



Appeal Decision

Hearing held and site visit made on 21 February 2024

by Tom Bristow BA MSc MRTPI AssocRICS

an Inspector appointed by the Secretary of State

Decision date: 20th March 2024

Appeal Ref: APP/U1105/W/23/3330735

Land adjacent to Tithebarn Way

- The appeal is made under section 78 of the Town and Country Planning Act 1990 as amended (the '1990 Act') against a refusal to grant planning permission.
 - The appeal is made by Eagle One MMIII Ltd. against the decision of East Devon District Council ('EDDC').
 - The application ref. 22/0975/MFUL, dated 12 May 2022, was refused by notice dated 13 September 2023.
 - The development proposed is the construction of four commercial, business and service units (Class E) and nine detached dwellings with associated access, parking and infrastructure.
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Decision

1. The appeal is allowed and planning permission is granted for the construction of four commercial, business and service units (Class E) and nine detached dwellings with associated access, parking and infrastructure at land adjacent to Tithebarn Way, in accordance with the terms of the application ref. 22/0975/MFUL, dated 12 May 2022, subject to the conditions below and to the provisions of the Unilateral Undertaking dated 29 February 2024 pursuant to section 106 of the 1990 Act (the 'UU').

Preliminary matters

Procedure

2. The main parties agreed at the hearing that it would be appropriate to address planning obligations and costs via written representations to agreed timescales. By consequence of discussions between the main parties following the hearing in those respects, there is only now an application for costs made by the appellant against EDDC. That is the subject of a separate decision.

Statutory and policy context

3. Statute requires that planning proposals are determined in accordance with the development plan unless material considerations indicate otherwise. Here the development plan includes policies of the East Devon Local Plan 2013-2031 (adopted 28 January 2016, the 'LP') and of the Broadclyst Neighbourhood Development Plan (made as part of the development plan on 20 July 2023, the 'NDP'). No NDP policies are, however, cited in EDDC's decision notice. None were raised as relevant to the dispute between the main parties at the hearing, and Broadclyst Parish Council ('BCP') support the proposal.

4. I have also had regard to various material considerations, including the National Planning Policy Framework (published 20 December 2023, the 'NPPF'), EDDC's Affordable Housing Supplementary Planning Document (adopted 25 November 2020, the 'Affordable Housing SPD') and the Planning Practice Guidance ('PPG'). Neither main party refer to policies in EDDC's emerging replacement plan to the LP (the 'LPR'). That is rational as there is no indication that emerging policies diverge significantly from existing policies of relevance here, and as the LPR is at an early stage of preparation.¹

Application ref. 23/2214/MFUL (the 'subsequent scheme')

5. BCP also support the subsequent scheme at substantively the same site. There were no third parties at the hearing, and none made comments in relation to application ref. 22/0975/MFUL, at appeal, or in relation to the subsequent scheme. That potentially reflects how the site is 'phase 10' of a larger swathe of land which secured outline permission in 2013 for mixed used development including for up to 930 dwellings (permission ref. 12/1291/MOUT).²
6. At the time of my site visit some phases of that overarching permission appeared complete, some were under construction, and some land remains undeveloped. The evolving surrounding context to the site, very much a work in progress, inherently makes certain planning judgements challenging. Given that context, and the LP's broader strategy of focussing growth towards Exeter,³ there is no dispute that the site is, in principle, an acceptable location for mixed-used development.
7. The officer report associated with the subsequent scheme, on balance, recommended that it be approved. That was written at a juncture when EDDC acknowledged that they were unable to demonstrate a forward supply of deliverable sites sufficient to provide for five years' worth of housing relative to the applicable requirement.
8. However that was with reference to the previous version of the NPPF, published 5 September 2023, which contained different provisions to now. On account of current NPPF paragraph 226, and given the stage of preparation that the LPR has reached, there is no dispute between the main parties that NPPF paragraph 11.d) no longer applies. EDDC state that they are able to demonstrate a forward supply of deliverable housing sites of around 4.5 years.
9. I can only assume that some time passed between the officer report in respect of the subsequent scheme, the planning committee consideration of it, and EDDC's communication of the outcome thereof to the appellant via correspondence of 10 January 2024. That correspondence sets out how the committee endorsed the recommendation to approve, subject to the execution of a suitable agreement under section 106 of the 1990 Act.
10. At the time of the hearing planning obligations in respect of the subsequent scheme had not, however, been agreed. I understand that there were similar differences of perspective there as in respect of obligations relevant to the

¹ A 'Regulation 18' version of the LPR under the Town and Country Planning (Local Planning) (England) Regulations 2012 having been consulted upon between November 2022 and January 2023.

² The timescale for submission of reserved matters relating to this site having now elapsed.

