the SPD indicates that the 2010 SHMA shows that around 70% of households in need of affordable homes can only afford social rented housing provided by RPs or the Council. It indicates that on each qualifying site the Council will therefore expect at least 70% of the 35% affordable housing requirement to be social rented housing. I consider that a minimum of 70% of the affordable housing should comprise social rented housing in accordance with both the evidence and the policy background. The obligation meets the legal tests in the CIL Regulations.

50. Most of the conditions are agreed between the parties. They are relevant and necessary for the development to go ahead in the interests of highway safety, the avoidance of noise and disturbance to neighbours during construction, protection against land contamination and external noise, archaeological investigation and recording, the provision of walking and cycling facilities, sustainable transport objectives, the protection and improvement of ecological conditions, surface water drainage and the maintenance of an appropriate mix of dwellings. I have condensed and clarified a number of the suggested conditions. A change is required to suggested condition 12, 'Travel Plan', to remove the requirement for vouchers, since this is in effect a requirement for a financial consideration, which is inappropriate in a condition, and in any case is too prescriptive. A minor change is also required to suggested condition 14, 'Surface Water Drainage', replacing 'general compliance' with 'general accordance' to provide greater flexibility for the submitted details in the light of the concerns raised by a local resident regarding the methodology of the flood risk assessment (see paragraph 42 above).
51. Three conditions proposed by the Council are disputed by the appellants. The first seeks ducting for fibre optic cables from the outside of the site to the inside of each dwelling. Whilst the Framework supports high quality communications infrastructure, there is no clear requirement within the relevant part of the Framework or in Core Strategy Policy CP18 for infrastructure provision of this sort to be provided and it is not necessary for the development to go ahead.
52. The second and third conditions relate to the achievement of Code for Sustainable Homes Level 4, a requirement of Core Strategy Policy CP15. The Written Ministerial Statement of 25 March 2015 allows local planning authorities to apply existing energy performance policies that set requirements up to the equivalent of the energy requirements of Code level 4 until the amendments to the Planning and Energy Act 2008 in the Deregulation Act are commenced. No decision has yet been taken on when to commence the amendments so the Written Ministerial Statement remains the most up-to-date statement of policy on the role of planning in delivering energy performance standards. It is therefore appropriate to attach a condition requiring energy performance equivalent to Code Level 4, together with details of compliance.
53. The conditions are set out in Appendix 1.

*Conclusion*

54. I have considered all the other matters raised but they do not alter the balance of my conclusions. For all the above reasons the appeal is allowed.

[REDACTED]

Inspector

## **APPEARANCES**

### FOR THE LOCAL PLANNING AUTHORITY:

|                    |                                               |
|--------------------|-----------------------------------------------|
| Mr Stephen Whale   | Of Counsel, instructed by Exeter City Council |
| He called:         |                                               |
| Ms Jill Day        | Exeter City Council                           |
| Ms Katharine Smith | Exeter City Council                           |
| Mr Michael Higgins | Exeter City Council                           |
| Mr George Marshall | Devon County Council                          |

### FOR THE APPELLANT:

|                   |                                                                                                                |
|-------------------|----------------------------------------------------------------------------------------------------------------|
| Mr Charles Banner | Of Counsel, instructed by Mr D Corsellis,<br>Stephens Scown, Curzon House, Southernhay<br>West, Exeter EX1 1RS |
| He called:        |                                                                                                                |
| Mr Chris Britton  | Chris Britton Landscape Associates                                                                             |
| Mr David Seaton   | PCL Planning Ltd                                                                                               |
| Mr Neil McDonald  | Independent adviser on housing demographics                                                                    |

### INTERESTED PERSONS:

Mr David Burley  
Cllr Margaret Baldwin  
Mr Jack Russell  
Dr Guy Harrill  
Dr Chris Buckingham  
Cllr Andrew Leadbetter  
Ms June Richards  
Mr John Carroll  
Ms Lily Neal

## **DOCUMENTS**

|                            |                                                                                                                                              |
|----------------------------|----------------------------------------------------------------------------------------------------------------------------------------------|
| Document 1                 | Attendance List                                                                                                                              |
| Document 2                 | Letter of notification and list of persons notified                                                                                          |
| Document 3                 | Letters of representation                                                                                                                    |
| Document 4                 | Proof and appendices of Ms Day                                                                                                               |
| Document 5                 | Proof and appendices of Ms Smith                                                                                                             |
| Document 6                 | Proof and appendices of Mr Higgins                                                                                                           |
| Document 7                 | Proof and appendices of Mr Marshall                                                                                                          |
| Document 8                 | Proof and appendices of Mr Britton                                                                                                           |
| Document 9                 | Proof and appendices of Mr Seaton                                                                                                            |
| Document 10                | Proof, rebuttal and appendices of Mr McDonald                                                                                                |
| Document 11                | Statement of Common Ground 1: general matters and 5 year housing land supply                                                                 |
| Document 12                | Statement of Common Ground 2: an explanation of the difference in methodologies for assessing student numbers and housing requirements       |
| Document 13                | Statements and material submitted to the inquiry by local objectors                                                                          |
| Document 14                | Agreed conditions and conditions in dispute                                                                                                  |
| Document 15                | Unilateral undertaking, and related email from Ms Smith                                                                                      |
| Document 16                | Appeal decision T/APP/Y1110/A/91/180051 concerning land adjacent to 35 Newcourt Road, Topsham                                                |
| Document 17                | Appeal decision APP/G2435/A/14/2228806 concerning Money Hill, Ashby-de-la-Zouch                                                              |
| Document 18                | Appeal decisions APP/A0665/W/14/3000528, APP/P1560/W/15/3124764, APP/C2708/W/15/3134174 and APP/J1860/W/15/3129997, submitted by the Council |
| Document 19                | Anita Colman v SSCLG, [2013] EWHC 1138                                                                                                       |
| Document 20                | 2003-Based Population Projections for Exeter (source, Government Actuary's Department)                                                       |
| Document 21                | Responses to Inspector's questions in the light of                                                                                           |
| Core Documents CD1 to CD84 |                                                                                                                                              |

**PLANS**

|        |                                              |
|--------|----------------------------------------------|
| Plan 1 | Illustrative Masterplan no 14057_01_01 rev B |
| Plan 2 | Site Plan no 14057_L01_02                    |
| Plan 3 | Site Access no 4051 B                        |

## APPENDIX 1

### CONDITIONS

- 1) Approval of the details of the layout, scale, appearance of the buildings and the landscaping of the site (hereinafter called 'the reserved matters') shall be obtained from the local planning authority in writing before any development is commenced.
- 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 begin no later than 2 years from the date of approval of the last of the reserved matters to be approved.
- 4) In respect of those matters not reserved for later approval, the development hereby permitted shall be carried out in accordance with the proposed access scheme shown on drawing no 4051 rev B.
- 5) Construction work shall not take place outside the following times: 0800hrs to 1800hrs Mondays to Fridays and 0800hrs to 1300hrs Saturdays, and shall not take place at any time on Sundays, Bank or Public Holidays.
- 6) A Construction Environmental Management Plan (CEMP) shall be submitted to and approved in writing by the local planning authority prior to the commencement of development, and work during the construction period shall be carried out in accordance with the approved details. This shall include details of mitigation measures to control the environmental impact of construction and demolition phases, including site traffic, vibration, noise and dust, as well as details of monitoring, complaints handling and arrangements to meet regularly with the local authority.
- 7) No development shall take place on site until a full investigation of the site has taken place to determine the extent of, and risk posed by, any contamination of the land and until details of any necessary remedial works have been approved in writing by the local planning authority. The buildings shall not be occupied until the approved remedial works have been implemented and details of compliance provided to the local authority.
- 8) Before development is commenced, a noise assessment together with details of any necessary mitigation measures to protect future occupiers of the development against identified inappropriate levels of externally-generated noise shall be submitted to and approved by the local planning authority and any mitigation measures so approved shall be implemented within the relevant part of the development before it is occupied.
- 9) No work in connection with the development shall take place within the site until a written scheme of archaeological work has been submitted to and approved in writing by the local planning authority and the work shall be carried out and completed in accordance with the scheme.
- 10) No more than 50% of the dwellings hereby approved shall be occupied until a new footway and cycle link providing a route between Exeter Road

and Newcourt Road has been laid out in accordance with details submitted to and approved by the local planning authority and made available for public use.

- 11) Before the development is occupied, a travel plan to promote the use of sustainable means of transport shall be submitted to and approved in writing by the local planning authority and shall be implemented in accordance with the approved plan.
- 12) Prior to the occupation of the development, details of a biodiversity management and enhancement programme for the site shall be submitted to and approved by the local planning authority and the programme shall be implemented and maintained thereafter in accordance with the approved details.
- 13) Details of a surface water drainage scheme, in general accordance with the submitted Flood Risk Assessment of July 2014, including the means of attenuation and disposal of surface water from the site, the use of sustainable urban drainage systems, an implementation timetable and the future management of the scheme, shall be submitted to and approved by the local planning authority before development is commenced and shall be carried out in accordance with the approved details.
- 14) The assisted living apartments hereby approved shall be used solely for purposes within Class C2 of the schedule to the Town and Country Planning (Use Classes) Order 1987, as amended (or in any provisions equivalent to the Class in any statutory instrument revoking or re-enacting that Order with or without modification).
- 15) The dwellings shall not be occupied until the relevant requirements of level of energy performance equivalent to ENE1 level 4 of the Code for Sustainable Homes have been met and the details of compliance provided to the local planning authority.

**Appendix 1d** - Appeal Decision for land west of Clyst Road, Topsham Phase 1  
(W/18/3202635)



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## Appeal Decision

Inquiry Held on 4-6 December 2018

Site visit made on 6 December 2018

**by Michael J Hetherington BSc(Hons) MA MRTPI MCIEEM**

**an Inspector appointed by the Secretary of State**

**Decision date: 14<sup>th</sup> January 2019**

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**Appeal Ref: APP/Y1110/W/18/3202635**

**Land to the west of Clyst Road, Topsham, Exeter, Devon**

- 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 Waddeton Park Ltd against the decision of Exeter City Council.
  - The application ref. 17/1148/OUT, dated 10 July 2017, was refused by notice dated 7 March 2018.
  - The development proposed is up to 155 residential units and a 64-bedroom residential care home.
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### Decision

1. The appeal is allowed and planning permission is granted for up to 155 residential units and a 64-bedroom residential care home on land to the west of Clyst Road, Topsham, Exeter, Devon in accordance with the terms of the application, ref. 17/1148/OUT, dated 10 July 2017, subject to the conditions set out in the schedule at the end of this decision.

### Application for Costs

2. At the inquiry an application for costs was made by Waddeton Park Ltd against Exeter City Council. This application is the subject of a separate decision.

