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## Appeal Decision

Inquiry opened on 21 June 2016

Accompanied site visit made on 24 June 2016

**by Philip Major BA(Hons) DipTP MRTPI**

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

**Decision date: 22 August 2016**

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**Appeal Ref: APP/W1145/W/15/3136171**

**Land at Heywood Road, Heywood Road, Bideford, 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 Ashfield Land Management Limited against the decision of Torridge District Council.
  - The application Ref: 1/0863/2014/OUTM, dated 15 September 2014, was refused by notice dated 15 September 2015.
  - The development proposed is the demolition of an existing dwelling, erection of up to 200 dwellings, extension of an existing care home, associated multi-use open space, additional car parking for the care home, diversion of a public right of way, and other associated infrastructure, with all matters reserved other than primary access.
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### Procedural and Preliminary Matters

1. The description of development above is taken from the appeal form, which itself is taken from the notice of refusal of planning permission. It is a description which adequately encapsulates the lengthy description set out on the application form. The description includes mention of the diversion of a public right of way. As confirmed at the inquiry, this would be subject to separate proceedings should the appeal be allowed and planning permission granted.
  2. There is an unusual context to the appeal in that a second application was invited by the Council following its decision not to contest this appeal. However, that application was also refused. The second application, which is not before me, included slightly revised details on the illustrative masterplan (3218 Rev F(1)) and a drawing of the proposed emergency access (SK06). I was asked to accept these as part of the current appeal. Given that both of these documents add relevant information without changing the nature of the application it is my judgement that no party would be prejudiced by my acceptance of those documents into this appeal. It was agreed that the illustrative masterplan, though submitted as an application document, does not contain fixed and firm proposals for the proposed development.
  3. As the Council did not contest the appeal the main arguments against the development were advanced by Residents Against Development at Raleigh/Heywood (hereafter RADAR).
  4. The proposal makes provision for the delivery of some 24% affordable housing, or some 48 dwellings in the event that 200 are delivered in total. The existing care facility to the north-east sector of the appeal site would be extended as
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part of the proposal. Public open space would be provided through the centre of the site, including woodland, informal areas and formal play facilities. It is intended that any diversion of the public footpath would generally follow the line of the public open space provision.

5. A Statement of Common Ground (SoCG) was submitted which identifies those matters agreed between the Appellant and the Council. The SoCG identifies the current development plan as the saved policies of the Torridge District Local Plan, adopted in 2004. Although a number of policies are referenced in the SoCG the principal relevant policies in this case are DVT2C (development in the open countryside) ENV1 (conservation interest) and ENV5 (countryside protection and landscape conservation). These are the policies cited in the Council's reason for refusal. In light of the case brought by RADAR and local residents it is also relevant to consider the proposal against Policies DVT18 (impact on traffic) and DVT23 (flood protection and defence).

### **Decision**

6. The appeal is allowed and planning permission is granted for the demolition of an existing dwelling, erection of up to 200 dwellings, extension of an existing care home, associated multi-use open space, additional car parking for the care home, diversion of a public right of way, and other associated infrastructure, with all matters reserved other than primary access on land at Heywood Road, Heywood Road, Bideford, Devon in accordance with the terms of the application, Ref: 1/0863/2014/OUTM, dated 15 September 2014, subject to the conditions set out in the schedule at the end of this decision.

### **Main Issues**

7. The main issues in the appeal are:
  - (a) The effect of the proposed development on the character and appearance of the locality;
  - (b) The impact of the proposed development on ecology and biodiversity;
  - (c) The impact of the proposed development on highway safety;
  - (d) The impact of the proposed development on flood risk.

### **Reasons**

#### **Background**

8. There is no dispute that the Council cannot demonstrate a 5 year supply of deliverable housing land as required by the National Planning Policy Framework (NPPF). Although figures were not debated at the inquiry it is agreed between the Appellant and the Council that there is a serious and significant lack of housing land in the District. I have no reason to disagree with that considered position. I was told about planning permissions having been granted on other sites, but there has been no evidence to counteract the lack of housing sites sufficient to provide the necessary 5 year supply. The lack of housing sites is a weighty material consideration and, as indicated in the NPPF (paragraph 49) means that relevant policies for the supply of housing should not be considered to be up to date. That does not mean that such policies are irrelevant, but that they are likely to carry less than full weight.

9. The appeal site is encompassed by an allocation of housing land in the emerging North Devon and Torridge Local Plan (NDTLP). I am informed that the NDTLP has recently been submitted for examination. Although the outcome of examination is of course unknown it must be the case that the Council is satisfied that the emerging plan, complete with the housing allocation which includes the appeal site, is sound. It is therefore perhaps unsurprising that the Council chose not to contest the appeal.