³ Notably via LP strategies 1, 2, 9 and 13.

appeal scheme. I also heard at the hearing how the appellant disagreed with the provisions of two conditions there that are not specifically advanced here.⁴ Whilst my decision relates to the appeal proposal, there is consequently some thematic overlap with matters relevant to the subsequent scheme.

Revised plans

11. There is also some complexity in respect of the plans representing the development proposed. The plans upon which EDDC reached a decision in respect of application ref. 22/0975/MFUL are appended to the statement of common ground between the main parties. Many are latter versions than those plans originally submitted. However the location plan, as opposed to other plans, shows an incorrect site boundary.⁵
12. The appellant has subsequently submitted 4 further plans in response to EDDC's reason for refusal related to internal space provision.⁶ There is also a further set of plans related to the subsequent scheme. The latter include changes related not only to internal space, but also to the number and finish of parking spaces proposed, and to bay window details in respect of the two easternmost properties (at plots 1 and 9).
13. Some complexity has arisen by virtue of ongoing communication between the main parties and revisions to the scheme over a lengthy period. Neither main party, however, raise any procedural issue with my considering any of the foregoing variants of the plans. That is rational given the limited nature of change between all iterations, that all have been consulted upon or have been available at appeal, and given the absence of third party representations.⁷

Main issues

14. The main issues are whether the proposal would be acceptable in respect of (i) parking provision and accessibility, (ii) site layout, design and natural surveillance, (iii) internal space provision for future occupants of the proposed dwellings.

Reasons

Parking provision and accessibility

15. The proposal includes 53 parking spaces, 18 of which would be associated with the proposed dwellings, 35 associated with 1,117sqm of commercial, business and service floorspace (Use Class E). Numerically, 35 spaces associated with 1,117sqm of floorspace gives a ratio of 1 space to 31.9sqm. EDDC's position is that the parking provision associated with the commercial element of the scheme would be excessive. They contend that would both fail to promote sustainable modes of travel and also result in an undue dominance of parking in terms of design.
16. EDDC's position has, understandably, taken account of the Inspector's reasoning in respect of 'phase 13' of permission ref. 12/1291/MOUT (the

⁴ Conditions 16 and 19 related to provision of 5 additional trees and a minimum of 3 benches on site.

⁵ Plan no. 1000 Rev: C.

⁶ Plan nos. 2100 Rev: A, 2300, 2303 and 2310.

⁷ With reference to *Bernard Wheatcroft Ltd. v Secretary of State for the Environment and Harborough District Council* [1982] JPL 37, and *Holborn Studios Ltd. v The London Borough of Hackney* [2017] EWHC 2823.

'previous' appeal).⁸ Phase 13 land is to the south of the appeal site on the opposite side of Blackhorse Lane, slightly closer to the A30 and therefore further away from the centre of gravity of permission ref. 12/1291/MOUT. There the Inspector characterised 1 space to 25sqm floorspace as 'a modest oversupply'.⁹

17. Moreover, in this instance additional commercial parking provision is proposed than the forecast peak staffing demand of 27 (established via appellant's Transport Statement, 'TS'). Numerically 27 spaces would amount to a ratio of 1 space to 41.4sqm of commercial floorspace. Whilst not within a town centre, the site benefits from relatively good public transport connectivity, and there would be a fair amount of unallocated parking nearby.
18. There appears to be some commonality between elements of the evidence presented to me and to the previous inspector, notably in respect of parking ratios prevailing at nearby 'Skypark', and at Council offices at Honiton. However circumstances in respect of the previous appeal and here differ, including by virtue of the nature of development proposed and, albeit to lesser extent, the location of each site as noted above.
19. Here a ratio of 1 parking space to 31.9sqm of floorspace is proposed. Hypothetically, if the 1 space to 25sqm ratio sought in respect of the previous appeal were instead to apply, 44.7 parking spaces would be proposed. That is a significant difference. I note that EDDC subsequently approved a revised application related to phase 13 with a ratio of '1 space per 29sqm GIA (31sqm GEA)'.¹⁰ That is broadly comparable to the ratio proposed here.
20. Furthermore, as set out in the appellant's Technical Note ('TN') to the TS, the forecast parking requirement of 27 relates solely to staff associated with the commercial units. It does not take account of any vehicles associated with customers, deliveries or building servicing or maintenance. The TN also clarifies how the TA is founded on a jobs density assumption of 1 employee per 12sqm of floorspace for 'general office use', derived from the Homes and Communities Agency's Employment Density Guide (3rd Edition, November 2015).
21. However Use Class E encompasses not only offices, but other uses related 'principally to visiting members of the public'. Those include financial and professional services, indoor sport and medical or health services. The scheme is speculative, in that it has not been brought to my attention that there are end users identified. Over the lifespan of the development there may be different occupants under the umbrella Use Class E.
22. Albeit that the appellant has not argued that the scheme would be inherently unviable with reduced parking, the commercial units may therefore draw varying numbers of visitors over time, and may be occupied for functions which have a higher jobs density than 'general office use'.¹¹ Two 'additional' parking spaces per commercial unit, within the control of those units as opposed to

⁸ Ref. APP/U1105/W/20/3246215, the outline phasing plan for that permission being reproduced at appendix 4 to the appellant's statement of case.