### Preliminary Matters

3. The application form indicates that all matters of detail apart from means of access are reserved for future determination. In addition to the accompanied site visit, I made a further visit to the appeal site's vicinity and its wider surroundings. The inquiry was closed in writing following receipt of comments from Natural England in respect of the appropriate assessment.
4. It was clarified at the inquiry that, in the light of the appellant's submission of a completed unilateral undertaking, the Council no longer wishes to pursue its 2<sup>nd</sup> refusal reason regarding affordable housing. While the Council's 1<sup>st</sup> reason for refusal cites conflict with the development plan because, in part, the appeal scheme would result in development outside the identified strategic locations for growth, it did not pursue this matter<sup>1</sup> at the inquiry. Similarly, an allegation by the Council's witness that the site is part of a valued landscape in the terms of paragraph 170 of the National Planning Policy Framework (the Framework) does not form part of the Council's formal case. Instead, and as discussed

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<sup>1</sup> Refusal reason 1(i).

below, the Council's case now relates to the scheme's effect on the character and local distinctiveness of the strategic gap between Topsham and Exeter.

## **Main Issues**

5. Accordingly, and bearing in mind concerns of local residents and the Topsham Society about accessibility and highway safety (matters that did not form part of the Council's reasons for refusal), the main issues in this appeal are:
  - (a) the appeal scheme's effect on the character and local distinctiveness of the strategic gap between Topsham and Exeter;
  - (b) its accessibility to modes of travel other than the private car; and
  - (c) its effect on highway safety.

## **Reasons**

### *Strategic Gap*

6. Two development plan policies are cited in the Council's first refusal reason – saved policy LS1 of the Exeter Local Plan First Review (LP), adopted 2005, and policy CP16 of the Exeter City Council Core Strategy (CS), adopted 2012.
7. LP policy LS1 does not permit development that would harm the landscape setting of the city. The appeal site lies within an area to which policy LS1 applies. It is common ground that the scheme would not satisfy the specific requirements of policy LS1 and, as such, that it would conflict with that policy. However, it is also common ground that the policy is out of date in the light of the National Planning Policy Framework (the Framework), as well as being based upon outdated information and superseded national policy. I agree with that assessment and, as such, I afford this policy conflict limited weight.
8. It is therefore common ground between the main parties that the critical policy underpinning the Council's remaining refusal reason is CS policy CP16. The relevant section is its third paragraph which states that the character and local distinctiveness of identified areas, including the strategic gap between Topsham and Exeter, will be protected. The areas to which this policy applies have not been defined by a subsequent Development Plan Document (DPD). Nevertheless, the CS<sup>2</sup> refers to their identification in the earlier LP and there is no dispute that the appeal site falls within the above-noted strategic gap.
9. The 1<sup>st</sup> refusal reason also refers to draft policy DD29 of the emerging Exeter Development Delivery DPD (EDD DPD). However, this has not been progressed to submission and, moreover, the evidence before the inquiry suggests that it will be delayed until sufficient progress has been made with the intended Greater Exeter Strategic Plan (GESP). Submission of the latter is not scheduled until March 2021<sup>3</sup>. As such I do not attach weight to the emerging EDD DPD. Similarly, I attach no weight to the emerging GESP – which has not in any event been presented to the inquiry.
10. The appeal relates to agricultural land to the west of Clyst Road. This is one of three principal routes in and out of Topsham; in comparison to the two others it is markedly narrower. Much of it has a distinctly rural character. The site is separated from Clyst Road by a hedgerow and some trees. The larger part of

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<sup>2</sup> Paragraph 10.35 of the CS.

<sup>3</sup> Local Development Scheme – core document (CD)31.

this boundary contains a substantial hedge, providing screening even in the winter months. While the northern part of the hedge is almost non-existent, the difference in levels means that there are no views into the site from Clyst Road at that point. Indeed, the only easily achievable views from the road into the site are from the field gate at the site's southern end.

11. On the opposite side of Clyst Road from the site lies a line of houses (Highfield). The upper elevations of most of these dwellings can be seen from the site over the above-noted hedge. Dwellings to the south of the site, including Tower House and the northern properties on Towerfield, are easily seen from within the site. The western side of the site is bounded by a railway line, beyond which lie fields and then dwellings on Newcourt Road. To the north, the site is separated from further agricultural land by a substantial hedge. Further north, the urban edge of Exeter, notably the buildings of Sandy Park, is visible. The noise of the nearby M5 is very much apparent.
12. As a result of these factors I consider the appeal site to have an open and rural character that is nevertheless affected by the presence of the above-noted built development. While some long range views, notably to the south-west, north and north-east can be achieved from within the site, the site itself is not easily seen from the wider viewpoints identified by the main parties – such as several points along Newcourt Road, Newcourt Station and a viewpoint above Darts Farm on the other side of the Clyst Valley.
13. As already noted, the Council's case has changed during the progress of this appeal. As clarified by its closing submissions<sup>4</sup>, and with reference to justification set out in respect of the strategic gap in CS paragraph 10.38, its case now rests upon two specific allegations: first, that the scheme would erode part of the above-noted strategic gap and second that it would adversely affect the attractive rural landscape in which the appeal site sits.
14. I deal with each in turn. However, it is first necessary to consider the appellant's allegation that the 1<sup>st</sup> refusal reason should be read as an 'in-principle' objection on the basis that the appeal scheme lies within the strategic gap. On balance, I do not accept that reading. While the wording of part (ii) of the relevant refusal reason appears to be strongly influenced by the reasoned justification to LP policy LS1<sup>5</sup> (which is agreed by the Council to contain an in-principle objection to the scheme), it also refers to CS policy CP16, which requires a case-specific assessment. Such an assessment is presented by the Council to the inquiry; this is discussed below.
15. As already described, the appeal site is part of the open and undeveloped land that separates Topsham and Exeter. The proposal would result in the loss of part of that gap. The degree of separation between Topsham and Exeter would be diminished. The strategic gap would therefore be eroded. However, the Council's witness accepted at the inquiry that there would not be any material coalescence between the two settlements arising from the scheme<sup>6</sup>. Given, first, that open land would remain to the north of the appeal site – and indeed to the west on the opposite side of the railway line – and, second, that the route between Topsham and Exeter along Clyst Road to the north of the site

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<sup>4</sup> Inquiry document (ID) 13, paragraphs 38- 39.

<sup>5</sup> LP paragraph 11.8.

<sup>6</sup> Mr Blackshaw in cross-examination.

- would continue to pass through open farmland within East Devon District, I have no reason to take a different view.
16. In respect of landscape character, neither main party has undertaken a full landscape and visual impact appraisal (LVIA) of the appeal scheme. While reaching a view on the site's landscape sensitivity, which it considers to be 'medium-low' (with a correspondingly high capacity to accommodate development), the appellant's assessment<sup>7</sup> stops short of considering the magnitude of change and therefore the overall significance of the scheme's landscape and visual effects. Instead, it focuses upon the allegations set out in the Council's refusal reasons.
17. Although the Council's witness has undertaken an analysis, the resulting assessment, which considers the site to have a 'moderate' landscape sensitivity, is not complete. While an amended version was tabled at the inquiry<sup>8</sup>, various steps appear to be missing<sup>9</sup>. Nevertheless, its finding in respect of the site's landscape sensitivity broadly accords with that of the Exeter Fringes Landscape Sensitivity and Capacity Study (EFS), completed in 2007<sup>10</sup>, which assigns the site a 'medium' value – along with the fields to the north and the land immediately across the railway line. Notwithstanding the appellant's analysis, it seems to me that there has been little material change in respect of the site's immediate surroundings since that time. While views into the site from Clyst Road remain limited due to the factors discussed, there is intervisibility between the site and the adjoining railway line.
18. Furthermore, and importantly, the appeal scheme proposes that Clyst Road would be stopped up in the site's vicinity, with traffic flows routed through the site itself. The hedgerow on the site's eastern boundary would not therefore screen development from traffic on Clyst Road. For these reasons, I consider that housing on the scale now proposed would reduce the openness and rural character of the area – a view that is consistent with the findings of the EFS in respect of this landscape zone<sup>11</sup>. To my mind, the introduction of up to 155 dwellings and a care home into this agricultural field would amount to a significant urbanising effect. This would be at odds with the site's open and rural character, notwithstanding the existing presence of nearby built development as already described.
19. It is accepted that, subject to details such as building height and site layout, the appeal scheme would be unlikely to appear conspicuous when seen from the above-noted off-site viewpoints. However, it would be very apparent to users of the diverted Clyst Road and the railway line, as well as to nearby existing occupiers. In such views it would appear as a built intrusion into a presently open agricultural field. This would amount to visual harm.
20. In addition, I consider that the diversion of Clyst Road through the site would have a significant effect on the appreciation of the approach to Topsham along Clyst Road. The present arrangement, with the Highfield houses on one side and a hedgerow on the other, acts as a transition between the more rural area to the north and the built-up area to the south. In contrast, the diversion of Clyst Road would, when approaching from the north, create an abrupt

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<sup>7</sup> Annex A to Mr Britton's proof of evidence.

<sup>8</sup> Appendix 3 to Mr Blackshaw's proof of evidence. A further version was tabled: ID5.

<sup>9</sup> With reference to the relevant toolkit methodology – ID4.

<sup>10</sup> CD33.

<sup>11</sup> Zone 21.

transition between the built-up area (as extended) and its rural surroundings. As a result, the setting of the built-up area would be materially harmed.