### ***Character and Appearance***

10. The appeal site is largely unused open land located to the north of Bideford. I am told that one of the fields making up the area has been used for grazing, though at the time of the inquiry there appeared to be no current use with the exception of that area to the north-east of the site. That section is occupied by Rose Hill, a care facility. Most of the land is undulating and generally forms 2 sides of the valley of a small stream. The undulating nature varies from almost flat land to steep sided parts of the valley.
11. To the immediate north is the A39 highway, a major link in north Devon. To the south is housing rising up Raleigh Hill and a large detached property in extensive grounds. To the east is Heywood Road (the A386) the major road into Bideford from the north. The site narrows towards its western boundary where it flanks Lenwood Road, a small lane which links to Northam beyond the A39. A public footpath crosses the site from south-east to north-west.
12. The land has a pleasant charm which is characterised by its rather overgrown nature, the modest size of its component parts and their delineation by hedgerows. A further important characteristic is the wooded area which is established alongside the western stretch of the stream where the valley sides are at their steepest. All of these characteristics are evident within the site, from the footpath running through the land, and from some local viewpoints nearby such as existing residential property. However the site is remarkably well contained in the wider landscape, and although it is possible to see into it from further afield, such as from Chudleigh Fort in East-the-Water, these longer distance views do not provide any real sense that the appeal site contributes materially to the wider landscape character. It has been suggested that the mature trees lining the southern side of the A39 lead to a sense that the appeal site merges seamlessly with the open land to the north. I disagree with that view simply because the A39 is so audible, and in any event much of the land to the north is out of view. It is notable that the land including the appeal site has been included in Landscape Character Area 7 – *Main Cities and Towns*, in the Joint Landscape Character Assessment for North Devon and Torridge. This assessment is the finest grain of assessment available and clearly sees the appeal site as being closely associated with the town of Bideford notwithstanding its lack of development.
13. Given this context it seems to me that the proposed development would have a localised but significant impact. The open and undeveloped parts of the site would, to a degree as yet not fully known, be materially affected by built development. However, the illustrative masterplan demonstrates that it would be possible to retain areas of greenspace and woodland. These areas would mitigate any built development and assist in retaining a good proportion of the openness of the site. As such, although the immediate character of the site

would be substantially altered the impact on the character of the landscape in the wider area would be minor.

14. The landscape is clearly valued by local people as a resource for recreation and I saw during my site visits that the footpath across the site appears to be well used. The footpath would be retained on an amended route, subject to formal diversion. But the land has no formal designation and it would be too simplistic to equate value with local appreciation alone. As I have noted above the land is visually self-contained and its wider visual value is therefore limited. There is no public access beyond that attaching to the public footpath. Although the woodland and open areas of the site are pleasant they are no more than would be expected on the fringes of the majority of towns and villages. In the local area the landscape is unremarkable. Indeed given the nearby landscapes of the Torridge estuary and its associated river valley I have no difficulty in concluding that it would be difficult to regard this particular site as a valued landscape as intended by the NPPF at paragraph 109.
15. It is self-evident that the development proposed would change the visual qualities of the site, and buildings, land regrading and infrastructure would intrude into what is currently open land. There would therefore be a significant visual impact for nearby residents and users of the public footpath across the site. But this impact would, because of the self-contained nature of the site, be restricted in its extent. Although it has been suggested that the site 'reads' as a continuous tract of land with that to the north beyond the A39 I do not agree. It is possible to see development there on the edge of Northam, but as I have noted above there is no real sense that the appeal site is part of a seamless area of open land. Similarly the site does not have a strong visual relationship with the land to the west of Lenwood Road.
16. Visual impact can therefore be summarised (as with the impact on character) as significant but localised. But it is also clear that development of the site would include the potential to add to landscaping, including around the boundaries of the land. This would assist in mitigating the visual impact of the proposal over time.
17. To conclude on this issue I consider that the proposed development would have a locally significant impact on the character and appearance of the area, but that this would be capable of mitigation as part of the development to the extent that the overall impact would be no more than moderate. Nonetheless this impact would run counter to the provisions of development plan Policy DVT2C, which seeks to restrict development in the countryside. This is a policy which would not normally permit housing in this location, and in light of the lack of a 5 year housing land supply it must be considered to be out of date. Given too that the emerging Local Plan identifies the site for development it is apparent that the weight attaching to Policy DVT2C must be curtailed. I consider that it carries limited weight. Policy ENV5 seeks to preserve or enhance natural and historic character. The policy does not to my mind include the requirement to balance planning considerations which is inherent in the NPPF and is therefore not fully in accordance with it. As such the weight of that policy is also reduced.

### ***Ecology and Biodiversity***

18. The site has been subject to much scrutiny and various surveys (both with and without permission of the landowner) in the period before the application,

appeal and inquiry. There is therefore much information available, though some is not agreed between experts. In short, it is apparent that the site currently supports a wide variety of flora and fauna. Clearly the development could not proceed without there being an impact on that situation, and the Appellant agrees that there would be some locally significant effects.