⁹ Paragraphs 10 to 12 of her decision, notwithstanding that there was a 'compromise position' in relation to parking referenced in paragraph 13 of her decision.

¹⁰ Appellant statement of case, appendix 9.

¹¹ The Employment Density Guide, for example, setting out that finance and insurance tends to have a higher jobs density of 1 employee per 10sqm.

being reliant upon provision elsewhere which may be occupied from time to time, would not be excessive in that context.

23. Consequently, given also the availability of alternative modes of transport here as potentially reflected in census data regarding private vehicular usage,¹² along with the nature of Use Class E amidst a swathe of growth eastwards of Exeter, many of those travelling to and from the site would likely do so via means other than private vehicle in any event. Given the reasonable level of parking provision on site along with the existence of unallocated parking nearby, the proposal would be highly unlikely to encourage individuals to travel by private vehicle who would not otherwise do so.
24. As noted by the previous Inspector, there is no 'direct mechanism' in terms of planning policy here to restrict parking levels.¹³ Moreover, given the foregoing reasoning, no conflict would arise with the overarching approach in Local Plan strategies 5B or 11 or with NPPF section 9 entitled 'promoting sustainable travel'. That the amount of commercial parking provision would be reasonable and proportionate means that I cannot rationally support EDDC's view that the level of parking provision would be dominant in terms of site layout in itself.

Site layout, design and natural surveillance

25. Section 1 to LP policy D1 sets out how development should respect the key characteristics of the area. Section 4 to policy D1 requires that development pays 'due regard for important aspects of detail and quality', including at criteria a) and c) with reference to 'attractive layouts' and 'appropriate building materials'.
26. Policy D1, section 4, criteria a) and b) reference how layouts should be secure and how development should incorporate 'measures to create a safe environment for the community...'. In summary, and amongst other things, LP policy D2 sets out how landscaping should include provision for the planting of trees, other soft landscaping, and how development should 'make a positive contribution to the street scene and the integration of the development with its wider surroundings and setting.'
27. Similarly NPPF paragraph 131 sets out how creating 'high quality, beautiful and sustainable buildings and places is fundamental to what the planning and development process should achieve'. Likewise NPPF paragraphs 135.a) and b) set out how development should add to the overall quality of the area, and be visually attractive as a result of good architecture, layout and appropriate and effective landscaping. The National Design Guide (published 1 October 2019, the 'NDG') references both the importance of the use of suitable materials, detailing, landscaping, and the benefits of natural surveillance.¹⁴
28. As proposed, commercial parking would be almost entirely black 'Tarmac'.¹⁵ Notwithstanding my reasoning in respect of the first main issue, that would inherently result in a featureless and purely functional aesthetic. Albeit that the surrounding context to the site is a work in progress, it is mixed use as

¹² EDDC statement of case, paragraph 2.9.

¹³ LP policy TC9 applying either to residential development or development in town centres.

¹⁴ Including at paragraphs 20, 28, 30, 43 and 105.

¹⁵ As shown on plan no. 1115 Rev: C.

opposed to commercial-led. Block or brick paving is a common, albeit not universal, feature (including, for example at Hutchings Drive). In my view variety in hard landscaping is more consistent with a mixed-used environment, along with also serving to provide some relief and visual interest.

29. As such some variety and detailing in terms of hardsurfacing is preferable, and would also achieve compliance with the relevant elements of the LP, NPPF and NDG set out above (in a way that the original scheme would not). As noted in paragraph 13 of this decision, there is nothing to prevent me from requiring alternative materials in this respect via condition.¹⁶
30. However, a sufficient degree of natural surveillance to the neighbouring public right of way beside sports pitches would be achieved without ground floor bay windows (as feature in the subsequent scheme).¹⁷ That is subject to a suitable condition related to landscaping, such that the side and front plots of properties are maintained in such a way so as not to unduly enclose, or impede visibility towards the right of way and beyond (which would be achieved via the landscaping proposed in respect of the subsequent scheme).¹⁸
31. Whilst the bay windows subsequently proposed would result in a slightly greater level of outlook eastwards, there would nonetheless be some outlook from the eastwards-facing windows proposed at plots 1 and 9 without those features.¹⁹ Importantly, along with providing some degree of outlook, the presence of those windows would contribute to a perception of natural surveillance. In my view the plans in this respect upon which EDDC determined application ref. 22/0975/MFUL strike an appropriate balance between ensuring natural surveillance and residential privacy.
32. Moreover the footpath is itself to be relatively wide and would lead out, more or less level, to playing pitches beyond.²⁰ There are trees proposed to punctuate the boundary of land around the playing pitches.²¹ However, even when mature, intervisibility between the playing pitches, right of way and elevations of the dwellings proposed at plots 1 and 9 would be little obstructed. There would, moreover, be some natural visibility across the right of way and towards sports pitches from the first floor windows of the easternmost properties proposed in any event.
33. Subject to the conditions referenced in paragraphs 29 and 30 above, I conclude that the scheme would accord with the relevant provisions of LP policies D1 and D2, and with relevant elements of NPPF paragraphs 131 and 135 a) and b).