21. It seems to me that the appeal scheme would therefore both adversely affect the area's landscape character and result in an adverse visual impact. As already discussed, the strategic gap would be eroded, although the Council accepts that there would not be any material coalescence. It is however necessary to relate these findings to the specific allegations that have been advanced in respect of CS policy CP16.
22. It is common ground that, in respect of the strategic gap, policy CP16's reference to 'character and local distinctiveness' relates to the gap's function (set out in paragraph 10.38 of the CS) of forming 'an open break between the two settlements, thus preventing their coalescence, whilst also protecting Topsham's attractive setting.' As already noted, the Council has accepted that there would not be any material coalescence as a result of the appeal scheme. Therefore, while the gap would be eroded, its function in respect of preventing coalescence in terms of policy CP16 would be maintained. The gap would continue to serve its purpose of separation.
23. I reach a different view in respect of the role of the strategic gap in protecting Topsham's attractive setting. It is accepted that the CS does not state that the strategic gap 'forms' this setting. It is also clear from the supporting evidence, such as the EFS, that there is a range of landscape sensitivities within the gap itself. There is, for example, no dispute that areas within the Clyst Valley are of a higher sensitivity than the appeal site<sup>12</sup>. However, it does not follow that other parts of the strategic gap should be excluded from forming part of the town's 'attractive setting' in the terms of policy CP16.
24. While I note the appellant's argument that this phrase derives from the 1997 landscape appraisal that underpinned LP policy LS1 and its supporting text, it seems to me that an assessment now needs to be made in the context of the more up-to-date policy and supporting evidence. In making this assessment, I consider that the 'attractive setting' does not necessarily relate to intrinsic landscape quality. Indeed, as already noted, CS paragraph 10.38 describes the strategic gap as having a low intrinsic landscape value whilst also protecting Topsham's attractive setting. To my mind, the matter rests upon the particular circumstances of the land concerned.
25. In the present case, the appeal site directly abuts the built-up area of Topsham. However, as already described, it has an open and rural character. This contrasts with, and provides the setting for, the adjoining built-up area. The appeal scheme would create a significant urbanising effect that would be at odds with this character. Moreover, the diversion of Clyst Road into the main body of the appeal site would result in an abrupt transition between the built-up area and its rural surroundings. In my view, these factors would combine to adversely affect Topsham's attractive setting.
26. At the inquiry, the Council's witness stated that 'protect' in the sense of policy CP16 means a lack of 'significant' harm – a view that is shared by the appellant. However, I do not agree with that assessment. A development demonstrating material harm to one (or indeed both) of the characteristics outlined in the policy cannot, in my view, be said to 'protect' them. Given my

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<sup>12</sup> For example, EFS areas 19, 20 and 23 – CD33.

findings above about the scheme's adverse effect on Topsham's attractive setting, I conclude that the appeal development would not protect the character and local distinctiveness of the strategic gap. As such, it would conflict with policy CP16 in that regard. However, the weight to be afforded to that conflict is another matter: I address it in the planning balance below.

27. I note the various other appeal decisions that have been cited in respect of this case. It seems to me that my interpretation of the scope of policy CP16 is in line with the Inspector's decision in the Exeter Road appeal<sup>13</sup>. Given my comments above, the present case differs materially from the Pinhoe appeal<sup>14</sup> where the Inspector concerned did not find harm in respect of Exeter's landscape setting.
28. Although not forming part of the Council's formal case, it is necessary for the avoidance of doubt to comment upon the view of its witness that the appeal site comprises a valued landscape in the terms of paragraph 170 of the Framework. In short, I do not agree. While the open and agricultural nature of the appeal site is clearly valued by local residents, particularly those whose properties overlook the site, it is common ground that the site is not of a high intrinsic landscape quality and is not subject to any statutory landscape designations. While lying within the strategic gap, the CS is clear (as already noted) that this has a low intrinsic landscape value. It does not therefore have identified landscape quality in the development plan. For these reasons, it does not amount to a valued landscape in the terms of the Framework. However, this does not affect my conclusion above.

#### *Accessibility*

29. As already noted, the appeal site adjoins the edge of the built-up area of Topsham. The settlement contains a wide range of services and facilities. Bus routes and a railway line provide connections to Exeter. Concern is however raised about the appeal site's degree of separation from such facilities, as well as the quality of the linkage along Clyst Road.
30. While the appellant and the Topsham Society differ about the exact distances between the appeal site and relevant facilities<sup>15</sup> there is broad agreement about the general length of such journeys. Taking the Topsham Society's figures, houses within the site would be some 800-1,200 metres from the nearest bus stop for Exeter<sup>16</sup>, 950-1,350m from Topsham Station, 1,050-1,450m from Topsham School and 1,235-1,635m from Topsham Surgery. In some cases the appellant's assessments are shorter.
31. However, even on the Topsham Society's assessment – and subject to my comments below about the quality of the linkage – these distances are not sufficiently great to materially discourage the use of transport modes other than the private car. Government guidance in Manual for Streets<sup>17</sup> notes that walkable neighbourhoods are characterised by having a range of facilities within 800 metres walking distance, but adds that this is not an upper limit. In

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<sup>13</sup> APP/Y1110/W/15/3005030 – CD18.

<sup>14</sup> APP/Y1110/A/14/2215771 – CD16.

<sup>15</sup> ID7, page 4.

<sup>16</sup> The range of distances reflects the estimated distance between the nearest and the furthest house within the appeal development.

<sup>17</sup> Manual for Streets (2007) paragraph 4.4.1.

fact, all of the above facilities would be well within a 2 km walk from the furthest part of the site. Clearly, they would be within easy cycling distance.

32. While the site is on higher ground than the centre of Topsham, the resulting gradient on Clyst Road is not excessive and is considerably within the 5% figure that is ideally recommended by Manual for Streets<sup>18</sup>. I observed on my visits that, despite its currently narrow (or in places absent) footway, Clyst Road appears to be well-used by both pedestrians and cyclists
33. Having said that, I consider the existing pedestrian facilities along Clyst Road to be markedly inadequate. The footway running north from the Denver Road junction is narrow, requiring pedestrians to step into the carriageway in order to pass each other. Furthermore, there is a break in the footway at the bend next to Highfield Farm: at this point pedestrians are required to join the carriageway itself. The footway then resumes for a short section before ending at the southern entrance to Towerfield; while this runs parallel to Clyst Road for a short distance, it is a private road. Walking along the Clyst Road carriageway north of the southern entrance to Towerfield is potentially hazardous; shrubs extend up to the carriageway edge on both sides, leaving no space for a pedestrian to evade oncoming vehicles.
34. The appeal scheme proposes off-site measures including the provision of a 2 metre footway between the appeal site's southern entrance and the junction of Clyst Road and Denver Road. These would be secured through the submitted unilateral undertaking. The footway would occupy highway land, including the verge between Towerfield and Clyst Road<sup>19</sup>. A priority vehicle flow system, discussed in more detail below, would also be put in place. Given my comments above about the nature of the existing linkage, I consider that these improvements would be essential in order to make the appeal scheme safely and easily accessible by foot. They would have the added advantage of improving conditions for existing users of this route. To that extent, the pedestrian improvements would therefore amount to a scheme benefit.
35. The unilateral undertaking also offers a sustainable transport contribution to deliver at least one of four bus service improvements for a minimum period of at least five years. Three of these would involve bus services travelling to the site itself, while the fourth would enhance the existing number 57 service during weekday peak hours. Clearly, the extension of bus services to the appeal site would act to increase its accessibility. However, given my comments above about pedestrian and cycle routes, I do not feel that such improvements would be necessary in order to make the appeal scheme accessible to modes other than the private car. Furthermore, they would not be secured after a five year period and would not therefore amount to a permanent solution. I take a similar view in respect of the suggested sustainable travel vouchers; while these would be likely to benefit the scheme's first occupiers, they would not affect its accessibility on a longer term basis.
36. Nevertheless, drawing the above matters together, I conclude that the scheme would be accessible to modes of travel other than the private car.

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<sup>18</sup> Manual for Streets (2007) paragraph 6.3.27.

<sup>19</sup> See figure 7 of the PCL Transport Technical Response (2017), appendix A to appendix 3 of Mr Seaton's rebuttal to the Topsham Society's proof of evidence.

### *Highway Safety*

37. Concerns have been raised about the access arrangements at both the northern and southern end of the appeal site in respect of turning movements onto the current line of Clyst Road, for example by cyclists and refuse vehicles. However, these junctions have been designed in accordance with relevant guidance (for example the Sustrans Design Manual) in consultation with the local highway authority – which raises no objections. I have seen no substantive technical evidence to the contrary.
38. The above-noted off-site works include the creation of a priority flow system on Clyst Road through the bend next to Highfield Farm. Vehicles travelling north would be required to give way to those travelling south. Again, this is not the subject of any objection from either the local planning or local highway authorities. While the Topsham Society has sought to demonstrate that the resulting visibility would be inadequate, its assessment of forward visibility for vehicles travelling north<sup>20</sup> has been taken from the wrong side of the road and moreover is not plotted as a straight line. Visibility to the south could be achieved over the bollards proposed on the eastern side of the road.
39. Furthermore, I note that the details of the proposed off-site works would be subject to agreement with the local highway authority under the Highways Act 1980. Drawing these matters together, I conclude that highway safety would not be materially harmed by the appeal development.

### **Planning Balance**

40. It is common ground that the Council cannot demonstrate a five year supply of deliverable housing sites, as is required by paragraph 73 of the Framework. In line with footnote 7 of the Framework, this would normally engage the balance set out in the Framework's paragraph 11(d) in respect of the presumption in favour of sustainable development. However, paragraph 177 of the Framework is clear that this presumption does not apply where development requiring appropriate assessment is being planned or determined. It is common ground that the appeal scheme does indeed require appropriate assessment in respect of its potential effect on European sites; I return to this matter below. As such, the paragraph 11(d) balance does not apply. Nevertheless, for the reasons set out below, I do not consider this matter to be determinative.
41. I have concluded above in favour of the appeal scheme in respect of accessibility to modes of travel other than the private car and highway safety. However, I have also concluded that it would not protect the character and local distinctiveness of the strategic gap and, as such, that it would conflict with policy CP16 in that regard. As also noted, it is common ground that the scheme would conflict with LP policy LS1.
42. Nevertheless, I afford the conflict with policy LS1 limited weight for the reasons set out above. In respect of policy CP16, it is clear from the Council's evidence to this inquiry that consideration needs to be given to the context for development within Exeter as a whole. Specifically, there is a significant need for new housing in the city. The scale of the five year land supply, agreed by the main parties as being just over two years and one month<sup>21</sup>, indicates a

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<sup>20</sup> Sketch 1 appended to ID7.

<sup>21</sup> Statement of common ground, paragraph 6.10.

considerable shortfall. The Council confirmed<sup>22</sup> that the lack of a five year housing land supply dates back to at least 2010. This is not a 'relatively abstract issue', as was claimed by the Topsham Society<sup>23</sup>. As set out in the Framework, the Government's objective is to significantly boost the supply of housing. For the reasons already set out I do not attach weight to the emerging plans that have been mentioned in this context.

43. Importantly, the Council has conceded in the present appeal<sup>24</sup> that to meet the CS housing requirement and to achieve a five year housing land supply, permissions would need to be granted on land that is subject to policies LS1 and CP16. I have no reason to doubt that assessment. It was further conceded that such land identified in the EFS as being of 'medium' landscape sensitivity, including the appeal site, must come into consideration for further housing and that, as such, some adverse impacts on such land would be unavoidable<sup>25</sup>. Again, I have no reason to take a different view.
44. To my mind, these concessions reduce the weight that can be given to the conflict with CS policy CP16 that I have identified. I have already commented on the weight to be attached to the conflict with policy LS1. Drawing the above matters together, I therefore consider that in the light of the considerable housing shortfall, the contribution that the appeal scheme would make to the supply of housing is an important material consideration that is sufficient to outweigh the adverse effect that would be caused to the character and local distinctiveness of the strategic gap and the conflicts with relevant development plan policies in this instance. The provision of affordable housing, the improvement of pedestrian facilities on Clyst Road, and the scheme's beneficial economic impact would provide additional benefits.
45. I note the concerns raised by various parties in respect of precedent, and I am aware that there is a considerable degree of local opposition to the appeal development. I accept that previous appeal decisions have been cited by the appellant and I have had regard to the findings of the Inspectors concerned. However, my decision is based upon the particular evidence that is before me, including the various concessions that were made by the Council at the inquiry, and my own assessment of the characteristics of the appeal scheme and its surroundings. While future decisions will need to take account of the relevant policy context at the appropriate time, it seems to me that allowing this appeal will not prevent other proposals from being considered on their own merits.

