



Appeal Decision

Inquiry held on 20, 21, 22 & 23 March and 12 April 2012

Site visit made on 12 April 2012

by Jessica Graham BA(Hons) PgDipL

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

Decision date: 1 June 2012

Appeal Ref: APP/X1165/A/11/2165846

Land at Area 4 South, Riviera Way, Torquay, 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 Cavanna Homes (South West) Ltd against the decision of Torbay Council.
 - The application Ref P/2010/1388/MOA, dated 7 December 2010, was refused by notice dated 25 November 2011.
 - The development proposed is up to 155 dwellings with associated access, landscaping and public open space.
-

Decision

1. The appeal is allowed and planning permission is granted for up to 155 dwellings with associated access, landscaping and public open space on land at Area 4 South, Riviera Way, Torquay, Devon in accordance with the terms of the application, Ref P/2010/1388/MOA, dated 7 December 2010, subject to the 11 conditions set out in the schedule attached to this Decision Letter.

Procedural matters

2. The planning application was submitted in outline, with details of access provided, but details of scale, layout, appearance and landscaping reserved for future consideration. My determination of the appeal proceeds on that basis.
3. On 27 March 2012 the government published the National Planning Policy Framework ("the Framework") which replaced most extant national Planning Policy Statements and Guidance with immediate effect. The parties have had the opportunity to make representations as to its impact on their respective cases, and its provisions have informed my determination of this appeal.
4. On the final day of the inquiry, the appellant provided an executed S.106 Unilateral Undertaking. I have taken the existence of this legal deed into account, and discuss its content and implications below.

Main issues

5. I consider the main issues to be
 - (a) the effect that the proposed development would have upon the character and appearance of the area; and
 - (b) whether the proposal includes adequate mitigation for any adverse impact it would have upon local infrastructure, and upon the biodiversity of the site.

Reasons

Background

6. I am aware that the appeal site, which extends to some 8.95ha and is known locally as "Scotts Meadow", has an extensive history in terms of disputed planning designations and applications. Be that as it may, the current position is that no part of the site is, or has ever been, developed. The site is designated an "Urban Landscape Protection Area" (ULPA) by virtue of saved Policy L5 of the Adopted Torbay Local Plan 1995-2011.
7. That Policy states that within ULPAs, development which would seriously harm the value of the area as an open element within the townscape, and the contribution it makes to the quality of the urban environment, will not be permitted. The explanatory text to Policy L5 advises that some ULPAs act as local vantage points, some as amenity open space and others as landmarks in the local scene; in some cases they perform all three roles. It goes on to say that while Policy L5 does not necessarily preclude all development in ULPAs, it will be necessary to demonstrate that the quality of these areas is retained.
8. The appeal site is privately owned, and while there is evidence that the public have had access for recreational purposes in the past, there is no evidence that any public right of access now subsists. The appeal site does not, therefore, function as a local vantage point, or provide any open amenity space. The principal value of this particular ULPA lies instead in the visual contribution it makes to the quality of its surroundings.

The existing situation

9. The Council and the appellant were unable to agree on whether the site could best be characterised as part of the countryside, or part of the suburban townscape. It is surrounded on three sides by urban development, and separated from the countryside to the west by Kingskerswell Lane. This adjoining countryside is a designated Area of Great Landscape Value (AGLV), and is, in the main, managed farmland. The appeal site is not included within the AGLV designation. Its natural topography was altered in the course of the construction of the A3022 Riviera Way along its southern boundary, with the cutting required for this dual carriageway shaped so that the landform blended back into the field above. Parts of the site were stripped of topsoil and used as a contractor's compound, then subsequently re-seeded with a wildflower mix. Large areas of bramble and scrub abound, and are periodically cut back.
10. In my judgment, the character of the appeal site is distinct from that of the neighbouring countryside. Rather than forming a continuation of the adjoining rural farmland it has the appearance of an open, green space that is part of – albeit lying at the edge of – the suburban townscape. I am confirmed in this view by the language of Policy L5, which describes it as an "Urban" Landscape Protection Area, and talks about its value as part of the "townscape" and its contribution to the "urban environment".
11. On that basis, I do not share the Council's concern that the proposed development would undermine the important break in development between Torquay and Kingskerswell, or in any way serve to encourage the coalescence of the two settlements. The intervening countryside is protected by robust planning policy, and any applications for development within it would have to be determined on the basis of their own specific merits.