Internal space

34. There appears to be no development plan policy on minimum levels of internal space.²² NPPF paragraph 135. f) sets out how development should have a 'high

¹⁶ Block paving is shown on plan no. 2115 Rev: D related to the subsequent scheme.

¹⁷ Noting that both the public right of way and sports pitches are yet to be constructed.

¹⁸ Plan no. 856/01 Rev: G, As opposed to plan no 856/01 Rev: I., the former showing a 'groundcover mix' adjacent to the proposed right of way as opposed to hedgerow.

¹⁹ Plan nos. 1302 Rev: C, and 1311 Rev: D.

²⁰ Noting EDDC statement of case, paragraph 2.5.

²¹ Plan no. NPS-DR-L-01-800 Rev: P8 related to permission ref. 21/1016/MRES.

²² Whilst criterion 3. f) to LP policy D1 sets out how development should not adversely affect 'the amenity of occupants of proposed future residential properties,' that appears to be 'with respect to access to open space, storage space for bins and bicycles and prams and other uses'.

standard of amenity for existing and future users.’ The footnote to that paragraph explains how use may be made of the Nationally Described Space Standard (published 27 March 2015, ‘NDSS’) ‘where the need for an internal space standard can be justified.’

35. Whilst that justification appears absent from EDDC’s case, as initially presented the scheme may have been interpreted as for 9 two-storey, two-bed, four-person properties.²³ EDDC’s statement of case gives the floorspace proposed at that juncture as between 69.2sqm and 72.6sqm depending on the house type (‘C2’ and ‘C1’). Either figure represents a significant shortfall relative to the NDSS figure of 79sqm for properties of that type, clearly indicating that the level of internal space proposed may well have been unsatisfactorily low.
36. The appellant has submitted amended plans which seek to show internal space would be acceptable for two-storey, two-bedroom three-person properties, albeit at or around the threshold of the 70sqm NDSS recommendation for that house type.²⁴ At the hearing EDDC maintained that proposed house type ‘C2’ would fail to achieve 70sqm. However the difference between the parties in that respect is fractional, likely attributable to measuring imprecision. Even if there were some shortfall, however, that would not be unacceptable given that it would be fractional (and given the absence of either a specific development plan policy or particular justification for NDSS recommendations here).
37. In my view the foregoing resolves the hypothetical question as to whether internal space standards were resolvable via condition in the first place. Through the revised plans there is clarity in terms of what is expected of the development proposed, a legitimate matter to address. Moreover conditions cannot be used to modify development in a way that makes it substantially different from that applied for.²⁵ Setting aside when this issue was raised by EDDC, there was some ambiguity in the original plans.
38. A property may in practice be occupied by more individuals than the number for which it was designed. Nevertheless that is a broader theoretical point beyond the remit of this appeal. For the above reasons, subject to securing adherence to the revised plans in footnote 24, the internal space proposed would be acceptable and accord with NPPF paragraph 135.f).

Other matters

Ecology

39. The appeal site falls within ‘zones of influence’ drawn around the Exe Estuary and Pebblebed Heaths Special Protection Areas (‘SPAs’) in the South-east Devon European Site Mitigation Strategy (published 29 April 2014). The SPAs, designated pursuant to the Birds Directive,²⁶ are extensive tracts of land including saltmarshes, mudflats and heath (each overlapping with other designations).²⁷ They are accorded protection on account of the value of their

²³ Plans 1300 rev.G related to housing type C1 where semi-detached, 1303 rev. B related to housing type C1 where detached and 1310 rev. D related to housing type C2 (semi-detached).

²⁴ Plan nos. 2100 Rev: A, 2300, 2303 and 2310.

²⁵ PPG Reference ID: 21a-012-20140306.

²⁶ European Council Directive 1979/409/EEC.

²⁷ The Exe Estuary SPA overlaps with the Ramsar site and Site of Special Scientific Interest. By virtue of NPPF paragraph 187. b) Ramsar Sites are accorded the same protection as SPA (including, by extension, via the

habitats and the fauna reliant upon it, notably migratory birds. Whilst not a precise correlation, increased recreational pressure associated with increased population is likely to adversely affect ecological integrity.