### **Appropriate Assessment**

46. The appeal site lies within 10km of the Exe Estuary Special Protection Area (SPA), Dawlish Warren Special Area of Conservation (SAC) and East Devon Pebblebed Heaths SPA and SAC – described in this decision as the European sites. The Exe Estuary is also listed as a Ramsar site and all three are also notified as Sites of Special Scientific Interest (SSSIs).
47. The appeal scheme would fall within the 'zone of influence' for the Exe Estuary, Dawlish Warren and Pebblebed Heaths European sites, as set out in the South-east Devon European Site Mitigation Strategy (SEDESMS), which was commissioned by Exeter City Council, Teignbridge District Council and East

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<sup>22</sup> Mr Blackshaw in cross-examination.

<sup>23</sup> Mr Burley, when putting questions to Mr Seaton.

<sup>24</sup> Mr Blackshaw in cross-examination.

<sup>25</sup> Mr Blackshaw in cross-examination.

Devon District Council<sup>26</sup>. It is anticipated that new housing development in this area is likely to have a significant effect, when considered either alone or in combination, upon the interest features of the European sites due to the risk of increased recreational pressure. An appropriate assessment is required in line with the Conservation of Habitats and Species Regulations 2017.

48. Natural England (NE) has been consulted accordingly. It advises<sup>27</sup> that mitigation will be required to prevent such harmful effects from occurring as a result of this development, adding that it is content that the measures set out in table 26 of the SEDESMS are sufficient to be certain that an adverse impact on the integrity of the European sites and their relevant features can be avoided through the provision of Suitable Alternative Natural Greenspaces and Strategic Access Management and Monitoring.
49. NE also confirms that it is content that the mechanisms in place to secure the mitigation measures by way of monies collected through the Community Infrastructure Levy (CIL) as described by the Council<sup>28</sup> are adequate to secure the deliverability of the measures. Given that this mechanism is monitored by NE through its attendance at the South-east Devon Habitats Regulations Executive Committee, I have no reason to take a different view.
50. I am therefore satisfied that the mitigation described above can be appropriately secured and that it would be sufficient to prevent harmful effects on the interest features of the European sites. I also share the assessment of NE that this mitigation would prevent additional impacts upon the SSSI interest features arising from the appeal scheme.

### **Planning Obligations**

51. At the inquiry, the appellant tabled a unilateral undertaking containing a number of obligations. The Council has clarified that none of the matters for which funding is provided would lead to the pooling of more than five contributions<sup>29</sup>. I have no reason to disagree.
52. The undertaking contains planning obligations in respect of three broad matters. The provision of 35% affordable housing, including at least 70% social rented, at a mix of 70% one or two beds, 25% three beds and 5% four or more beds, would accord with relevant policies. Open space provision within the site is needed in line with LP policy DG5 and supporting supplementary guidance. I am satisfied that these requirements meet the tests of Regulation 122(2) of the CIL Regulations 2010. For the reasons already discussed, I take the same view in respect of the off-site highway improvement works.
53. However, as is apparent from my comments above, I do not feel that either the proposed sustainable transport contribution or the sustainable travel vouchers (to be contained in a 'welcome pack') are necessary to make the development acceptable in planning terms. As set out above, I consider that subject to the completion of the off-site highway improvement works, the scheme would be accessible to modes of travel other than the private car without these measures. The bus service improvements would not be secured after five years, while the sustainable travel vouchers – although being likely to benefit

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<sup>26</sup> ID11.

<sup>27</sup> ID18.

<sup>28</sup> ID11.

<sup>29</sup> CIL Compliance Statement – ID10.

the scheme's first occupiers – would not affect its accessibility on a longer term basis. The relevant obligations therefore conflict with the requirements of CIL Regulation 122(2)(a).

### **Conditions**

54. A list of agreed conditions was submitted at the end of the inquiry. I have considered (and, where necessary, reworded or deleted) these conditions in the light of the Framework and Planning Practice Guidance. In some cases, advisory text has been deleted and implementation clauses added. The appellant has agreed in writing to the suggested pre-commencement conditions. Given that these relate to matters that are likely to affect the subsequent details of the scheme (such as sustainable drainage works), require work to be undertaken to the undeveloped site (such as investigations for archaeology or land contamination) or affect the construction process (such as the construction environmental management plan) it is necessary that these requirements pre-date the start of construction.
55. It is necessary that the development should be carried out in accordance with the approved plans as this provides certainty. For the reasons set out above, the off-site highway improvement works should be carried out to an agreed timetable. In order to protect the living conditions of nearby residents, it is necessary for a construction environmental management plan to be submitted, approved and implemented. To ensure that surface water is adequately drained it is necessary to ensure that percolation tests have been carried out, that a groundwater monitoring programme is undertaken and that the detailed designs of the surface water drainage systems (both permanent and during construction) are submitted, approved and implemented.
56. Given that the site has the potential to hold archaeological remains, it is necessary that a scheme of archaeological work is submitted, approved and implemented. Assessment of the nature and extent of any contamination, and the submission and implementation of any necessary remediation measures, is needed to ensure satisfactory conditions for the proposed development.
57. Submission, approval and implementation of an acoustic design statement is needed in order to safeguard the living conditions of the site's occupiers. For the same reason it is necessary that details of any mechanical building services plant at the care home and controls on fumes and odour from its kitchen are submitted, approved and implemented. In order to promote sustainable transport it is necessary that detailed travel plans for the care home and residential development are submitted, approved and implemented. Achievement of a CO<sub>2</sub> emissions reduction target is needed in line with CS policy CP15. To enhance the site's biodiversity value in line with local and national policies, a biodiversity management and enhancement programme should be submitted, approved and implemented.

### **Overall Conclusion**

58. For the reasons given above and having regard to all other matters raised, I conclude that the appeal should be allowed.



INSPECTOR

### **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 begins 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 three years from the date of this permission.
- 3) The development hereby permitted shall begin not later than two years from the date of approval of the last of the reserved matters to be approved.
- 4) In respect of those matters not reserved for later approval, the development hereby permitted shall be carried out in accordance with the following approved plans: drawing no. 161113 L 01 02 rev B and drawing no. 4179-501 Rev C (in respect of the access arrangements contained within the red lines).
- 5) The development hereby permitted shall not commence until a scheme of highway improvement works, including a timeframe for its implementation, to the stretch of Clyst Road from its junction with Whitehill Lane to its junction with Denver Road (to include the provision of a footpath) broadly in accordance with the indicative scheme outside the red line areas on drawing no. 4179-501 Rev C has been submitted to and approved in writing by the local planning authority. Development shall accord with the approved scheme and implementation schedule.
- 6) The development hereby permitted shall not commence until a construction environmental management plan has been submitted to and approved in writing by the local planning authority and this shall be adhered to during the construction period. The plan should include details of monitoring and mitigation measures to control the environmental impact of the development during the construction and demolition phases, including site traffic and traffic routing, the effects of piling, and emissions of noise and dust. No construction or demolition work shall take place outside the following times: 08:00 to 18:00 (Mondays to Fridays), 08:00 to 13:00 (Saturdays) nor at any time on Sundays, Bank or Public Holidays.
- 7) The development hereby permitted shall not commence until a programme of percolation tests has been carried out in accordance with BRE Digest 365 Soakaway Design (2016), and the results have been approved in writing by the local planning authority. A representative number of tests should be conducted to provide adequate coverage of the site, with particular focus placed on the locations and depths of the proposed infiltration devices.
- 8) The development hereby permitted shall not commence until the full results of a groundwater monitoring programme, undertaken over a period of 12 months, has been submitted to, and approved in writing by the local planning authority. This monitoring should be conducted to provide adequate coverage of the site, with particular focus placed on the locations and depths of the proposed infiltration devices.

- 9) The development hereby permitted shall not commence until the detailed design of the proposed surface water drainage management system to serve the development site for the full period of its construction has been submitted to and approved in writing by the local planning authority. This shall be implemented as approved.
- 10) The development hereby permitted shall not commence until the detailed design of the proposed permanent surface water drainage management system, and full details of its proposed adoption and maintenance arrangements, has been submitted to, and been approved in writing by the local planning authority. The design of this permanent surface water drainage management system should be informed by the programme of approved BRE Digest 365 Soakaway Design (2016) percolation tests and in accordance with the principles set out in the Flood Risk Assessment (Ref. 457/FRA2, Rev V2, dated 05/06/2017) and should ensure that additional or increased flows of surface water do not discharge onto Network Rail land or into Network Rail's culvert or drains. Development shall accord with the approved details.
- 11) The development hereby permitted shall not commence until a written scheme of archaeological work has been submitted to and approved in writing by the local planning authority. This scheme shall include on-site work, and off-site work such as the analysis, publication, and archiving of the results, together with a timetable for completion of each element. All works shall be carried out and completed in accordance with the approved scheme.
- 12) The development hereby permitted shall not commence until a full investigation of the site has taken place to determine the extent of, and risk posed by, any contamination of the land and the results, together with any remedial works necessary, have been approved in writing by the local planning authority. The buildings shall not be occupied until the approved remedial works have been implemented and a remediation statement submitted to the local planning authority detailing what contamination has been found and how it has been dealt with together with confirmation that no unacceptable risks remain.
- 13) The development hereby permitted shall not commence until an acoustic design statement has been submitted to and approved in writing by the local planning authority. Any required mitigation measures shall be implemented in accordance with the approved acoustic design statement prior to occupation of the development and maintained thereafter.
- 14) The development hereby permitted shall not commence until a Standard Assessment Procedure (SAP) calculation which demonstrates that a 19% reduction in CO<sub>2</sub> emissions over that necessary to meet the requirements of the 2013 Building Regulations can be achieved has been submitted to and approved by the local planning authority. The measures necessary to achieve this CO<sub>2</sub> saving shall thereafter be implemented on site and within 3 months of completion of any dwelling a report from a suitably qualified consultant to demonstrate compliance with this condition will be submitted to and approved in writing by the local planning authority.
- 15) Prior to the opening of the care home, a scheme for the installation of equipment to control the emission of fumes and smell from the kitchen(s) shall be submitted to, and approved in writing by, the local planning

authority and the approved scheme shall be implemented. All such equipment shall be installed in accordance with the approved scheme and shall be operated and maintained in accordance with the manufacturer's instructions thereafter.