19. The surveys carried out on behalf of the Appellant revealed the undisputed presence of only one European Protected Species (EPS) that being the lesser horseshoe bat which has been found to be roosting in Phayre House (the dwelling to be demolished). But the evidence is that the roost is an 'opportunistic', non-breeding and transitory one resulting from the bats being able to access the property through broken windows caused by vandalism. This does not affect their protected status, but I agree that it is highly likely that a licence for the relocation of the bats would be granted. Natural England has agreed that the loss of the roost would be of a 'low impact'. A replacement bat roost building is included in the illustrative proposals, but this was criticised as being unlikely to be suitable. It is a point of disagreement between experts, but in any event the location and design of any bat roost building has not been fixed and would be included in any reserved matters application. It would also be considered by Natural England during the licencing process and that is not a matter for me to consider. I have no evidence to suggest that there is likely to be any breach of the Habitats Directive (on the contrary the Appellant is well aware of the responsibilities here) and as a result I am satisfied that the presence of a EPS should not weigh against the proposal in principle. There is no need for an appropriate assessment under the Habitats Directive in this case.
20. It was also suggested that the site is likely to be used by otters. The Appellant does not dispute that otters may well transit through the site, but there has been no definitive evidence of occupation. The ecologist representing RADAR appeared sure that otters would use the site, but in the absence of compelling evidence that opinion is not enough to persuade me that that is the case. A similar situation arises from the 'expected' presence of adders or grass snakes. RADAR's ecologist seemed to be sure that they were likely to be on site, but their absence from the surveys carried out on behalf of the Appellant is more convincing. Similarly, RADAR's ecologist's view that the site may be used by hazel dormice cannot be regarded uncritically. The Appellant's survey found no such use and this is the best available evidence.
21. The claims of RADAR's ecologist that the appeal site reaches the standard to be classified as a County Wildlife Site (CWS) have not been made out. The 'scoring' mechanism to achieve that level has not been demonstrated. I note that a request to designate the land as a CWS was turned down by the Devon County Wildlife Trust.
22. The survey carried out of residents nearby cannot indicate any particular species is present on site for two reasons. First, the respondents may well not have the skills to accurately identify particular species. Secondly any sightings may well have been of transitory individuals.
23. There is, however, a breeding population of slow worm. The Appellant has therefore followed the relevant advice and has put in place measures to translocate them. The Devon County Wildlife Trust has agreed with the proposals. Whilst the proposed translocation sites have been criticised by

- RADAR's ecologist, other experts have no such disagreement and I therefore have no grounds to find that the translocation strategy would be unacceptable.
24. With respect to the loss of biodiversity apparent in the grassland at the site the Appellant has instituted a process of offsetting – providing an alternative location or locations which can be managed to replace the area lost. Although the original location for offsetting has now fallen away the relevant body (North Devon Biosphere Reserve) is confident that alternatives are available within a reasonable range. I am also mindful that there would be a loss of ancient hedgerow at the site, though this would be replaced by new planting of greater extent. It is undeniable that new hedgerows will take many years to provide equivalent biodiversity, but nonetheless this is not a case where there would be loss of biodiversity without future provision. The old orchard to the south of Rose Hill would be removed and replaced with a new orchard. The old orchard is undoubtedly a rich ecological resource because of its age and over maturity, but it seems to have no value as an orchard. It is a small area and it seems reasonable to me to remove the old orchard and replant, again acknowledging that the same levels of biodiversity will take time to be reached.
25. The site is one of a number in the locality which it has been suggested form an important network of biodiversity. These principally include the open land at the Kenwith Valley Nature Reserve to the south, and around Godborough Castle to the west. However, it was conceded that the links between Kenwith Valley and the appeal site are 'not the strongest'. I accept that some interaction between the sites is likely to take place, but there is no evidence that the links between any of the locations brought to my attention is so crucial to biodiversity that it should play any role in determining this proposal.
26. Paragraph 109 of the NPPF makes it clear that development should seek to minimise impacts on biodiversity, and provide net gains where possible. The Appellant suggests that there would be a net gain in this case. I am not persuaded of that. However, I am satisfied that the impacts of the development would be minimised and mitigated to an acceptable degree such that there would be, at worst, a neutral impact. The acceptance of the proposals by the relevant wildlife and biodiversity bodies is testament to that.
27. Taking this issue in the round I am satisfied that the Appellant has provided the necessary survey information, backed by mitigation, to make the proposal acceptable in terms of biodiversity. There would be some locally significant effects, but these would be dealt with by translocation and offsetting. The evidence of RADAR's ecologist, much of it unsubstantiated and based on assertion, does not provide any reasons why the proposal should be turned down on the grounds of impact on ecology and biodiversity.
28. Development plan Policy ENV1 requires that development should maintain or where possible enhance biodiversity, the richness of wildlife habitats, and the variety of natural interest. The Policy also indicates that any mitigation measures may be secured by condition or obligation (which is the case here). Hence, for the reasons set out above, I am satisfied that the proposal is not in conflict with the development plan.

### **Highway Safety**

29. This issue is not contested by RADAR but was argued by local residents. The Highway Authority, Devon County Council, has no objections in principle to the

scheme. Access to the site would be taken from Heywood Road, the access to Rose Hill being widened in order to facilitate the expected traffic flows. A secondary access would be provided for emergencies at the Lenwood Road end of the site. Heywood Road is the approach to the A39/A386 roundabout. It has a relatively steep gradient from south to north.