The impact of the proposed development

12. The current proposal would leave some 51% of the total area of the appeal site undeveloped. A substantial proportion of the existing hedgerows and grassland would be retained, and the proposed scheme would include a play area and park, a trim trail, two pocket gardens, informal open space and grassland areas. A 50m wide tranche of undeveloped land would be retained in the southern part of the site, parallel with Riviera Way, and a 1.52ha open space in the western part of the site would be managed as a wildflower meadow. While I accept that these provisions would, in the words of the Torbay *Landscape Character Assessment*, constitute “generous green infrastructure”, it is important not to underestimate the impact of building on what is at present a green and open site.
13. The site is most visible from the slopes of Shiphay, the residential development on the opposite side of the valley. I saw that many of the dwellings here have views across the valley from their windows, gardens and sitting-out areas, and the appeal site is also visible from many of the roads and green spaces within Shiphay. Its location near the start of Riviera Way, a main arterial route in and out of Torquay, means that the openness of the appeal site also plays a role in the visual transition from the built-up area to the neighbouring countryside.
14. As I have noted above, the value of the appeal site as an open space lies primarily in the visual contribution it makes to the quality of the townscape. This is much appreciated, and highly valued, by local residents. Its openness provides welcome relief from development, and acts as an attractive setting to the urban environment. Constructing new houses on half of it would detract from its ability to perform these functions, and in that sense, the proposed development would clearly be harmful.
15. However, the extent of that harm would be limited, in my judgment, by the careful thought that has gone into the landscaping proposals. The green infrastructure and the retention of open space in the southern and western parts of the site would help to soften the impact of the development in wider views, while the grouping of the houses in the north-eastern part of the site would relate well to the adjoining residential development to the north.
16. The fact that the appeal site lies some distance away on the opposite side of the valley means that in views from Shiphay, it is seen in the context of its suburban surroundings. From the lower slopes of Shiphay, the new development would be seen against the foil of the mature trees along the railway and dual carriageway in the foreground. From higher up the hillside there would be direct views over the trees in the bottom of the valley, but with other intervening properties also in view. Similarly, from Swallowfield Rise, the new housing would be seen against the backdrop of the existing dwellings of Shiphay and Edginswell. New residential development in this context would not, then, be inherently out of keeping with the suburban character of its setting.
17. The proposed housing would be set back from the Riviera Way road corridor by some 50m, behind a new line of trees, and the steep, open cutting slope along this southern boundary would be retained. The comparative levels would mean that in views from Riviera Way heading toward Torquay, very little of the proposed housing would be visible above this slope. Heading out of Torquay, the new houses would be more readily apparent but views across the open

western part of the site would be retained, as would longer distance views to the rural landscape straight ahead.

18. There are, in this case, other factors which impact on the value of the appeal site as an open element within the townscape, and the contribution it makes to the quality of the urban environment. In terms of accessibility, the proposed development would improve the existing situation. It would open up a large part of the site to the public, providing attractive open space that people would not only be able to look at, but be able to use for walking and recreation.
19. Since the proposed development would result in the loss of open green space, I can understand concerns about its ecological impact, including the loss of habitat and plant species. However, the site is not currently under active management, and while many may consider that the owner of open land has a moral obligation to keep it in good order, there is currently no legal imperative. There is however evidence that the biodiversity value of the unimproved grassland on the site will decline if not properly managed.
20. The proposed development would involve the designation, and future maintenance, of the most westerly part of the site as a meadow and the appellant has provided a legally binding Undertaking not to object to its designation as a County Wildlife Site. I note that this provision was welcomed by the Council and the Devon Wildlife Trust, and would provide an opportunity to secure and maintain important habitats on the appeal site.
21. The Undertaking also secures a financial contribution of £69,570 toward off-site wildlife mitigation, and makes provision for the future maintenance of the open spaces on the site, which would be made freely available for use by all members of the public in perpetuity. The majority of the mature habitat-rich hedgerows on the site would be retained, and the proposed new houses and planting would be kept back from the grassland of the highway bank, so as not to disturb the thriving orchid population. A number of other measures, such as the incorporation of nesting boxes, could be addressed by condition at the detailed design stage.
22. In terms of the impact on biodiversity, then, I consider that the proposed scheme would do no more, and no less, than provide adequate mitigation for the disturbance that would be caused by the construction of the proposed new dwellings. But in terms of the overall value of the appeal site as an open space, and the contribution it makes to the overall quality of the urban environment, I find that opening up access to the general public would constitute a considerable social benefit to set against the visual harm that the reduction in openness would cause to the townscape.
23. Weighing all of these considerations together, I find that on balance, the construction of the proposed housing would result in only a slight reduction in the overall value of the appeal site as an open space, and the contribution it makes to the quality of its surroundings. I consider that it would not cause any significant harm to the outlook from any existing properties, to the experience of entering or leaving Torquay via Riviera Way, or to the character and distinctiveness of the area.
24. On that basis I conclude that the proposed development would not conflict with the aims of Policy L5 of the Local Plan, which seeks only to prevent such development as would *seriously* (my emphasis) harm the value of the area as