- 16) Prior to the installation of any mechanical building services plant at the care home, details of the plant shall be submitted to and approved in writing by the local planning authority. The details shall include location, design (including any compound) and noise specification. The plant shall not exceed 5dB below the existing background noise level at the care home boundary. If the plant exceeds this level, mitigation measures shall be provided to achieve this in accordance with details to be submitted to and approved in writing by the Local Planning Authority. All measurements shall be made in accordance with BS 4142:2014.
- 17) Prior to the opening of the care home and occupation of residential development, detailed travel plans shall be submitted to and approved in writing by the local planning authority and shall be implemented in accordance with the approved details.
- 18) Prior to the occupation of the development, details of a biodiversity management and enhancement programme for the site shall be submitted to and approved by the local planning authority and the programme shall be implemented and maintained thereafter in accordance with the approved details.

## **APPEARANCES**

### **FOR THE LOCAL PLANNING AUTHORITY:**

|                                      |                                                                                                                                |
|--------------------------------------|--------------------------------------------------------------------------------------------------------------------------------|
| Ms Leanne Buckley-Thomson            | of Counsel<br>Instructed by Ms Deborah Hudson, Solicitor,<br>Exeter City Council (ECC)                                         |
| She called:                          |                                                                                                                                |
| Mr Peter Blackshaw<br>BA(Hons) MRTPI | Principal Development Officer (Appeals)<br>Cornwall Council (for ECC)                                                          |
| Mr Michael Higgins<br>MRTPI          | Principal Project Manager (Development), ECC<br>(Appropriate Assessment, Conditions and<br>Planning Obligations sessions only) |

### **FOR THE APPELLANT:**

|                                        |                                                                                                                 |
|----------------------------------------|-----------------------------------------------------------------------------------------------------------------|
| Mr Charles Banner                      | of Counsel<br>Instructed by David Seaton, PCL Planning Limited                                                  |
| He called:                             |                                                                                                                 |
| Mr Chris Britton<br>BSc(Hons) MLA CMLI | Chris Britton Landscape Associates                                                                              |
| Mr Martin Brady<br>IEng MICE MCIHT     | Trace Design Consultants Ltd                                                                                    |
| Mr David Seaton<br>BA(Hons) MRTPI      | PCL Planning Ltd                                                                                                |
| Mr David Corsellis LLB                 | Solicitor, Eminence Grise Ltd<br>(Appropriate Assessment, Conditions and<br>Planning Obligations sessions only) |

### **INTERESTED PERSONS:**

|                              |                                          |
|------------------------------|------------------------------------------|
| Mr David Burley DipArch RIBA | Topsham Society, Planning Panel Chairman |
| Dr Andrew Graham-Cumming     | Local resident                           |
| Mr Ralph Hare                | Local resident                           |
| Mrs Lily Neal                | Local resident                           |
| Mr Neil Ballam               | Local resident                           |
| Councillor Rob Newby         | Ward Councillor and local resident       |

## **DOCUMENTS TABLED AT THE INQUIRY**

- Document 1: Letter from Exeter City Council (ECC) to PINS dated 3 December 2018 in respect of affordable housing.
- Document 2: Appellant's opening statement.
- Document 3: Opening note for ECC.
- Document 4: Judging Landscape Capacity (Cornwall Council).
- Document 5: Amended version of Mr Blackshaw's appendix 3.
- Document 6: Note from Aspect Tree Consultancy.
- Document 7: Response to Appellant's Rebuttal by Topsham Society.
- Document 8: Statement from Mrs Lily Neal.
- Document 9: Signed unilateral undertaking.
- Document 10: CIL Regulations 122 and 123 Compliance Statement (ECC).
- Document 11: ECC Appropriate Assessment bundle comprising Council statement, CIL Regulation 123 list and copy of South-east Devon European Site Mitigation Strategy.
- Document 12: List of agreed conditions.
- Document 13: Outline closing submissions on behalf of the Council.
- Document 14: Appellant's closing submissions.
- Document 15: Appellant's costs application.

## **DOCUMENTS SUBMITTED AFTER INQUIRY SITTING**

- Document 16: Costs response on behalf of the Council.
- Document 17: Appellant's reply to the Council's costs response.
- Document 18: Letter from Natural England to PINS dated 8 January 2019.

**Appendix 1e** – Appeal Decision for land west of Clyst Road, Topsham Phase 2 (W/22/3296946).



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## Appeal Decision

Inquiry held on 21, 22 and 26 September 2022

Site visit made on 23 September 2022

**by M Woodward BA (Hons) MA MRTPI**

**an Inspector appointed by the Secretary of State**

**Decision date: 11 October 2022**

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### **Appeal Ref: APP/Y1110/W/22/3296946**

#### **Land to the west of Clyst Road, Topsham**

- 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 Waddeton Park Ltd against the decision of Exeter City Council.
  - The application Ref 21/0894/OUT, dated 1 June 2021, was refused by notice dated 20 January 2022.
  - The development proposed is phased outline planning application for the construction of up to 100 dwellings and associated infrastructure (all matters reserved).
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#### **Decision**

1. The appeal is allowed and planning permission is granted for phased outline planning application for the construction of up to 100 dwellings and associated infrastructure (all matters reserved) at Land to the west of Clyst Road, Topsham, in accordance with the terms of the application, Ref 21/0894/OUT, dated 1 June 2021, subject to the conditions contained in the attached Schedule.

#### **Preliminary Matters**

2. The planning application was submitted in outline form with all matters reserved except for access. Prior to the Inquiry the appellant sought to withdraw 'access' from consideration, seeking to reserve it for later determination. Several submitted plans<sup>1</sup> show the location of the access, the point of access being a requirement of the GDPO<sup>2</sup> in relation to outline applications. No objections were raised to the access either by the Council or the Highway Authority when the planning application was considered. Removal of access from consideration at this stage would not give rise to procedural unfairness and would align with the *Wheatcroft Principles*<sup>3</sup>.
3. As a result of the foregoing, I have amended the description of development in the banner heading above, from that stated on the application form, to reflect that the proposal is being considered in outline form with all matters reserved.
4. Several plans are included which show details of 'reserved matters'. I have treated these plans as illustrative only, and I have taken them into account only insofar as it shows how the site could be developed in future.

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<sup>1</sup> Including plan ref – 190614 L 02 01 A

<sup>2</sup> Part 3, Article 5 of The Town and Country Planning (Development Management Procedure) (England) Order 2015

<sup>3</sup> *Bernard Wheatcroft Ltd v SSE* [JPL 1982 P37]

5. A Unilateral Undertaking (UU) under Section 106 of the Town and Country Planning Act 1990 was submitted by the appellant during the Inquiry. However, it was agreed during the Inquiry that further planning obligations relating to designated European sites mitigation would be necessary. Therefore, I was provided with a further UU alongside a S106 planning agreement shortly after the Inquiry closed. I deal with these documents in my reasoning below.

## **Main Issues**

6. A pre-Inquiry case management conference was held which identified the likely main issues. I have refined the first main issue taking into account exchanges of evidence and all that I heard during the Inquiry. As a result, the main issues in this case are:
- The effect of the proposal on the character and appearance of the area, with particular regard to the 'strategic gap' and any perceived or actual coalescence between Exeter and Topsham.
  - The effect of the proposal on the integrity of designated European Sites (Exe Estuary Special Protection Area and Pebblebed Heath Special Area of Conservation and Special Protection Area), including any mitigation proposed.

## **Reasons**

### *Background*

7. The appeal site is located outside a defined settlement boundary and comprises a number of fields. One side of the appeal site lies adjacent to a recently consented scheme for up to 155 dwellings and a residential care home, the outline element of which was allowed on appeal<sup>4</sup>. This scheme is currently under construction. Access to the appeal site would rely on a connection to this adjacent scheme (hereafter referred to as 'phase 1'), which itself is accessed from Clyst Road.

### *Character and appearance*

8. The appeal site lies within the 'strategic gap' between Topsham and Exeter. Policy CP16 of the Exeter City Council Core Strategy 2012 (Core Strategy) states that the character and local distinctiveness of areas, including the strategic gap between Topsham and Exeter, will be protected. The importance of this strategic gap in maintaining the distinct identities of the settlements is reinforced by the supporting text to policy LS1 of the Exeter Local Plan First Review 2005 (Local Plan)<sup>5</sup>.
9. From the outset, it is clear to me that the provision of up to 100 houses along with associated roads and infrastructure would constitute notable urban encroachment into an area of countryside which is largely free from development, diminishing the site's openness and rurality. The appellant also accepts that the proposal would have a moderate adverse effect on the rural character of the site<sup>6</sup>. However, it is nevertheless important to clarify the

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<sup>4</sup> Appeal ref - APP/Y1110/W/18/3202635

<sup>5</sup> Paragraph 11.8 of the Local Plan

<sup>6</sup> Appellant's Landscape Proof of Evidence

extent and nature of the harm that would arise and the subsequent effect on the strategic gap.

10. The Exeter Fringes Landscape Sensitivity and Capacity Study 2007 (LSCS) states that the site falls within 'zone 21', which is identified as a rural buffer between Topsham and the M5 motorway, with low intrinsic value and medium landscape sensitivity. It highlights that the capacity for additional housing is limited due to the openness and rural character of the area.
11. It is apparent, however, that since the publication of the LSCS and the adoption of the Core Strategy, housing and other developments have reduced the extent of the strategic gap, with further consented developments likely to erode it further<sup>7</sup>. This situation is not exclusive to zone 21. For example, when travelling along Exeter Road and Topsham Road within an adjacent LSCS zone, recently constructed development has blurred the separate identity of Topsham and Exeter in places. This erosion of the strategic gap over time underlines the importance of the remaining open land, which includes the appeal site, in fulfilling its role as an anti-coalescence buffer.
12. Paragraph 10.38 of the Core Strategy also identifies that the strategic gap between Exeter and Topsham is particularly important, as it prevents coalescence, as well as protecting Topsham's attractive setting. Dealing with the latter point first, Topsham's attractive setting mostly derives from the surrounding landscape relating to the historic core. The appeal site does not form part of this landscape; thus, Topsham's attractive setting would be preserved, a matter undisputed by the main parties.
13. Turning to coalescence. In the context of this appeal, Topsham and Exeter are located on either side of, and constrained by, the M5 motorway. However, that does not mean that coalescence cannot occur, as development could be located on each side of the motorway in a manner which would result in the merging of the two settlements.
14. As far as actual separation is concerned, the proposal would be *circa* 110m from the M5 motorway, and 135m from the nearest buildings in Exeter which lie on the opposite side of the M5<sup>8</sup>. As a spatial concept, this would result in the retention of land between the appeal site and existing built elements.
15. However, the distance between urban features on a map does not take into account the multi-faceted make up of landscapes, the qualitative characteristics of which assist in instilling a perception of place. To appreciate the likelihood of coalescence occurring based on perception, it is important to understand the views likely to be experienced by people as they travel through the local area. Alongside the evidence submitted, I have used my own judgment based on the observations I made on my site visit.
16. Appended to the Council's landscape proof is a Zone of Theoretical Visibility map. However, it is based on 'bare ground' conditions and does not take into account vegetation or buildings which have had a significant effect on the appeal site's visibility. The appellant's visually impact analysis on the other hand was comprehensive, reflective of the observations I made on my site visit and carried out in line with best practice guidance<sup>9</sup>. Based on this assessment,

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<sup>7</sup> ID4

<sup>8</sup> ID5

<sup>9</sup> Core Document 31

a summary of visual effects from various viewpoints in the locality was also undertaken<sup>10</sup>. I agree with the appellant's findings insofar as I find no significant visual degree of effect at any of the viewpoints, and in my view the site overall is relatively well contained visually. Nevertheless, there are several obtainable viewpoints which warrant further analysis in determining the extent to which the strategic gap would be eroded.