30. There was some concern expressed at the inquiry that Heywood Road had been consistently described by the Appellant as a local distributor road, whereas it is a Maintenance Category 3/Class 1 County road. I have no reason to believe that the Highway Authority has not been aware of the class of road being dealt with, and responded to the application as such. Hence incorrect terminology is of limited consequence, but I have considered this proposal on the basis that Heywood Road is a strategic route through the County and takes the type of traffic commensurate with that role. Indeed I was able to spend much time outside the inquiry seeing and experiencing the use of the road. What matters is whether it has been demonstrated that the highway network is capable of taking the traffic flows from the site without (to use the words of the NPPF) resulting in residual cumulative impacts which are severe. If that is avoided then, all other matters being satisfactory, matters relating to traffic and highway safety should not in themselves be a reason to refuse planning permission.
31. There are acknowledged errors and inconsistencies in the Appellant's Transport Assessment (TA). As a result of this being drawn to the attention of the Highway Authority an independent report was sought by the County Council. The independent report was critical of the TA in some respects, but having made allowances for its shortcomings it reached a conclusion that there are no reasonable grounds for refusing the proposal on transport grounds subject to contributions being made towards offsetting highway improvements.
32. I acknowledge all of the issues raised by local residents here. For example the points that traffic counts were not made in neutral months, that the modal split assumptions for the site may be open to question, and that the TRICS database may not have generated a like for like situation. But it is worth pointing out that traffic forecasting is not and cannot be exact. It is an exercise in predictions using a number of variables and assumptions. The basis for the TA was accepted by the Highway Authority, and 'audited' independently. Despite its shortcomings the predictions are that the proposed access would lead to roads operating within capacity. It is difficult to argue against that expert assessment.
33. But to be fair to local residents I have, as noted above, spent time experiencing the roads around the site outside the inquiry process. This was during peak hours and at other times. Although it cannot replicate a TA my observations enable me to form a view on whether the TA is realistic.
34. Heywood Road is a busy road. It has a fairly consistent stream of traffic commensurate with its strategic place in the network. During my observations there were times when traffic entering the road from side junctions had to wait before entering the main flow. This is not unusual, and there can be no doubt that the proposed development would add to the flow on the main highway. However, I accept the generality of the predictions for the increased traffic likely to be generated by the scheme. This is a low percentage figure and

- would not make a significant difference to the overall quantum of traffic flows on Heywood Road. It would not result in a severe impact.
35. The visibility at the proposed junction seems to me to be adequate. This is a 30mph stretch of highway on the approach to the A39 roundabout and traffic speeds are not high. The County Highway Authority clearly concurs with that. I understand the concerns relating to the fact that the right turn lane from the north would be less than the ideal standard, but it seems to me that it would be adequate for a turn into a street serving a limited number of dwellings and a care facility. Similarly, although the development would entail the narrowing of the footpath along Heywood Road to enable the construction of the right turn lane, there would still be an adequate footway. The discontinuity of the footpath on the east side of the road exists now, and I do not agree that any extra hazard would be caused by the relatively few extra vehicles entering the highway here.
36. I do not seek to suggest that the concerns of local residents are not material, and it is important to maintain the best possible standards of highway safety. But the evidence here is that the highways are safe. There have been some recorded accidents, though these are not numerous and many are associated with the use of the roundabout to the north (rear end collisions). Although criticised by residents the safety audit carried out did not identify significant difficulties.
37. The secondary access to Lenwood Road would be intended for use in emergencies. Hence there would be no daily use of it by general traffic, so restricting any increase in vehicles using Raleigh Hill. I see no difficulty with that situation.
38. The TA considered the question of locational sustainability of the site. In my view it can be described as a sustainable location. It is a short walk to the nearest large supermarket for daily needs, and the walk to the town centre is some 20 to 30 minutes at a gentle pace. There is a good bus service past the site entrance which serves Bideford, Barnstaple and other towns. Not all residents would choose to walk (or indeed cycle) but it would be an option which could be taken advantage of from this site.
39. To sum up on this issue I accept that it would be possible to create a new access on the Heywood Road which would not cause severe residual impacts to the existing network in terms of either capacity or safety. Although the concerns of local residents are understandable and I have given them much attention, I cannot conclude that the defects in the work carried out on behalf of the Appellant's are such that it can be wholly disregarded. Nor do I accept that the likely traffic flows from the appeal site would exacerbate highway conditions to the extent suggested. The appeal site is a sustainable location in transport terms and, whilst the access proposed may not exactly match the requirements of the Design Manual for Roads and Bridges, the Highway Authority has accepted that the proposal is safe and suitable subject to contributions being made towards highway improvements (which I deal with later). On balance I have no reason to disagree with the conclusion of the Highway Authority. There is no conflict with Policy DVT18 of the development plan, or with the NPPF.