an open element within the townscape and the contribution it makes to the quality of the urban environment. Nor would it conflict with the objectives of Policy LS of the Local Plan, which aims to ensure that new development does not harm or detract from the local character and distinctiveness of Torbay's landscape setting, and to secure the benefits that green spaces bring to urban areas, not just in townscape terms, but for their recreational and amenity value.

Conclusion on the first main issue

25. I find that while there would be a slight reduction in the overall value of the appeal site as an open space, and the contribution it makes to the quality of its surroundings, this would not lead to any conflict with adopted policies of the Development Plan.

Mitigation measures

26. I have already referred above to the legal Undertaking submitted by the appellant, under the provisions of S.106 of the Town and Country Planning Act 1990, and the obligations it contains concerning the future maintenance of the public open space, and the payment of a financial contribution toward off-site mitigation for wildlife. I am satisfied that these provisions meet the requirements of Regulation 122 of the Community Infrastructure Levy Regulations 2010 (CIL), in that they are necessary to make the proposal acceptable in planning terms, and are directly, fairly and reasonably related to the development.
27. I can understand the Council's view that the bulk of the contribution toward off-site wildlife mitigation should be paid prior to commencement of development; indeed, given the timescales likely to be involved in identifying alternative sites suitable for grassland creation or enhancement, I share that view. The Undertaking executed by the appellant provides for £50,000 to be paid within nine months of commencement of development, and the remaining £19,570 twelve months thereafter. While not ideal, this staggered arrangement nevertheless secures payment in full of the financial contribution calculated by the Council as necessary, and so ensures that together with the improved management measures, adequate mitigation for the net loss of habitat will, albeit somewhat belatedly, be provided.
28. There was disagreement about the sum, and purpose, of any 'Sustainable Transport Contribution' rendered necessary by the proposed development. The Council requested a financial contribution on the basis that works would be needed to ensure appropriate infrastructure for access to and from the site by bus; to provide a toucan crossing at Lawes Bridge junction; and to provide additional shared-use paths in the area to secure safe and attractive access for pedestrians and cyclists.
29. The appellant accepts that the sum of £20,000 requested by the Council toward the toucan crossing is necessary, and the Undertaking secures the staged payment of this sum. I am satisfied that this obligation, which addresses the increased number of cycle movements likely to be generated as a result of the proposed development, accords with the provisions of Regulation 122 of CIL.
30. As to the question of shared use paths, I agree with the appellant that such a path linking Broomhill Way to the Riviera Retail Park could not be considered to be directly related to the proposed development, and that appropriate sections

of shared path in the vicinity of the Nicholson Road / Browns Bridge roundabout could be adequately secured by a condition requiring compliance with the Highway Works Plan submitted by the appellant at the inquiry. I note that the on-site paths detailed on that Plan do not quite accord with the Council's requirement, in that there is no shared surface access route to Browns Bridge Road, but the question of whether additional cycle routes through the appeal site are necessary could be addressed as part of the final details of layout, at Reserved Matters stage. I therefore see no reasonable basis for requiring the payment of a financial contribution toward further pedestrian and cycle access provision.