17. In particular, Clyst Road is a key route which passes through the landscape to the east of the appeal site and forms a connection between Exeter and Topsham<sup>11</sup>. The road is well screened by hedgerows and other vegetation, although punctuated by field gates and other gaps along its length which allows intermittent views of the appeal site depending on precise location<sup>12</sup>. Even though I conducted my site visits during the summer months, the dense arrangement of vegetation along Clyst Road indicates a notable degree of screening, even during winter months<sup>13</sup>.
18. Moreover, whilst phase 1 was described by the Council as the 'rounding off' of Topsham given its proximity to existing housing and Clyst Road, the context of the appeal proposal is different as it would extend housing in a generally northerly direction away from Topsham and into the countryside, and set away from Clyst Road. Therefore, the scheme would comprise a relatively narrow encroachment into a wider area of open land, whilst retaining a large swathe of open land between Clyst Road and the appeal site.
19. Therefore, views of the scheme would be intermittent, and the proposal's position, beyond an area of open land relative to Clyst Road, would reduce its prominence. Moreover, the submitted illustrative framework plan<sup>14</sup> demonstrates that extensive landscaping could be provided along the eastern boundary. Given the higher level of the site relative to surrounding land, and the extensive urbanisation proposed, it would not completely screen the development. However, it would assist in assimilating the proposal with its verdant surroundings, and would further reduce the perception of urban encroachment into the strategic gap when viewed from Clyst Road and its immediate environs. I am satisfied that suitable landscaping could be secured as part of future reserved matters.
20. It is put to me by the Council that the proposal would be seen alongside phase 1, existing housing which lies on the opposite side of the railway line on Newcourt Road, and a stadium and hotel which occupy the urban edge of Exeter. However, as I saw on my site visit, appreciation of the entire extent of the development referred to involves a panoramic view from a limited number of viewpoints on Clyst Road, requiring the observer to change orientation, this being unrepresentative of the intermittent and fleeting views typically experienced when travelling along Clyst Road. In any event, given the distance involved between each of the obtainable views and all of the developments referred to, and the extent of intervening open land and vegetation, urban form within the panorama appears intermittently and often inconspicuously. The addition of the appeal scheme to this panorama would not contribute to a

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<sup>10</sup> Summarised in Appendix 6 of Appellant's Landscape Proof of Evidence

<sup>11</sup> via Sidmouth Road

<sup>12</sup> View points 4 and 5 as detailed in ID3

<sup>13</sup> My findings are consistent with the appellant's 'winter' assessment under Appendix 6 of the Landscape Proof of Evidence

<sup>14</sup> Plan ref - 190614 L 02 01

'near continuous band of development across the skyline', as is alleged by the Council<sup>15</sup>.

21. Turning to other notable obtainable views. Whilst the proposal would be visible from various points along Newcourt Road, and would diminish the rurality of the appeal site, it would appear as a continuation of the housing associated with phase 1. There would be no discernible visible connection between the scheme and built form in Exeter.
22. In respect of views from other transport corridors, a railway line runs close to the western boundary of the appeal site connecting Exeter and Topsham. However, kinetic views from the train are fleeting at best with trees, hedgerows and other features interrupting obtainable views of the landscape beyond the rail corridor. Whilst the appeal scheme would occupy several fields and would close the existing divide, a brief but noticeable gap comprising a single field would remain in between the appeal site and Newcourt station<sup>16</sup>. In all, with the appeal scheme in place, the strategic gap would continue its actual and perceived anti-coalescence function when viewed from the train.
23. I appreciate that the strategic gap is valued by local people, in part reflected in the objections received to this proposal. My findings above have also taken into account another appeal decision which confirmed that the open land seen after the M5 when travelling towards Topsham from Exeter is important in maintaining their separate identities<sup>17</sup>.
24. However, even if I was to take the settlement edge of Exeter as the M5 motorway, which is closer to the appeal site than the nearest buildings in Exeter, when travelling along the local transport corridors, the current sense of arrival and departure experienced when travelling between the two settlements would not be materially altered by the proposal. This, along with the generally limited and localised visual effects, and the fact that the proposal would not impinge on the existing visual relationship between Exeter and Topsham, leads me to conclude that there would be a sufficient physical and perceptual gap between the two settlements so that coalescence would not arise.
25. Therefore, in conclusion, the extent of encroachment into the strategic gap would be limited overall and would not result in coalescence. Whilst the proposal would materially reduce the openness of the appeal site and harm the rural character and appearance of the area due to the introduction of built development, this would be tempered to some extent by the potential for boundary landscaping and limited landscape and visual effects. Consequently, there would be moderate conflict with policy CP16 of the Core Strategy and policy LS1 of the Local Plan. I address the weight to be afforded to this conflict in my 'planning balance'.
26. In respect of the identified policy conflict, the appellant points to appeal decisions where a degree of 'harm' was tolerated when the respective schemes were measured against policy CP16<sup>18</sup>. However, I take a different view in this case based on the particular landscape circumstances of this case which differs from those referred to.

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<sup>15</sup> Council's closing submission

<sup>16</sup> Newcourt station is the closest railway station in Exeter relative to the appeal site

<sup>17</sup> Appeal ref - APP/Y1110/W/15/3005030

<sup>18</sup> Appeal refs - APP/Y1110/A/14/2215771 and APP/Y1110/W/21/3278148

### *Habitats Sites*

27. The appeal site lies within the zone of influence for the Exe Estuary Special Protection Area (SPA) and East Devon Pebblebed Heaths Special Area of Conservation (SAC) and SPA. They comprise habitats sites<sup>19</sup> which are protected under the Conservation of Habitats and Species Regulations 2017 (the Habitats Regulations). Policy CP16 of the Core Strategy also seeks to prevent harm to these sites.
28. The Exe Estuary SPA is internationally important mainly due to its large winter population of Avocet, migratory species over winter such as Oystercatcher and Brent Goose, and a regular assemblage of at least 20,000 wintering waterfowl. The Pebblebeds Heaths SAC mainly comprises extensive lowland heath, including a diverse range of associated heathland communities. This includes North Atlantic wet heaths and European dry heaths. As part of its SPA status, it supports a number of breeding Nightjar and Dartford Warbler.
29. The South-East Devon European Site Mitigation Strategy 2014 (SEDESMS) recognises that new housing will increase the number of local residents who may be drawn to the habitat sites due to their recreational value. Consequently, given the proposal would involve up to 100 new dwellings and it falls within the zone of influence of these habitats sites, likely significant effects on the important interest features of the habitats sites, as a result of an increase in recreational pressure, cannot be screened out. As a result, I am obliged under the Habitats Regulations as the competent authority to carry out an Appropriate Assessment.
30. As the SEDESMS highlights, a range of recreational activities within the Exe Estuary SPA can result in birds taking flight due to disturbance. A disturbance study found that most flight events were caused by dog walkers, particularly when dogs are off their leads, but walking in general in certain other areas also caused disruption. In the East Devon Pebblebed Heaths SPA and SAC, disturbance to birds is also an issue, as is the trampling of heathland, fires, and nitrogen impacts from dog waste. Consequently, due to the impacts of the proposal in combination with other residential developments in Exeter, there would likely be an increase in visitor pressures on these habitats sites, leading to the recreational impacts as described above.
31. To mitigate these effects, the SEDESMS sets out a range of measures<sup>20</sup>. This includes Suitable Alternative Natural Greenspace (SANG) to divert visitors from sensitive sites and includes enhancing some existing parks within the local area. It also includes Strategic Access Management and Monitoring (SAMM) which involves, amongst other things, creating exclusion zones and fencing, providing dedicated dog exercise areas, and wardens to communicate with users of the sites. The SANG and SAMM require monetary contributions from residential developments in order to mitigate impacts.
32. The SEDESMS is also advocated by Natural England as per their consultation response on the planning application. Within this response they advise that a financial contribution would be required to prevent harmful effects from occurring, and permission should not be granted until this has been secured. I

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<sup>19</sup> As per the glossary in the National Planning Policy Framework

<sup>20</sup> Table 26 of the SEDESMS

am satisfied that a financial contribution is capable of delivering the strategic approach to habitats mitigation as advocated by the SEDESMS.

33. In order to mitigate impacts, the appellant proposed CIL contributions, and the Council confirms that they utilise CIL for this purpose where development is liable, by top slicing CIL receipts for habitats contributions. This is based on a set amount per dwelling and has been factored into the overall CIL charging schedule. However, the Council's CIL charging schedule includes a range of exemptions and reliefs, including social housing.
34. During the Inquiry the Council were unable to clarify whether or not the per dwelling charge factored in affordable housing exemptions, but I see no reason why affordable housing should be exempt from contributing towards habitat mitigation given the recreational pressures I have previously identified as likely as a result of population increase.
35. In order to address the potential shortfall in contributions arising from CIL exemptions, the appellant has provided planning obligations in the form of a S106 Agreement which would ensure that a habitat mitigation contribution would also be applicable in relation to the proposed affordable housing units.
36. As a result of the foregoing, I am satisfied that the mitigation can be appropriately secured by CIL and by way of a S106 Agreement. Therefore, the proposal would not lead to adverse effects on the integrity of the habitat sites either alone or in-combination with other plans and projects. The proposal would comply with policy CP16 of the Core Strategy in this respect, which requires that European Sites are protected.