40. SPA protection is incorporated into domestic statute via the Conservation of Habitats and Species Regulations 2017 as amended. Regulation 63(1) requires that, before deciding to give any permission or other authorisation for a project which is likely to have a significant effect on a European site, a competent authority must make an appropriate assessment of its implications (including in combination with others). I have undertaken an appropriate assessment in a reasonable and proportionate manner. I am also required to take reasonable steps to conserve and enhance the natural features of sites of special scientific interest, and in relation to biodiversity more broadly.²⁸
41. As in the Mitigation Strategy, avoidance or mitigation of effects resulting from residential pressure is to be achieved by the provision of alternative greenspace, to redirect those who would have made use of the SPAs recreationally, and via associated monitoring and management arrangements. The contributions that individual schemes are expected to make are established at a strategic level, such that a proportionate contribution is made relative to development proposed. As secured via the UU, there is an associated contribution of £367.72 per new dwelling, in line with EDDC's latest position in that regard.
42. The Mitigation Strategy has been arrived at in conjunction with Natural England, the appropriate nature conservation body under Regulation 63(3). Natural England have also made representations on this proposal to the effect that, subject to securing the foregoing contribution, there would not be an adverse effect on the ecological integrity of the SPAs. Formerly agricultural, the site has been stripped of top-soil and recently used for spoil storage associated with the construction of Tithebarn Way.
43. The site itself is, by consequence, of little ecological value (aside from in respect of the hedgebank to the south which would be retained).²⁹ Subject to the mitigation and enhancement proposed,³⁰ the scheme could readily deliver biodiversity net gain ('BNG'); the subsequent scheme suggesting a metric of some 86.90% in that respect is achievable (notwithstanding BNG is not statutorily required in this instance).
44. Consequently, and given also that ecology is protected via other regimes,³¹ subject to the imposition of suitable conditions, and to the provisions of the UU, unacceptable effects to ecology would not arise either directly or indirectly. The proposal would suitably safeguard ecological integrity in line with the relevant provisions of LP strategies 47 and 50 and NPPF paragraph 186.

Obligations

provisions of Regulation 63 of the Habitats Regulations). The Pebblebed Heaths SPA is also a Special Area of Conservation, protected pursuant to the Habitats Directive 92/43/EEC.

²⁸ Section 28(G) of the Wildlife and Countryside Act 1981 as amended, section 40 of the Natural Environment and Rural Communities Act 2000 as amended.

²⁹ Updated Ecological Appraisal prepared by Devon Wildlife Consultants, 29 November 2021.

³⁰ Ibid.

³¹ Notably via the Wildlife and Countryside Act 1981 as amended.

45. The UU of 29 February 2024 under section 106 of the 1990 Act commits to the fulfilment of certain obligations in the eventuality that the appeal were to be allowed, conditional on my reasoning. The UU contains obligations by way of financial contributions towards habitat mitigation as above, affordable housing of £12,448 per dwelling, monitoring fees and EDDC's reasonable legal costs in connection with the preparation and completion of the deed. The UU also sets out associated matters of detailed implementation including in respect of commencement, trigger points, notice requirements and enforceability.
46. There is an appropriate basis for all contributions and provisions of the UU, including with regard to EDDC's Planning Obligations Supplementary Planning Document (June 2017). That includes the affordable housing contribution with reference to LP strategies 34 and 50 and the Affordable Housing SPD (noting that Broadclyst remains a designated rural area within the terms of NPPF paragraph 65). Similarly I have taken note of the Council's current position in respect of obligations monitoring with reference to LP strategy 50.³² There is, moreover, now no dispute between the appellant and EDDC over the justification or appropriateness of any elements of the UU.
47. Inherent in my reasoning above, the obligations contained within the UU are necessary to make the development proposed acceptable and also accord with the relevant provisions of NPPF paragraph 57 and Regulation 122 of the Community Infrastructure Levy Regulations (2010) as amended (the 'CIL' Regulations). By contrast, none of the obligations in the previous unilateral undertaking of 5 February 2024 are necessary and, accordingly, do not accord with the relevant provisions of NPPF paragraph 57 and CIL Regulation 122.

Conclusion

48. For the foregoing reasons, subject to the provisions of the UU and conditions below, the development proposed would comply with the development plan taken as a whole. Consequently, and having had regard to all other material conditions, I conclude that the appeal should be allowed.