31. There is conflicting evidence concerning the bus services that would be available to future occupiers of the proposed dwellings. The Council contends that the site is not currently served by any bus service, and that the 64/65, an hourly service which at peak times is at or nearing capacity, terminates in Osprey Drive, some 500m from the proposed Plantation Way access to the new development.
32. The evidence of the appellant, which is based on the proposal to provide pedestrian access to and from the appeal site at Riviera Way and Brown's Bridge Road as well as via Plantation Way, and is supported by various bus maps and timetables, indicates that there are 5 bus stops within a 400m walk from the site, providing access to 8 different bus routes. I appreciate the difficulties inherent in crossing Riviera Way to reach the stops on Newton Road, but in terms of accessibility to public transport, I nevertheless consider the site to be well served.
33. The appellant points out that the Council has not submitted any figures to support the contention that existing bus services are at or near capacity, but has not itself submitted any to refute the Council's evidence in that regard. It seems to me that the construction of up to 155 new dwellings in close proximity to bus stops is likely to result in a significant increase in their use. Indeed, encouraging the use of sustainable means of transport such as public buses, rather than private cars, is a key tenet of Policy TS of the Local Plan, and is an aim that has informed the appellant's proposed Travel Plan. Any increase in passenger numbers on bus services that are already at or near capacity is likely to lead to overcrowding, which would discourage, rather than encourage, their use. On that basis, it seems reasonable that the Council should seek a financial contribution toward improving existing bus services, to meet the increased demand likely to arise as a result of the proposed development. This would accord with the guidance set out in its adopted Supplementary Planning Document (SPD) *Planning Contributions and Affordable Housing* (as updated in April 2011).
34. In the absence of any more detailed evidence concerning the current capacity levels of all the routes served by the stops within 400m of the site, the increase in use that would occur, and the cost to the Council of making the necessary improvements, it is not possible for me to reach a reliable conclusion as to whether the £98,000 requested by the Council toward improving bus services would constitute a fair and reasonable contribution. But the point remains that an appropriate sum should have been calculated, and its payment secured. That has not happened here; the Undertaking provided by the appellant makes no provision for any financial contribution at all toward bus services.

Conclusion on the second main issue

35. I find that while the proposal incorporates adequate mitigation to address the adverse impact it would have upon the biodiversity of the site, it does not make any provision to offset the increased pressure it would place on local public transport infrastructure. This would conflict with advice contained in the SPD, and is a failing that weighs against the proposed development.

Other material considerations

36. I now turn to a variety of other considerations that are material to this appeal.

Affordable housing

37. There is no dispute between the parties as to the dire need for affordable housing in Torbay. With over 3,000 households on the waiting list for rented accommodation, the need for affordable rental dwellings is particularly acute. The Unilateral Undertaking provided by the appellant secures the provision of 30% of the dwellings to be constructed on the site as affordable housing, in accordance with the provisions of Policy H6 of the Local Plan and the SPD.
38. Having considered very carefully the terms of the executed Undertaking, I am satisfied that changes made to earlier drafts have addressed most of the Council's concerns about the manner in which the proposed affordable housing would be provided, and retained. One such amendment secured the occupation of 25% of the affordable dwellings on Social Rent tenancies, 25% on Affordable, Intermediate or Social Rent tenancies, and the remaining 50% as Intermediate Affordable Housing. This accords with the agreement between the Council and the appellant that 50% of the total affordable housing, rather than the target figure of 75% contained in paragraph 6.9 of the April 2011 update to the SPD, should be provided as rental units.
39. In the light of evidence that the tenure for which there is most need is the Social Rent tenancy, I can readily understand the Council's preference for 75% of the affordable housing to be provided as Social Rented. But that is not what paragraph 6.9 requires; it simply states that there is a target for 75% of the affordable housing to be for rent, without further specifying the tenure. Since the Council has agreed that only 50% of the affordable housing provided here need be for rent, the Undertaking does not depart from that advice.
40. Of more fundamental concern is the table annexed to the Undertaking, which specifies the mix, in terms of tenure and dwelling size, of the affordable housing to be provided. The Council's view is that fixing the types and tenure of the affordable housing at the stage of granting outline planning permission would be inappropriate, since the Undertaking contains no equivalent provision fixing the type and size of the open-market housing.
41. I share that view. The final details of the size and type of the open-market dwellings would not be decided until the Reserved Matters stage. There could be compelling reasons for these to differ significantly from the mix currently set out in the Annexure, and if that were the case, the mix of affordable housing would no longer match the overall mix of dwelling types and sizes on the site. There is then the very real risk that the affordable housing would be clearly distinguishable from the open-market dwellings, frustrating the policy aim of promoting social inclusivity through tenure-blind housing development.