### **Other Matters**

37. During the Inquiry, concerns were aired by the Council that the landscaping detailed on the illustrative framework plan did not form part of the proposal. Whilst I understand that this plan is illustrative, the Council did not provide me with any evidence to suggest that the landscaping envisaged would not be deliverable. In any event, consideration of landscaping has been reserved for future consideration and the Council retains control over this element to be determined as and when it is sought. Should a proposal be submitted at reserved matters stage then the Council retains the power to refuse it, should they find any reserved matters proposal unacceptable. Allowing this appeal would not prejudice the Council's position with regard to the reserved matters.
38. Concerns have been raised by interested parties regarding the locational suitability of the site. Moreover, it is alleged that the roads leading from the development are unsafe and of poor quality, and that there would be an impact on nearby junctions, particularly junction 30 of the M5. However, access to the appeal site would be taken via the adjacent phase 1 scheme, thus the proposal would be reliant on access to Clyst Road as secured as part of phase 1. Furthermore, improvements to footway provision along Clyst Road are also provided as part of phase 1, which would also be of benefit to future residents of the appeal scheme<sup>21</sup>.
39. In addition, the proposal would promote sustainable transport. As addressed in the 'planning obligations' section, sustainable travel provisions are provided as part of the proposal, including travel vouchers and a mobility hub which could

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<sup>21</sup> As set out in the Core Document 7

provide access to a shared car club vehicle and electric bikes. Therefore, whilst I accept that the scheme would likely be largely reliant on the private car given its location and lack of nearby bus stops, I am satisfied that opportunities have been pursued to promote sustainable travel for future residents of the scheme.

40. In respect of highway safety, I note that the Highway Authority<sup>22</sup> raises no objection on highway safety grounds, nor do National Highways object to the likely traffic impact on junction 30 of the M5. Moreover, the submitted Transport Assessment (TA) assessed the impact of the proposal along with other committed developments and concluded that the impact of traffic on the local network as a result of the scheme in combination would be very low. Therefore, even if I was to accept the assertion made by an interested party that, due to economic recovery post COVID-19, baseline traffic levels have increased since the TA was commissioned, there is no substantive evidence before me to suggest that any of the junctions affected by the scheme's traffic would be anywhere close to exceeding capacity, even factoring in potential baseline traffic increases.
41. In respect of other concerns raised by interested parties, ecological impacts, including those concerning protected species, would be dealt with as part of biodiversity enhancement and construction mitigation (see planning conditions section).
42. The proposed drainage strategy would involve ground water infiltration. The submitted ecological report confirms that the Clyst Marshes County Wildlife Site would be sufficient distance away, along with the intervening topography, to ensure no adverse effects on the quality of these habitats. In any event, conditions would be imposed requiring the submission and subsequent approval of a final drainage strategy.
43. Whilst the appeal site lies in close proximity of the M5, the submitted air quality assessment confirms that concentrations of air pollutants meet relevant limits, thus there would be no significant impact on human health.

## **Planning Balance**

44. The Council's housing land supply position stands at approximately 4 years<sup>23</sup>. As such, they are unable to demonstrate a five-year supply of deliverable housing sites as required by paragraph 68 of the National Planning Policy Framework (the Framework). Therefore, the policies which are the most important for determining the application are considered out of date. In such circumstances, paragraph 11d)(ii) of the Framework indicates that permission should be granted unless any adverse impacts of doing so would significantly and demonstrably outweigh the benefits, when assessed against the policies in the Framework taken as a whole.
45. I am aware that the Council's recent housing delivery test measurement was 155%<sup>24</sup>. This is a past delivery assessment, indicating that housing delivery appears to be on an upward trajectory, in comparison with previous years when the shortfall was particularly acute. I am also aware that when the emerging local plan is adopted, the Council will be able to demonstrate sufficient housing land. However, the emerging local plan is at an early stage

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<sup>22</sup> Devon County Council

<sup>23</sup> See Statement of Common Ground

<sup>24</sup> Core Document 32

and carries limited weight. In any event, neither of these factors compensates for the fact that the Council are unable to deliver 5 years' supply of housing land, and there is no substantive evidence to suggest that the Core Strategy's minimum target of *circa* 12,000 homes is likely to be met during the plan period. Therefore, I conclude that the Council's housing land supply shortfall is at least moderate.

46. In any event, like the main parties, I consider that the delivery of the proposed market homes should be afforded significant weight in light of the Framework's objective of significantly boosting housing supply, and the Council's housing supply shortfall. In addition, there has been significant under-delivery of affordable housing in the past and the need is now acute. Therefore, I also attribute substantial weight to the scheme's affordable housing contribution.
47. The benefits to the local economy, both during construction and indirectly through a likely increase in local spending by future residents, would be modest.
48. I concur with the Council that the amount of biodiversity net gain that will be achieved remains uncertain at this outline stage. However, whilst the Framework advocates biodiversity net gain, it does not prescribe a specific amount. Moreover, the Council does not provide any evidence to suggest that enhancement on the appeal site could not be realised, and the submitted ecological appraisal sets out the type of measures which could be incorporated, to an extent this is reflected in the submitted illustrative framework plan. Therefore, I conclude that biodiversity benefits could be delivered, secured in detail at reserved matters stage. Therefore, I attribute moderate weight to this benefit.
49. Public open space provision would at least meet the Council's requirements as set out in the Local Plan and supplementary planning guidance. This is mitigation necessary to make the development acceptable in planning terms and attracts neutral weight. I find no adverse effects on the integrity of habitat sites, and the mitigation necessary does not attract weight either for or against the scheme.
50. In terms of harm. I have identified conflict with policy CP16 of the Core Strategy and policy LS1 of the Local Plan. However, this is specifically in relation to the scheme's urbanising effect and reduction in the site's openness, albeit within a landscape which is not highly sensitive<sup>25</sup>. The proposal would not result in coalescence, nor would it detract from Topsham's attractive setting. In addition, it appears likely that unallocated land covered under policy CP16 would need to be released for housing in order to address the Council's housing supply shortfall. Consequently, I afford moderate weight to the conflict with policy CP16 I have identified. I attribute only limited weight to the conflict with policy LS1 of the Local Plan, as this policy advocates a blanket approach to protecting the countryside, at odds with the more flexible approach advocated by the Framework.
51. With regards paragraph 174 of the Framework, the scheme would not lie within a valued landscape, nor would it harm the undeveloped coast<sup>26</sup>. Harm to the

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<sup>25</sup> As per figure 2 of Core Document 25

<sup>26</sup> Paragraph 174 a) and c) respectively

intrinsic character of the countryside would be limited, as set out above<sup>27</sup>. Despite this<sup>28</sup>, the development could be designed to be visually attractive and to establish a strong sense of place, in line with paragraph 130 of the Framework.

52. Overall, the adverse effects arising from the scheme would be limited. Those impacts would not significantly and demonstrably outweigh the benefits, when assessed against the policies in the Framework taken as a whole. Therefore, the proposal benefits from the presumption in favour of sustainable development and this is a material consideration of sufficient weight, clearly indicating that planning permission should be granted in this case, notwithstanding identified conflict with the development plan.

### **Planning Obligations**

53. Signed Unilateral Undertakings (UUs) are included with this appeal along with a S106 Agreement which binds the appellant, the Council and Devon County Council. The first UU was submitted with the appeal, followed by a 'top up' UU relating to habitat mitigation submitted shortly after the Inquiry. The S106 Agreement (Agreement) was also submitted shortly after the Inquiry. The UUs and the Agreement contain clauses allowing me to make a finding as to which legal arrangement is preferable.
54. In this respect, the 'top up' UU contains a typographical error which has been acknowledged by the appellant. The error concerns a nominal shortfall in the monetary contribution necessary to mitigate habitats impacts, although the Council confirms that this has been addressed and provided separately by the appellant. Moreover, the UUs also contain an education provision which is no longer sought by the County Council. These anomalies are effectively addressed in the Agreement. As a result, my decision is based on the S106 Agreement<sup>29</sup>. I do not consider the UUs further.
55. The Agreement includes a number of planning obligations, including the provision of 35% affordable housing. This, along with the mechanism to deliver affordable housing as set out, would address policy CP7 of the Core Strategy, and is necessary to make the development acceptable.
56. The Agreement also includes separate contributions towards the Royal Devon and Exeter NHS Foundation Trust (NHS Trust) and Topsham GP surgery (through NHS Devon CCG). Be that as it may, the necessity of these provisions is disputed by the appellant, and there is a clause in the Agreement which would allow me to strike out either of these provisions if I do not deem them CIL compliant.
57. The NHS Trust did not attend the inquiry; thus, I have relied on their written response to the planning application, alongside other evidence received from the appellant and the Council's CIL compliance statement. The NHS Trust identifies that future population growth will require additional healthcare infrastructure. In their view, as they cannot predict when planning applications will be made, they cannot effectively plan for future population growth, and this scheme would grow the population of the area. The Trust's position is that monies would only be required to fund approximately one year of service

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<sup>27</sup> Paragraph 174 b)

<sup>28</sup> And limited conflict with paragraph 130 c)

<sup>29</sup> Having regard to appellant's accompanying letter to the S106 agreement ref- DGR/GDP/308821-00005

provision, as funding would thereafter be reviewed based on the circumstances of the previous year. Therefore, the NHS Trust's request is to bridge a potential funding shortfall in the short-term.

58. Nevertheless, I do not accept that this request is justified. Whilst NHS funding appears to be inherently complex, in its most basic form it appears to include an element of future forecasting based on predicted population increases over a number of years<sup>30</sup>. This ONS data is also the basis on which local plans are formulated in order to identify sufficient housing for the future<sup>31</sup>. As I concluded earlier in my decision, there is no substantive evidence before me to suggest that the Council's housing target will be met over the plan period. Furthermore, even though mid-term population estimates for 2019 have been provided, I do not know whether these figures are comparable with previous population forecasts. It seems more likely to me that population increases in Exeter have fallen below projections due to insufficient housing provision. Whilst I accept that the NHS Trust catchment area is much wider than Exeter, neither do I have information assessing actual and likely future growth against earlier future forecasting, to cover the wider geography.
59. Furthermore, whilst I do not dispute the Trust's assertion that its facilities are operating at maximum capacity, there is an absence of specific details as to where any monies provided would be spent. This is important because funding is only sought to 'plug the gap', yet I am not clear how such a contribution would alleviate pressure on the NHS Trust over such a short period, and the details lack clarity in this regard. Finally, I also agree with the Council that there does not appear to be a policy basis for such a contribution. As such, it has not been demonstrated that it would be necessary or fairly and reasonably related in scale and kind to the development.
60. Having regard to the above, I take a different view when it comes to the impact on Topsham GP surgery. Given that a number of developments and planning permissions have been granted in the Topsham area, including phase 1, this indicates to me that the population locally has increased. The appellant has not provided any substantive evidence to the contrary. Moreover, the Council also consider a contribution to increase the capacity of Topsham GP surgery would be necessary. Taking into account this and the consultation response on the planning application from NHS Devon CCG<sup>32</sup>, I am satisfied that the proposal would give rise to additional local demand on the GP surgery which would otherwise not exist, and this impact should be mitigated to make the development acceptable in planning terms.
61. The provision of 10% public open space would be secured, along with play areas, in accordance with policy DG5 of the Local Plan and the Public Open Space Supplementary Planning Document 2005. A contribution towards a Traffic Regulation Order is required so that parking bays within the proposed site can be restricted for an electric car club vehicle, charging spaces of other vehicles and for cycle and electric bicycle parking. Measures including vouchers towards the use of sustainable travel modes and methods to promote non-car travel are also included.