Conditions

49. In addition to requiring commencement within the relevant statutory period via condition 1, for clarity, and so as to ensure that the proposal is implemented as assessed above, I have imposed condition 2 requiring adherence to the relevant supporting plans. Condition 2 is necessarily modified from the version presented to me as follows: omitting incorrect plan no. 1000 Rev: C, omitting plan no. 1115 Rev: C. regarding intended surface treatments and substituting for it plan no. 2115 Rev: D in that respect, including plan nos. 2100 Rev: A, 2300, 2303 and 2310 in respect of internal space standards in place of previous iterations, and including landscaping plan no. 856/01 Rev: G.
50. Similarly, following my reasoning above, to ensure that the proposal integrates acceptably with its surroundings, I have imposed conditions 3, 4 and 5. Condition 3 is also necessary in the context of the statutory duty on me in respect of trees.³³ Condition 4 makes provision for landscaping and open space following on from my reasoning above (including at paragraph 10). I note that

³² Noting the Council's revised position in respect of obligation monitoring as discussed at Planning Committee on 5 September 2023, with reference to a supporting report entitled 'Section 106 and CIL Resources and Processes'.

³³ Section 197 of the 1990 Act.

LP strategy 43 does not require that open space is provided for schemes of 9 dwellings or less (and there would be, in any event, a close inter-relationship between the site and playing fields to the east). Condition 5 combines several conditions put to me where those relate to the design, appearance and detailing of elements of the scheme.

51. Conditions 6 and 7 are necessary to ensure appropriate living conditions for future occupants, whether by virtue of ensuring appropriate noise attenuation in the context of the flightpath to Exeter Airport, or by ensuring that any fixed plant or equipment associated with the commercial element of the scheme operates within acceptable noise parameters (thereby securing adherence to LP policies D1 and EN14 and NPPF paragraph 135.f)). Similarly, conditions 8 and 9 are necessary in the foregoing policy context to safeguard the living conditions of those nearby during construction.
52. Pursuant to the general biodiversity objective and to ensure the ecological effects of the scheme are acceptable with reference to LP policy EN5 and NPPF paragraph 180.d), I have imposed conditions 10 and 11. Condition 12 is also necessary to achieve compliance with LP Strategy 38, noting both the written ministerial statement of 13 December 2023,³⁴ and that there is no dispute between the main parties as to the appropriateness of that condition.
53. The appellant contends that alternative measures aside from the decentralised energy network ('DEN') may have both a lower carbon footprint, and also better align with companies' energy performance expectations of buildings. I acknowledge those points in principle, and understand that the DEN here is currently gas powered. However LP strategy 40 sets out clearly that for development of this scale, connection should be made to a DEN. There is no argument that would be unviable or otherwise unachievable in this instance, and it is EDDC's intention to decarbonise the DEN over time. Accordingly, condition 13 is necessary.
54. Moreover the alternative version of that condition advanced by the appellant appears imprecise and unenforceable, given that it relates to installing measures with a lower carbon footprint than the DEN (inevitably an intricate calculation reliant on multiple assumptions, the details of which are not before me). In any event, condition 13, as advocated by EDDC, requires 'connection to' the DEN, and there are separate provisions for modifying conditions (if, for example, connection to the DEN proved to be unviable within the terms of LP strategy 40).
55. Conditions 14, 15 and 16 are necessary to ensure the development proposed is serviced by adequate cycle storage, electric vehicle charging points and drainage. Adherence to those conditions would, respectively, secure compliance with LP Strategies 5B and 11 and also NPPF paragraph 175.³⁵
56. Paragraph 1.3 of the Government's Statutory Guidance related to Part 2A of the Environmental Protection Act 1990 as amended sets out that the starting point should be that land is not contaminated land unless there is a reason to

³⁴ UIN HCWS123.

³⁵ Notwithstanding the provisions of the Building Regulations 2010 as amended in respect of electric vehicle charging points, condition 15 would ensure provision is made relative to the specific nature of the development proposed in that respect.

consider otherwise. Given the former agricultural nature of the site, and subsequent use storing spoil, the propensity for contamination to be present is likely relatively low, albeit not absent.³⁶ Therefore as a precautionary approach to addressing contamination with reference to NPPF paragraph 189, I have imposed condition 17.

57. Three conditions are necessarily pre-commencement.³⁷ With reference to those conditions undertaking any development has the potential to affect trees, the living conditions of those nearby, or the drainage characteristics of the site. In imposing conditions I have had regard to relevant elements of the NPPF, the PPG and statute. In that context I have amended the wording or form of certain conditions put to me to ensure that all are appropriate, without altering their fundamental aims.