42. The executed Undertaking attempts to address this problem by including a provision that if, as a result of Reserved Matters approvals, there were a change to more than 23 of the open-market dwelling types shown in the Annexure, the mix of affordable housing would then need to be varied in accordance with the Council's agreement. I am not convinced that this goes far enough. For example, a change to just 18 of the open-market dwellings listed in the Annexure could mean that the open-market provision would consist solely of three- and four-bedroom houses, with no two-bedroom properties at all, whereas 25 two-bedroom affordable dwellings would be provided. This change would not trigger the provision for variation of the affordable mix, and the small affordable units would be clearly distinguishable from the larger open market dwellings.
43. I note the appellant's point that the Council accepted the use of a similar mechanism in connection with the provision of affordable housing on a recently permitted residential development nearby, but the Council has explained its site-specific reasons for doing so in that case. In any event, I fail to see why this means I should approve a mechanism which, in my view, would do more to frustrate than facilitate the provision of an appropriate mix of affordable housing on this particular site.
44. That said, it remains the case that the Undertaking would secure the provision and retention of 30% of the total number of dwellings as affordable housing, in line with Development Plan policy and (for the most part) the advice of the SPD. This constitutes a clear benefit of the proposed development. I consider the weight of that benefit to be reduced by the appellant's inclusion of a mechanism fixing the types of affordable housing to be provided, since that has the potential to adversely affect the social inclusivity of the development as a whole, but the provision of much-needed affordable housing nevertheless remains a factor that weighs in favour of granting permission for the proposal.

Housing supply

45. The topic of Torbay's housing supply took up a considerable amount of time at the inquiry. The reason for its relevance to this appeal is the requirement, at paragraph 47 of the Framework, that local planning authorities should identify a supply of deliverable sites sufficient to provide five years worth of housing against their housing requirements.
46. The Council confirmed that due to the availability of later evidence, it does not rely on the housing target figures contained in the Torbay Local Plan 1995-2011 or the Devon Structure Plan 2001-2016 to assess its housing requirement. It does however emphasise the weight that saved policies of those adopted plans carry in identifying the infrastructure, environmental and other constraints that affect the area's capacity to grow. Such constraints, together with market assessments, population analysis and many other considerations, will no doubt be addressed in detail as part of the Council's ongoing work to produce an up-to-date Development Plan. But in the context of the current appeal, it is important to bear in mind that I have neither the remit, nor sufficient evidence, to forestall that process by attempting to identify, conclusively, the future housing needs of Torbay.
47. I am, however, obliged to assess whether or not the Council can currently demonstrate a five year supply of deliverable housing sites sufficient to meet its housing need. For the purposes of that assessment, I do not share the

Council's view that constraints on growth should play any part in establishing the housing requirement. Such constraints do not bear upon the actual *need* for dwellings, but rather upon the arrangements for their provision. In my view, the stage at which growth constraints should be taken into account is when assessing how the identified housing need can be addressed in a sustainable way; they cannot reasonably be used as justification simply to reduce the number of dwellings calculated as necessary to meet housing need.

48. The Council contends that 500 dwellings per annum is the maximum amount that Torbay can accommodate. This was the housing requirement figure it advanced for inclusion in the draft RS; that is, 10,000 units for the period 2006–2026, based on a sub-regional study carried out in 2005. The Panel appointed to conduct the Examination in Public concluded that this proposed figure would constitute a sizeable under-provision, and recommended a higher figure of 20,000 units. After reviewing the Panel's report and the Council's objections to it, the Secretary of State published Proposed Changes to the RS recommending a housing target for Torbay of 15,000 units, which equates to 750 dwellings per annum.
49. Provisions within the Localism Act 2011 for the revocation of Regional Strategies (RSs) make it highly unlikely that the emerging RS for the South West will ever now be adopted, but it had nevertheless reached an advanced stage of its progress towards adoption, and was informed by evidence of more recent origin than that on which the extant Structure Plan and Local Plan were based. I therefore agree with the appellant that there is a strong case for using a five-year housing requirement of 3,750 as the basis for my assessment.
50. However, I note that the evidence base for the emerging RS included 2003-based household projections made by the Department for Communities and Local Government (CLG). More recent 2008-based CLG household projections have since been published. As noted by the Inspector appointed to determine a recent appeal concerning the former Pontin's site in Brixham (Appeal Ref: APP/X1165/A/11/2145178), these CLG household projections calculate a 20-year requirement of 13,051, a figure that is both current and of relatively recent origin. While the Council accepts this is the case, it contends that evidence of Torbay's wider constraints, which would make that figure unsustainable, was not considered at that inquiry. But for the reasons I have already set out above, I do not share the Council's view that 'wider constraints' should influence the assessment of housing need. How (or indeed if) the identified need can be delivered in a sustainable manner is a different question.
51. I also note that 2010-based population projections were published by the Office for National Statistics on 31 March 2012. These show a lesser population increase than that which informed the 2008-based CLG household projections. It may well be, as the Council contends, that the next iteration of those household projections is revised downwards, but the correlation is not straightforward since the CLG calculations also take into account a wide variety of demographic trends and other considerations in order to establish the number of households, as distinct from general population figures.
52. Taking all of this into account, I consider that it would be unreasonable not to reduce the Proposed Changes version of the RS housing requirement figure to reflect the more recent evidence of the 2008-based CLG household projections, but premature to attempt to calculate any further reduction based on the raw

