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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.

*M J Hetherington*

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

### FOR THE APPELLANT:

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