Tom Bristow

INSPECTOR

SCHEDULE 1, CONDITIONS

- 1) The development hereby permitted shall begin not later than 3 years from the date of this decision.
- 2) The development hereby permitted shall be carried out in accordance with the following approved plans 1400, 1401 Rev: A, 1402, 1111 Rev: F, 1114 Rev: C, 1116 Rev: C, 1150 Rev: B, 1160 Rev: C, 1161 Rev: C, 1301 Rev: I, 1100 Rev: Q, 2100 Rev: A, 2300, 1302 Rev: C, 2303, 1304 Rev: B, 2310, 1311 Rev: D, 1312 Rev: B, 1200 Rev: G, 1201 Rev: D, 1210 Rev: H, 1211 Rev: E, 1220 Rev: C, 1230 Rev: B, 856/01 Rev: G, and, insofar as surface materials are shown, plan no. 2115 Rev: D.
- 3) No development hereby permitted shall be undertaken until an arboricultural scheme for the protection of relevant trees and hedgerows has been submitted to, and agreed in writing by, the local planning authority. The arboricultural scheme shall include a tree protection plan in line with the tree constraints plan no. 05730 TCP 21.9.21, and an arboricultural method statement related to any trees, hedges or hedgerows on or adjacent to the site that may be affected by undertaking the development proposed in accordance with the guidance in British Standard 5837:2012, Trees in relation to demolition and construction (or successor document). The arboricultural scheme shall also include details of (i) any relevant arboricultural operations associated with the development proposed, (ii) protection measures for those arboricultural features to be retained for the duration of construction, and (iii) any interventions within root protection areas including the laying of services or drainage with reference to the guidance in volume 4 of the National Joint Utilities Group Guidelines for the planning, installation and maintenance of utility apparatus in proximity to trees (issue 2, 2007) or successor document. The development shall be undertaken in accordance with the agreed arboricultural scheme.

³⁶ PPG Reference ID: 33-003-20190722.

³⁷ Nos. 3, 8 and 16.

- 4) No building hereby permitted shall be occupied until a landscaping scheme has been submitted to, and agreed in writing by, the local planning authority. The landscaping scheme shall be in broad accordance with approved plan nos. 856/01 Rev. G and 2115 Rev: D, and shall include, by way of annotated plans or otherwise, details of: (i) landscaping aims and objectives for the site (ii) maintenance works schedules, both cyclical and intermittent, in respect of existing and new trees, hedges and planting (iii) arrangements for inspection, monitoring and review of the landscaping scheme, (iv) the extent, ownership and responsibilities for management and maintenance of landscaping, (v) details of how landscape management will be funded for the life of the development hereby permitted, and (vi) a programme for undertaking landscaping works. The development hereby permitted shall be undertaken in accordance with the agreed landscaping scheme, including in respect of the agreed programme. Any planting carried out shall be maintained in accordance with the agreed landscaping scheme. Any planting which, within a period of five years from the carrying out of landscaping pursuant to this condition, are removed, or become seriously damaged or diseased, shall be replaced in the next planting season with others of similar size and species.
- 5) Before their use as part of the development hereby permitted, samples or details, or both, of the following external materials and finishes shall have been submitted to, and agreed in writing by the local planning authority: block paving, natural paving slabs, granite setts, bricks (including banding and plinths), spandrel panels, canopies, meter boxes and photovoltaic panels (including in relation to the design, location and method of fixing of photovoltaic panels). The development shall accord with the agreed samples and details.
- 6) No dwelling hereby permitted shall be occupied until the following minimum acoustic performance requirements for glazing and ventilation are met (i) for east and west facing facades, the minimum weighted sound reduction figure related to bedrooms is R_w 37dB, for other habitable rooms is R_w 32dB, the minimum ventilator performance for bedrooms is a normalised level of difference of $D_{n,ew}$ 35dB, for other habitable rooms is $D_{n,ew}$ 32dB, and (ii) for north and south facing facades, the minimum weighted sound reduction figure is R_w 32dB and ventilator performance is a normalised level of difference of $D_{N,ew}$ 32dB.
- 7) Any fixed plant or equipment associated with the development hereby permitted shall operate at a maximum level of 5dB below daytime and nighttime sound levels measured, or predicted, at the boundary of any noise sensitivity property during those times (daytime being 07:00-23:00, expressed as $LA_{90}(1hr)$, nighttime being 23:00-07:00 expressed as $LA_{90}(15min)$). Any measurements and calculations shall accord with British Standard 4142:2014+A1:2019, 'Methods for rating and assessing industrial and commercial sound' or successor document.
- 8) No development hereby permitted shall take place until a Construction and Environmental Management Plan ('CEMP') has been submitted to, and agreed in writing by, the local planning authority, which shall at least include details in respect of: (i) air quality, (ii) dust control, (iii) lighting, (iv) noise and vibration, (v) pollution prevention and control, including an emergency

plan, (vi) monitoring arrangements, (vii) site compound and parking including location and size, (viii) construction traffic management, (ix) waste management during construction, (x) airport safeguarding, and (xi) a detailed soil resources management plan prepared in accordance with the Construction Code of Practice for the Sustainable Use of Soils on Construction Sites (DEFRA, 2009) or successor document. Additionally there shall be no burning of materials or waste on site and no high frequency audible reversing alarms used during construction. The agreed CEMP shall be adhered to throughout construction.