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<sup>30</sup> CD23(H) – NHS technical guidance to allocation formulae and pace of change

<sup>31</sup> See appellant CIL Compliance Proof

<sup>32</sup> Clinical Commissioning Group

62. Having dealt with this earlier in my decision, the Agreement also contains necessary habitats mitigation. Overall, apart from the NHS Trust contribution, I find that the planning obligations would be directly related to the development proposed, are fairly and reasonably related in scale and kind, and are necessary to make the development acceptable. The proposal would therefore comply with the requirements of Regulation 122 of the CIL Regulations and the tests set out in paragraph 57 of the Framework.

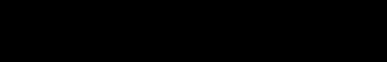
### **Conditions**

63. I discussed the main parties' agreed list of planning conditions during the Inquiry. I have assessed them against relevant guidance contained within Planning Practice Guidance (PPG) and the Framework which requires that planning conditions should be kept to a minimum and only imposed where they are necessary, relevant to planning and to the development to be permitted, enforceable, precise and reasonable in all other respects. I have amended some of them and consolidated several of them in the interests of clarity and in order to meet PPG, and to avoid repetition.
64. I have applied the standard time limit conditions relating to the submission of reserved matters and implementation of the permission. A condition is also necessary securing the location plan which is the subject of approval as part of this permission, in order to provide certainty.
65. A parameters and phasing plan is required as part of the first reserved matters submission so that infrastructure requirements such as highways and drainage can be properly considered in subsequent reserved matters details, so that each phase delivers satisfactory elements of the proposal, including infrastructure.
66. A construction environmental management plan is necessary in the interests of the environment and the living conditions of nearby residents. It also includes measures to protect badgers during construction, in the interests of biodiversity. In terms of surface water drainage, conditions relating to the testing of ground conditions for soakaways, drainage details during construction, and a full surface water drainage management scheme and subsequent details regarding adoption and maintenance arrangements are necessary to ensure no unacceptable flood risk, and adequate surface water drainage measures are in place.
67. A condition relating to archaeology is necessary based on the findings of the submitted archaeology desk-based assessment, which shows potential for remains of local importance. Ground contamination requires further assessment, incorporating mitigation/remediation as necessary, in the interests of the environment.
68. Details of acoustic mitigation are necessary in order to safeguard the living conditions of the scheme's future occupiers. I do not agree with the Council that this should be provided pre-commencement given the nature of the works involved, so I have amended the wording of the condition accordingly. Similarly, whilst a condition relating to CO2 reduction is required to ensure energy efficiency in new homes, I have also re-worded the suggested condition so it is not pre-commencement.

69. I am aware of the potential for a pedestrian/cycle link nearby which would involve a new pedestrian and cycle bridge crossing the railway, partly outside the red-line boundary of the appeal site. The Highway Authority request that land within the appeal site is safeguarded to ensure this can be secured. However, there are limited details at this stage as to the likelihood of this being delivered given that it appears to involve land outside the appellant's control. In any event this could be addressed as part of the reserved matters 'layout' and therefore, it is not necessary to impose a condition on this permission.
70. A condition requiring the submission of a travel plan is necessary in order to promote sustainable transport as per the Framework. In accordance with the Framework's requirement to enhance biodiversity, a condition is required in order to secure a biodiversity management and enhancement plan. Finally, the illustrative framework plan shows that an acoustic screen or bund would be provided along the appeal site's boundary with the railway. In the interests of visual amenity, a condition is necessary to ensure that full details are provided as part of the reserved matters submission(s).
71. The appellant agreed to a number of 'pre-commencement' conditions. Given that these conditions relate to issues which need addressing before the main building works commence, including drainage, archaeology, contaminated land investigation, and construction management; this approach is justified in relation to the affected conditions.

### **Conclusion**

72. For the reasons given above, and subject to the following conditions, the appeal is allowed.

  
INSPECTOR

## APPEARANCES

### FOR THE LOCAL PLANNING AUTHORITY:

Tim Leader of St John's Chambers

He called:

Robin Upton BSc (Hons) MRTPI

Carney Sweeney Planning

Anne Priscott BA (Hons) CMLI

Anne Priscott Associates

### FOR THE APPELLANT:

Charlie Banner KC – *assisted by Isobel Kamber*

He called:

David Seaton MRTPI

PCL Planning

Andrew Cook BA (Hons) MLD CMLI  
MIEMA CEnv

Pegasus Group

### INTERESTED PERSONS:

Simon Curran  
Neil Thorne  
Gerry Keay  
Andrew Kitchener  
Will Ridalls  
David Richardson  
Paul Collenette

Essex City Council  
Stantec UK Ltd  
Waddeton Park Ltd  
KLP  
PCL Planning Ltd  
Ashfords LLP  
Local resident

### **DOCUMENTS SUBMITTED DURING THE INQUIRY**

- ID1 Access note by Neil Thorne (Stantec) – 21/09/2022
- ID2 Plan showing recent consented development, green wedge, flood zones and strategic allocations
- ID3 Plan showing combined viewpoints of Andrew Cook and Anne Priscott
- ID4 Topsham Gap – Plan showing planning history
- ID5 Distances Plan
- ID6 Appellant Opening Submission
- ID7 Council Opening Submission
- ID8 Closing submission of the Council
- ID9 Closing submission of the appellant

### **DOCUMENTS SUBMITTED AFTER THE INQUIRY**

- 1 S106 letter ref - DGR/GDP/308821-00005
- 2 S106 Unilateral Undertaking – Habitats
- 3 E-mail from Council to appellant dated 6<sup>th</sup> October 2022
- 4 S106 Agreement
- 5 Joint Addendum Statement: Exeter City Council and Waddeton Park Ltd

## **SCHEDULE OF CONDITIONS**

- 1) Details of the appearance, landscaping, layout, scale and access (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 three years from the date of this permission.
- 3) The development hereby permitted shall take place not later than two 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 plan: drawing no. 190604 L 01 01.
- 5) A parameter plan (including phasing) shall be submitted for approval together with the first submission of reserved matters made pursuant to condition 1 of this permission. It shall include details of the maximum number of dwellings and other development (including all infrastructure) to be implemented within each phase of the development. The development shall be implemented in accordance with the approved parameter plan.
- 6) The development hereby permitted shall not commence until a construction environmental management plan has been submitted to and approved in writing by the local planning authority. The plan shall include details of monitoring and mitigation measures to control the environmental impact of the development during the construction and demolition phases, including site traffic and traffic routing, the parking of site operator vehicles, the effects of piling, and emissions of noise and dust. The plan should also include measures to protect badgers from adverse effects during construction. No construction or demolition work shall take place outside the following times: 08:00 to 18:00 (Mondays to Fridays), 08:00 to 13:00 (Saturdays) nor at any time on Sundays, Bank or Public Holidays. The approved construction environmental management plan shall be adhered to throughout the construction period.
- 7) The development hereby permitted shall not commence until a programme of percolation tests has been carried out in accordance with BRE Digest 365 Soakaway Design (2016), and the results have been approved in writing by the local planning authority. A representative number of tests should be conducted to provide adequate coverage of the site, with particular focus placed on the locations and depths of the proposed infiltration devices.
- 8) The development hereby permitted shall not commence until the full results of a groundwater monitoring programme, undertaken over a

period of 12 months, has been submitted to, and approved in writing by the local planning authority. This monitoring should be conducted to provide adequate coverage of the site, with particular focus placed on the locations and depths of the proposed infiltration devices.

- 9) The development hereby permitted shall not commence until the detailed design of the proposed surface water drainage management system to serve the development site for the full period of its construction has been submitted to and approved in writing by the local planning authority. This shall be implemented in accordance with the approved details prior to the commencement of development.
- 10) The development hereby permitted shall not commence until the detailed design of the proposed permanent surface water drainage management system, and full details of its proposed adoption and maintenance arrangements, has been submitted to, and been approved in writing by the local planning authority. The design of this permanent surface water drainage management system should be informed by the programme of approved BRE Digest 365 Soakaway Design (2016) percolation tests (condition 7) and in accordance with the principles set out in the Flood Risk Assessment (Ref. 530/FRA3, Rev C) and should ensure that additional or increased flows of surface water do not discharge onto Network Rail land or into Network Rail's culvert or drains. Development shall be implemented in prior to the occupation of each respective phase in accordance with the approved details.
- 11) The development hereby permitted shall not commence until a written scheme of archaeological work has been submitted to and approved in writing by the local planning authority. This scheme shall include on-site work, and off-site work such as the analysis, publication, and archiving of the results, together with a timetable for completion of each element. All works shall be carried out and completed in accordance with the approved scheme.
- 12) The development hereby permitted shall not commence until a full investigation of the site has taken place to determine the extent of, and risk posed by, any contamination of the land and the results, together with any remedial works necessary, have been approved in writing by the local planning authority. The buildings shall not be occupied until the approved remedial works have been implemented and a remediation statement submitted to the local planning authority detailing what contamination has been found and how it has been dealt with together with confirmation that no unacceptable risks remain.
- 13) No building works above slab level shall take place until an Acoustic Design Statement, including details of mitigation and a timescale for implementation of each mitigation measure, have been submitted to and approved in writing by the local planning authority. The mitigation measures provided shall be in broad accordance with section 8 of the 'Environmental Noise Assessment' by Acoustic Associated SW Ltd. The Acoustic Design Statement shall be implemented in full in accordance with the approved timetable and details and shall be retained thereafter.
- 14) No building works above slab level shall take place until a Standard Assessment Procedure (SAP) calculation, which demonstrates that a 19% reduction in CO2 emissions over that necessary to meet the requirements

of the 2013 Building Regulations can be achieved, has been submitted to and approved by the local planning authority. The measures necessary to achieve this CO2 saving shall thereafter be implemented on site and within 3 months of completion of any dwelling a report from a suitably qualified consultant to demonstrate compliance with this condition will be submitted to and approved in writing by the local planning authority.

- 15) No above ground works shall take place in 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 biodiversity enhancement measures and 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.
- 16) Full details of the 'acoustic screen/bund' as detailed on drawing no. 190614 L 02 01 shall be submitted for approval together with the first submission of reserved matters made pursuant to condition 1 of this permission.
- 17) Prior to the occupation of any dwelling, a travel plan, which shall include a timetable for the implementation of measures, shall be submitted to and approved in writing by the local planning authority. The travel plan shall be implemented in accordance with the approved details.

*End of Schedule*