### **Flood Risk**

40. There would be no risk of direct flooding of proposed properties on the site because of its topography; such a possibility can be designed out. In any event the vast majority of the land is in flood zone 1, only that adjacent to the stream being remotely at risk from any surface water flooding. However, the area downstream from the appeal site has been flooded in the past and I was provided with documentary and photographic evidence of those events. They are not in dispute. Nor is there any dispute that the area downstream is described as a 'critical drainage area' (CDA) by the Environment Agency (EA). What is crucial, therefore, is that any development of the appeal site must not add to the potential for flooding downstream.
41. In order to prevent downstream impact it would be necessary to incorporate attenuation on site such that surface water would not be released in such quantities as to cause difficulty. That requires on-site storage and it is this matter which is at the heart of the concerns of RADAR. Put simply RADAR is not convinced that adequate storage could be provided.
42. The EA has a preference for sustainable urban drainage systems (SUDS) which would incorporate above ground storage. However, that is not mandatory and some underground storage cannot be ruled out. During consideration of the application the EA objected to the proposals as shown on the illustrative plans and in the flood risk assessment (FRA). This was in part because of the proposal to use underground storage. Continuing discussions resulted in the agreement of the EA to the proposals as evidenced in their response of 27 August 2015. That is on the basis of the illustrative details supplied and which are before me in this appeal. There is therefore no doubt that despite initial concerns the EA is now content with the proposal.
43. I have been supplied with storage calculations for the site prepared on behalf of RADAR. This suggests that the area given over to storage on the illustrative masterplan is inadequate and would need to be roughly doubled. In acknowledging those calculations it must be pointed out that the masterplan is what it says – illustrative. It cannot therefore be relied upon as showing any exact locations for particular features. As pointed out by the Appellant an entirely open attenuation scheme is unlikely to be feasible, but it would be possible to rely on an approach which combines both open and enclosed storage. I accept that this is the most sustainable approach on this site. In my judgement there is a clear case here that a 'combined' storage approach offers a way of ensuring adequate retention and control of surface water. On that basis I cannot conclude that there is a case for finding that flood risk would be unacceptable. As such there is no conflict with development plan Policy DVT23.

### **Other Matters**

44. Rose Hill is a Grade II listed building. Whilst it has been suggested that the boundary wall to Heywood Road is also listed I do not agree. It is clear from evidence that the wall was built, and the entrance relocated, as part of the works associated with the construction of the Bideford bypass and straightening of Heywood Road. Since that took place after 1948 the wall does not benefit from listed status and is not mentioned in the listing. However, even were the wall to be accepted as part of the listing the alterations proposed to the frontage wall are such that there would be no material impact

given that it would only entail slight widening of an existing entrance. The form of the wall and its splays at the access would be retained.

45. However, the proposal has the potential to impact on the setting of Rose Hill itself, and Woodville which lies to the south. The setting of each of these buildings is closely associated with their immediate garden areas and each has been much changed over time. Both properties take access from long driveways and this means that the buildings themselves are partly concealed by vegetation. Each also has strong boundary features between it and the proposed site for development. In this context the introduction of development would have little effect on the significance of the buildings as substantial villas on the edge of Bideford, and there would be no impact on the interpretation of their place in the growth of the town. In the case of Woodville it is proposed that the new orchard would be close to the boundary, and this would further delineate its self-contained setting. On the basis of the evidence submitted and the opportunity at reserved matters stage to ensure good design and layout I am satisfied that there would be no impact on the setting of these buildings.
46. I have been provided with a number of other appeal decisions. Without exception each deals with a different set of circumstances and is not directly comparable to the case here. For example, APP/W1145/A/14/2224155, dealing with Knapp House Activity Centre was significantly different in that it was for a very different type of development, within a Coastal Protection Area, and required an Environmental Impact Assessment. The appeal relating to a retirement care village (APP/W1145/A/09/2106479) was different in being pre-NPPF, with different access proposals including the use of Raleigh Hill and Lenwood Road, and in a different development plan context. Other cases brought to my attention have similarly different characteristics such that they do not provide material assistance in this case.
47. I have noted the concern expressed in relation to the change which would be likely to take place to the public footpath through the site. To some extent this is dealt with in the section above dealing with landscape. However I acknowledge that the experience of using a diverted footpath here would be altered in that it would entail walking past housing. But a significant part of the route would still be likely to be through green space and woodland. As such, and given that this is a relatively short section of path, I do not consider that any change would be sufficiently detrimental to weigh against the proposal.
48. There have been other concerns raised by local residents which I deal with briefly here. First, property value is not a matter which I can take into account as it cannot carry any weight in land use planning decisions. Secondly I recognise that views from some houses would be affected by development. However, there is no right to a view as such and I have dealt with the wider impact of visual impact above. There are no homes brought to my attention in which the impact of the development would be so severe that it would make them unsuitable places to live. Therefore the impact on views from individual properties is not a matter to which any weight can attach. Local people have expressed concerns that schools and medical facilities would not be able to cope with the influx of residents from the appeal site. However the relevant authorities are not objecting to the proposal on those grounds, and where

necessary have requested contributions to enable capacity to be increased. I deal with the matter of contributions later.

49. The comments of the Local Plan Inspector made in 2003 have also been raised. At that time the land was proposed for allocation (site BID6). The Inspector recommended that it be omitted for a number of reasons. These included the open nature of the land in the setting of Bideford, difficulties with access, the low density nature of the proposal, and the fact that the land was perceived as part of a visual break between Bideford and Northam. Those concerns were made in a different context, pre NPPF, and quite possibly before the landscaping alongside the A39 had matured. In any event I do not agree that as seen today the appeal site forms any significant role in either defining the setting of Bideford or in defining the gap between Bideford and Northam, for the reasons set out earlier in this decision. Circumstances now are therefore materially different.