- 9) No works related to the development hereby permitted shall take place outside of the following hours: 08:00 to 18:00 Mondays to Fridays inclusive, 08:00 to 13:00 on Saturdays. No works related to the development hereby permitted shall take place at any time on Sundays or on Bank or Public Holidays.
- 10) No building hereby permitted shall be occupied until an ecological mitigation scheme ('EMS') has been submitted to, and agreed in writing by, the local planning authority. The EMS shall accord with the mitigation, compensation and enhancement measures set out in the associated Updated Ecology Appraisal (Devon Wildlife Consultants, 29 November 2021). No building hereby permitted shall be occupied until measures related to that building have been implemented in line with the agreed EMS. Once implemented as agreed, the EMS shall thereafter be maintained.
- 11) No building hereby permitted shall be occupied until a lighting scheme has been submitted to, agreed in writing by the local planning authority, and implemented as agreed in respect of the relevant building. The lighting scheme shall be in line with the Updated Ecology Appraisal (Devon Wildlife Consultants, 29 November 2021) and accord with the guidance in the Institute of Lighting Professionals' GN08/23 (or successor document). The lighting scheme shall include details of the implications of any lighting on the nearest sensitive receptors, including hedgerows, and include the provision of any mitigation measures (such as shielding, timing of operation, colour temperature, technical specifications, and measures to avoid casting or reflecting light laterally or upwards). Once implemented as agreed, the agreed lighting scheme shall thereafter be maintained.
- 12) Within 6 months of the first occupation of any commercial building hereby permitted, a BREEAM assessment shall have been submitted to the local planning authority confirming at least a 'Very Good' rating for that building. In the eventuality that a 'Very Good' rating cannot be confirmed, the submitted BREEAM assessment shall be accompanied by details of performance improvements to achieve a 'Very Good' rating, along with a timetable for their implementation, which shall in turn be agreed in writing by the local planning authority. Any requisite performance improvements shall be implemented as agreed.
- 13) The commercial and residential dwellings hereby permitted shall be connected to the existing Decentralised Energy Network ('DEN') in the locality; a building shall not be occupied until it is constructed so that the internal systems for space and water heating are connected to the DEN.

- 14) Notwithstanding condition 2, no building hereby permitted shall be occupied until a scheme for secure cycle parking and storage on site has been submitted to, agreed in writing by the local planning authority, and implemented as agreed in respect of the relevant building. Once implemented as agreed, secure cycle parking and storage shall thereafter be maintained solely for those purposes.
- 15) No building hereby permitted shall be occupied until details of associated electric vehicle charging points have been submitted to, agreed in writing by the local planning authority, and implemented as agreed in respect of the relevant building (in line with approved plan 1100 Rev: Q). Once implemented as agreed, electric vehicle charging points shall thereafter be retained.
- 16) No development hereby permitted shall be undertaken until a drainage scheme for the site has been submitted to, and agreed in writing by, the local planning authority. The drainage scheme shall include details of (i) drainage design based on the approved Flood Risk and Drainage Assessment (report ref. 2022.049, Rev. PL03), (ii) the management of surface water and silt runoff from the site during construction, (iii) proposals for the adoption and maintenance of permanent surface water drainage systems, and (iv) how exceedance flows will be safely managed. No building hereby permitted shall be occupied until the drainage scheme has been agreed and implemented insofar as it relates to the relevant building to be occupied.
- 17) If, during the course of undertaking the development hereby permitted, any unforeseen contamination is encountered, measures for remediation shall be submitted to, and agreed in writing by, the local planning authority before development affecting the relevant part of the site proceeds. Development shall be undertaken in accordance with any agreed remediation measures.

SCHEDULE 2, APPEARANCES

For the appellant

Simon Collier	Collier Planning
Paul Withers	Eagle One, Director

For EDDC

Liam Fisher	Senior Planning Officer
Thea Billeter	New Community Manager
James Brown	New Community Officer
Rory Stracey	Trowers + Hamlins, Partner
Sophie Emerson	Trowers + Hamlins, Senior Associate

SCHEDULE 3, HEARING DOCUMENTS

1. Inspector's indicative hearing agenda of 29 January 2024.
2. Inspector's table summarising areas of dispute between the main parties in respect of the UU as of 21 February 2024.
3. Council's officer report in relation to application ref. 22/0975/MFUL and associated plans.
4. Appellant's document entitled 'Layout Evolution' showing changes to the proposal over time.
5. Document setting out the main parties' position on conditions.
6. Appellant's costs application against EDDC in writing.