



Appeal Decision

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

Site visit made on 10 March 2016

by Jonathan Bore MRTPI

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

Decision date: 27 April 2016

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

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

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

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

Application for costs

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

Main Issues

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

(a) Housing land supply

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

- housing supply and that PSBA ought to be included in the calculation up to a cap of 28%. However, there are a number of serious deficiencies in the Council's approach.
9. Firstly, the PPG does not use the terms 'direct release' or 'indirect release' for which there is no definition; it uses the expression 'based on the amount of accommodation it releases in the housing market'. The wording is quite clear, as observed by Mr Justice Hickinbottom, and must be read on its face. There needs to be evidence of accommodation being released in the housing market. Simply suggesting that student in-migration is included in the ONS figures that underpin the housing requirement does not in itself demonstrate the release of accommodation in the housing market. Even if the ONS figures had taken into account a substantial amount of student net in-migration (which itself is doubtful – see below), that would still not show that accommodation had been released in the housing market.
 10. Secondly, it was clear even at the time of the Core Strategy examination in 2011 that growing student numbers were of concern and would contribute to the demand for general housing, as acknowledged at paragraphs 20 and 21 of the Inspector's report. Since then there has been no on-the-ground evidence to demonstrate that the provision of student accommodation has directly released accommodation on to the housing market. On the contrary, the Council tax exemptions graph, which is an indicator of student incursion into the housing market, continues to suggest a strong student presence.
 11. Thirdly, the migration figures for 2003 are not available. It is not disputed that an element of student in-migration may be incorporated in the 2003 ONS figures, but the evidence that it constitutes a substantial component is unconvincing. The email trail between the Council and the Migration Statistics Unit of ONS, submitted by the Council to support their case, highlights the weakness of the evidence. ONS used registrations with the Student Health Centre to calculate student migration data, but these contain inherent unreliability, especially around subsequent de-registration at the end of the study period. International migration is an admitted area of uncertainty. There is a big unaccounted-for difference between population estimates and the 2011 Census result. ONS improvements in methodology since 2003 testify to the deficiencies of the earlier methodologies. The April 2015 paper by Edge Analytics and the work carried out by Devon County Council deal primarily with forward projection related to the 2015 SHMA, and although it is stated that the previous increases in student numbers are reflected in the mid-year population estimates, there is little direct evidence regarding the degree to which student net in-migration was included in the 2003 ONS figures. Although mid-year estimates are available, those projections are based on the assumption that historic flow rates can be projected forward; they may not therefore recognise the impact of accelerated growth arising from the policy changes that sought to expand higher education and the growing national and international reputation of Exeter University.
 12. Fourthly, there is strong evidence to indicate that student net in-migration was substantially underestimated in the migration statistics. The 2003-based population projection for Exeter, broken down into age groups, sourced from the Government's Actuary's Department (Document 20), shows a bulge in the key age groups of 15-19, 20-24 and 25-29, reflecting the number of students in Exeter, but predicts remarkably little growth in these age groups from 2006

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

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

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

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

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

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

(c) The benefits of the scheme

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

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

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

(d) The policy context of the scheme

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

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

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

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

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

(e) The concluding balance

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

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

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

Other matters

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

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

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

Planning obligation and conditions

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

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

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

Conclusion

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

Jonathan Bore

Inspector

Richborough Estates

APPEARANCES

FOR THE LOCAL PLANNING AUTHORITY:

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

FOR THE APPELLANT:

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

INTERESTED PERSONS:

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

DOCUMENTS

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

PLANS

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

Richborough Estates

APPENDIX 1

CONDITIONS

- 1) Approval of the details of the layout, scale, appearance of the buildings and the landscaping of the site (hereinafter called 'the reserved matters') shall be obtained from the local planning authority in writing before any development is commenced.
- 2) Application for approval of the reserved matters shall be made to the local planning authority not later than 3 years from the date of this permission.
- 3) The development hereby permitted shall begin no later than 2 years from the date of approval of the last of the reserved matters to be approved.
- 4) In respect of those matters not reserved for later approval, the development hereby permitted shall be carried out in accordance with the proposed access scheme shown on drawing no 4051 rev B.
- 5) Construction work shall not take place outside the following times: 0800hrs to 1800hrs Mondays to Fridays and 0800hrs to 1300hrs Saturdays, and shall not take place at any time on Sundays, Bank or Public Holidays.
- 6) A Construction Environmental Management Plan (CEMP) shall be submitted to and approved in writing by the local planning authority prior to the commencement of development, and work during the construction period shall be carried out in accordance with the approved details. This shall include details of mitigation measures to control the environmental impact of construction and demolition phases, including site traffic, vibration, noise and dust, as well as details of monitoring, complaints handling and arrangements to meet regularly with the local authority.
- 7) No development shall take place on site until a full investigation of the site has taken place to determine the extent of, and risk posed by, any contamination of the land and until details of any necessary remedial works have been approved in writing by the local planning authority. The buildings shall not be occupied until the approved remedial works have been implemented and details of compliance provided to the local authority.
- 8) Before development is commenced, a noise assessment together with details of any necessary mitigation measures to protect future occupiers of the development against identified inappropriate levels of externally-generated noise shall be submitted to and approved by the local planning authority and any mitigation measures so approved shall be implemented within the relevant part of the development before it is occupied.
- 9) No work in connection with the development shall take place within the site until a written scheme of archaeological work has been submitted to and approved in writing by the local planning authority and the work shall be carried out and completed in accordance with the scheme.
- 10) No more than 50% of the dwellings hereby approved shall be occupied until a new footway and cycle link providing a route between Exeter Road

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

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