### **Conditions and Obligation**

50. A list of planning conditions was agreed between the Council and the Appellant. I have used this as a basis for considering what conditions would be appropriate in the event of the appeal being allowed. I have also taken into account the views of other parties. Where necessary I have simplified and re-worded conditions for clarity, reasonableness and precision. Some of the proposed conditions were agreed to be unnecessary.

51. It is reasonable and necessary to impose conditions dealing with the following matters:

- Adherence to the agreed plans under consideration (in order to make clear the parameters of the permission)
- Agreement to a phasing scheme (in order to ensure the site is developed in a suitable manner)
- Construction of access points, highway drainage and parking/garaging to agreed specifications in a phased manner (in the interests of highway safety)
- The requirement for detailed drainage plans for the site before development commences (in the interests of flood and pollution avoidance)
- The approval of a construction management plan, including waste management (to ensure disruption is minimised and waste properly dealt with)
- The approval of tree protection measures, and arrangements for future management of trees (in the interests of biodiversity protection)
- The approval of a landscape and ecological management strategy (LEMS) and plan (LEMP) (in order to safeguard ecology on site)
- Investigation of any potential for contamination and its disposal (in order to avoid risks from any contaminated land)
- The implementation of archaeological investigation (in order to protect any archaeological remains)
- The implementation of a travel plan (in order to minimise the impact of development on the local highway network)
- Approval of biodiversity offsetting details (in order to protect and where possible enhance biodiversity locally)

- Limitations on the hours of work on site during construction (in order to minimise nuisance to local residents)
52. A signed and dated planning obligation pursuant to S106 of the 1990 Act has been submitted which includes agreement to pay sums towards particular infrastructure which would be affected by the proposed development. These are sums for highway improvements, educational facilities, and biodiversity offsetting. In addition there is a commitment for the provision of affordable housing, for the translocation of reptiles, for the provision of on-site public open space, and that the C2 units forming part of the scheme are retained as such. I have considered these provisions in the light of the Community Infrastructure Levy (CIL) Regulations and agree that each meets the tests set out<sup>1</sup>. I have also considered the CIL compliance statement submitted and I am satisfied that the obligation meets the necessary standards.

### **The Planning Balance**

53. This is a case where there is an undisputed lack of a five year supply of deliverable housing land. As such the Council's policies relevant to the supply of housing must be considered to be out of date. The lack of housing supply is a significant matter in favour of the proposal and carries substantial weight.
54. Landscape impact to both character and visual amenity would be localised though of some significance. In a wider context this would be less significant, with an overall moderate impact. Although there is conflict with landscape protection policies these are of reduced weight in this instance.
55. In relation to ecology and biodiversity the development would seek to mitigate any impact, and where possible achieve a net gain. This matter does not weigh against the proposal. There is no conflict with the development plan.
56. Similarly, in relation to flood risk I am satisfied that the development could be suitably mitigated. Again, this does not weigh against the proposal and there is no conflict with the development plan.
57. The concerns of local residents that the development would add to highway congestion and reduce safety have not been made out. I have no persuasive evidence that the development could not be absorbed into the local transport network. The site is sustainable in transport terms and is not in conflict with the development plan.
58. Turning to the NPPF and the 3 dimensions of sustainability I am satisfied that the economic benefits of the proposal would be strong, including the creation of jobs, the addition of spending power to the local economy and the new homes bonus. Social gains would also be significant. Apart from meeting general housing needs there would be an important provision of up to 48 affordable homes. Environmentally the impact of development would be limited in landscape terms. In addition the location of the site offers the potential for reductions in car use, which would be an environmental benefit. The development would also offer the potential for greater public open space within the site which would be available to all. Taken in the round I am therefore satisfied that the site is sustainable in NPPF terms, and that the provisions of paragraph 14 of the NPPF are engaged. Given that I have found that there

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<sup>1</sup> Necessary to make the development acceptable in planning terms; directly related to the development; fairly and reasonably related in scale and kind to the development.

would be no harm to heritage assets or other locations set out in footnote 9 of the NPPF there is no imperative that development should be restricted.

59. This is a case where NPPF paragraph 14 is clear that planning permission should be granted unless any adverse impacts would significantly and demonstrably outweigh the benefits when assessed against the policies in the NPPF as a whole. For the reasons I have set out above I do not find that there would be any significant and demonstrable harm which would outweigh the substantial benefits flowing from the provision of much needed housing, including a significant element of affordable housing. There is limited conflict with the development plan which in this case is clearly outweighed by other considerations. With the imposition of appropriate conditions the balance lies firmly in favour of the proposal.

### **Conclusion**

60. For the reasons given above I conclude that the appeal should be allowed.

*Philip Major*

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 takes place and the development shall be carried out as approved.
- 2) Application for approval of the reserved matters shall be made to the local planning authority not later than 3 years from the date of this permission.
- 3) The development hereby permitted shall take place not later than 2 years from the date of approval of the last of the reserved matters to be approved.
- 4) The development hereby permitted shall be carried out in general accordance with the following plans and drawings:
  - Site Location Plan (140311\_ASHA2015\_1008 Rev A)
  - Illustrative Masterplan (3218 Rev F(1))
  - Topographical Surveys (U13255\_3D\_SX, sheets 1-7)
  - Illustrative Landscape Strategy (2788/08J)
  - Section G Site Entrance (4207)
  - Section F Site Entrance (4208)
  - Proposed Site Access Arrangement (Figure 6.1 Rev E)
  - Proposed Site Access Arrangement Swept Analysis Plan (SP01)
  - Proposed Emergency Services Access Arrangement (SK06)
  - Reptile Receptor Location Plan

- 5) The details required by Condition No 1 shall include:
  - A) all boundary treatments, including replacement hedgerows and Devon hedgebanks;
  - B) the specification and position for fencing for the protection of all retained trees and groups of trees, which shall be erected prior to any development and be retained until the development has been completed and all equipment, machinery and surplus materials have been removed.
- 6) No development shall take place until a management plan for the trees and hedgerows/hedgebanks on site has been submitted to and approved in writing by the local planning authority. Development shall be carried out in accordance with the approved management plan. Any trees or plants which within a period of 5 years from the completion of the development die, are removed or become seriously damaged or diseased shall be replaced in the next planting season with others of similar size and species.
- 7) No development shall take place until a phasing programme has been submitted to and approved in writing by the local planning authority. Development shall then be carried out in accordance with the approved programme.
- 8) No other part of the development hereby permitted shall be commenced until the new access, visibility splays and right turn lane on Heywood Road are constructed, laid out and retained for that purpose in accordance with the details shown on the approved plans.
- 9) The site access road to any housing phase shall be hardened, surfaced, drained and retained thereafter for a distance of not less than 20 meters back from its junction with the spine road prior to commencement of any other part of that phase of development.
- 10) Provision shall be made within the site for the disposal of surface water so that none drains on to any County Highway. The works shall be implemented within the agreed phasing of development.
- 11) The occupation of any dwelling in an agreed phase of the development shall not take place until the following works have been carried out:
  - A) A site compound and car park have been provided in accordance with details to be submitted to and approved in writing by the local planning authority;
  - B) The spine road, visibility splays and cul-de-sac carriageway including visibility splays and turning head within that phase has been laid out, kerbed, drained and constructed up to and including base course level, the ironwork set to base course level and the sewers, manholes and service crossings completed;
  - C) The spine road and cul-de-sac footways and footpaths which provide that dwelling with direct pedestrian routes to an existing highway maintainable at public expense have been constructed up to and including base course level;
  - D) The street lighting for the spine road and cul-de-sac and footpaths has been erected and is operational;
  - E) The car parking and any other vehicular access facility approved for the dwelling has been completed;

- F) The verge and service margin and vehicle crossing on the road frontage of the dwelling have been completed with the highway boundary properly defined;
- G) The street nameplates for the spine road and cul-de-sac have been provided and erected.
- 12) Any garage/hardstanding and parking spaces provided shall be in addition to and separate from provided turning spaces. Hardstanding areas shall be permeable unless otherwise approved in writing by the local planning authority.
- 13) The secondary emergency access shall be constructed in accordance with details which shall be submitted to and approved in writing by the local planning authority. The details shall specify the method of retaining the access for emergency use only, and shall be so retained. The secondary emergency access shall be provided in accordance with the approved details prior to the occupation of the 100<sup>th</sup> dwelling on site.
- 14) No dwelling shall be occupied until a Residential Travel Plan (RTP) has been submitted to and approved in writing by the local planning authority. The RTP shall detail transport mode split targets and measures to reduce car trips, and how this will be monitored and reviewed on an annual basis. The RTP shall also detail the information to be provided to each dwelling as part of the Travel Welcome Pack, including travel vouchers and the mechanism for their use. The RTP shall be carried out as approved.
- 15) No development shall take place until a detailed surface water drainage management plan has been submitted to and approved in writing by the local planning authority. The surface water drainage management plan shall be informed by the programme of approved BRE Digest 365 Soakaway Design (2007) percolation tests, in accordance with the principles set out in the Flood Risk Assessment (Report Ref R/C 13459/001.08, dated 15 May 2015).
- 16) No development shall take place until a Construction Management Plan (CMP) has been submitted to and approved in writing by the local planning authority. This shall detail the method of construction, including the control of noise, vibration and dust from the site, and shall include a waste audit statement for each strategic phase of the development. Development shall be carried out in accordance with the approved CMP.
- 17) No development shall take place until a Construction Environmental Management Plan (CEMP) has been submitted to and approved in writing by the local planning authority. This shall include measures in line with the Environment Agency's Pollution Prevention Guidelines and the SUDS detail and shall include details of mitigation measures to prevent and/or minimise any detrimental impact from construction works. The approved CEMP shall be implemented as approved.
- 18) No development shall take place until a Landscape and Ecological Management Strategy (LEMS) has been submitted to and approved in writing by the local planning authority. The LEMS shall detail all mitigation and enhancement measures detailed in the following documents:
- Ecological Impact assessment Report (EAD August 2014)

- Ecological Impact Assessment Addendum Report (EAD September 2014)
- Phayre House Bat Survey Addendum Letter (EAD 3 October 2014)
- EAD Ecology letter dated 26 February 2016

The LEMS shall set out landscape and ecological management objectives for the site; pre-construction, construction and post-construction management actions; monitoring actions and action responsibility. Development shall be carried out in accordance with the approved LEMS.

- 19) No development shall take place until a Landscape and Ecological Management Plan (LEMP) has been submitted to and approved in writing by the local planning authority. The LEMP shall be based on the LEMS and shall be carried out as approved.
- 20) No development shall take place until details of the location, size, biodiversity assessment metric of the site to be proposed to be managed to offset residual biodiversity impacts of the development have been submitted to and approved in writing by the local planning authority. The details shall accord with the North Devon UNESCO World Biosphere Reserve Offsetting Strategy 2013-2018 and be carried out as approved.
- 21) No development shall commence until an assessment of the risks posed by any potential contamination, carried out in accordance with British Standard BS 10175: Investigation of potentially contaminated sites - Code of Practice and the Environment Agency's Model Procedures for the Management of Land Contamination (CLR 11) (or equivalent British Standard and Model Procedures if replaced), shall have been submitted to and approved in writing by the local planning authority. If any contamination is found, a report specifying the measures to be taken, including the timescale, to remediate the site to render it suitable for the approved development shall be submitted to and approved in writing by the local planning authority. The site shall be remediated in accordance with the approved measures and timescale and a verification report shall be submitted to and approved in writing by the local planning authority. If, during the course of development, any contamination is found which has not been previously identified, work shall be suspended and additional measures for its remediation shall be submitted to and approved in writing by the local planning authority. The remediation of the site shall incorporate the approved additional measures and a verification report for all the remediation works shall be submitted to the local planning authority within 30 days of the report being completed and shall be approved in writing by the local planning authority.
- 22) No development shall take place until a scheme for a programme of archaeological work in accordance with a written scheme of investigation of the site has been submitted to and approved in writing by the local planning authority. Development shall be carried out in accordance with the approved schemes.
- 23) Construction works shall take place only between 0800 and 1800 on Mondays to Fridays, 0800 and 1300 on Saturdays, and shall not take place at any time on Sundays or on Bank or Public Holidays.



## **APPEARANCES**

### *FOR THE LOCAL PLANNING AUTHORITY:*

Mr P Robson Of Counsel  
He called:  
Mr D Green MA MRTPI Planning Manager, Torridge District Council

### *FOR THE APPELLANT:*

Mr R Harris Queen's Counsel  
He called:  
Mr J Cooper BSc(Hons) Director, SLR Consulting Limited  
DipLD FLI AILA  
Mr M Jones BSc MSC Director, EAD Ecology Limited  
MCIEEM CEnv  
Mr R Peters BSc(Hons) Executive Director, Turley  
DipTP MRTPI

### *FOR RESIDENTS AGAINST DEVELOPMENT AT RALEIGH/HEYWOOD (RADARH):*

Mrs M Cox  
She called:  
Mr T Barstow Local resident  
Mr J Day BSc(Hons) Independent ecologist  
Mr K Funnell BA(Hons) Retired landscape architect  
DipLD MPhil

### *INTERESTED PERSONS:*

Mrs A Yeo Local resident  
Cllr P Christie District Councillor  
Mrs Eastman Local resident  
Mrs Winfield Local resident on behalf of Mrs Badcock  
Mr P Hames For Northam Town Council, and on his own  
behalf  
Mr F Branch Local resident  
Cllr S Robinson District Councillor

## **DOCUMENTS SUBMITTED BY MAIN PARTIES AT THE INQUIRY**

### **From the Council**

- 1 Opening Submissions
- 2 Copy of TDLP Policy DVT20
- 3 Closing Submissions

### **From the Appellant**

- 4 Opening Submissions
- 5 Surface Water Drainage Strategy Plan (also in CD40)
- 6 Agreed Plans Schedule
- 7 Letter from North Devon Biosphere dated 8 June 2016
- 8 Plan of heritage land classification

- 9 Draft S106 Agreement
- 10 Community Infrastructure Levy Compliance Statement
- 11 Judgement in Cheshire East and SoS CLG/Rowland Homes Ltd
- 12 Copy of TDLP Policy DVT11
- 13 List of conditions agreed with the Council
- 14 Closing Submissions

**From RADAR**

- 15 Opening Statement
- 16 Email exchange with Devon Wildlife Trust, January 2015
- 17 Email from Devon Wildlife Trust dated 27 March 2015
- 18 Information from Prof J Altringham
- 19 Closing Statement

**DOCUMENTS SUBMITTED BY THIRD PARTIES AT THE INQUIRY**

- 20 Statement and documents from Mrs Yeo
- 21 Statement and photographs from Cllr Christie
- 22 Statement of Mrs Winfield
- 23 Statement of Mr Hames
- 24 Statement and documents from Cllr Robinson

**DOCUMENTS SUBMITTED POST INQUIRY BY AGREEMENT**

- A Retention pond assessment submitted by RADAR
- B Response by the Appellant
- C Signed and dated S106 Agreement

Richborough Estates