data provided by the ONS population projections. In my judgment the CLG 2008-based household projection figures constitute the most reliable up-to-date figures, and therefore the best evidence on which to base my assessment of Torbay's housing supply position. I share the appellant's view that it is reasonable to apply an increase of 6%, in order to translate the number of projected households into the number of dwellings required, taking account of vacancies and occupation as second homes. This equates to a requirement for 3,458 dwellings over 5 years.

53. Paragraph 47 of the Framework states that local planning authorities should be able to identify 5 years worth of housing against their housing requirement, with an additional buffer of 5%, or 20% if there has been a record of persistent under-delivery of housing. The appellant points out that completions in Torbay have been below target for the past 3 years, but the Council contends that this was an unavoidable consequence of the world-wide economic crisis rather than an accurate reflection of its usual supply. I agree that in the absence of any substantive evidence that under-delivery is a persistent problem in Torbay, application of a 5% buffer is appropriate. This means that the Council should be able to identify specific and deliverable sites to provide a five year supply of 3,631 dwellings.
54. The Council has compiled a list of specific sites which, it is claimed, have a realistic prospect of delivering a total of 3,869 dwellings within 5 years. This includes an allowance, at a 50% completion rate, for sites upon which planning permission has recently expired. However, to be included within the anticipated housing supply sites must be deliverable, and the footnote to paragraph 47 of the Framework explains that sites with planning permission should be considered deliverable "until permission expires". The anticipated figure of 116 dwellings from sites where planning permission has expired should therefore be deducted from the overall total, leaving 3,753.
55. Both the Council and the appellant agree that some provision should be made for non-completion. The Council accepted that a 30% discount would reflect the 30% drop in completions that has been a trend of the past three years. This is broadly similar to the discount proposed by the appellant, albeit calculated on a different, site-specific basis. Applying a discount of 30%, in the light of my findings above, results in a housing supply of 2,627.
56. A number of local residents drew my attention to various 'brownfield', or previously developed, sites within Torbay which may have the potential to be re-developed for housing. I agree that the benefits of making effective re-use of such sites, in preference to building houses on land that has not been developed, are obvious. Indeed, this strategy is adopted by the Local Plan, which seeks to minimise 'greenfield' development by taking a sequential approach, firstly maximising the use of existing housing stock, and then prioritising development of 'brownfield' land. It is an approach endorsed by the Framework; one of its core principles is that planning should "encourage the effective use of land by re-using land that has been previously developed".
57. However, the Framework also makes it clear (at paragraph 47, and footnotes) that when identifying whether there are sufficient housing sites to meet their housing need for the next five years, local planning authorities should only include those sites which are 'deliverable'. To be considered deliverable, in the terms of the Framework, sites should be available now, offer a suitable location for development now, and be achievable, with a realistic prospect that housing

will be delivered on the site within 5 years. This definition does not differ substantively from that contained in (now superseded) Policy Planning Statement 3: *Housing*, which informed the list of deliverable sites that was compiled by the Council and submitted in evidence to the inquiry. I am satisfied, then, that the contribution of such brownfield sites as may be considered 'deliverable' have been duly accounted for in the housing supply assessment undertaken above.

58. On the basis of the evidence before me, I have found that the Council has a supply of deliverable sites sufficient to provide 2,627 dwellings over the next five years, which is clearly not enough to meet the requirement for 3,631 dwellings in that period. The fact that the currently proposed residential development would go some way toward addressing that shortfall is a factor that weighs heavily in its favour.

Other matters

59. The extent of local opposition to a scheme is not, in itself, a reasonable ground for resisting development, but opposition founded on valid planning reasons certainly can be. Local residents, organisations and Councillors have taken considerable trouble to advise me of a number of material issues and genuine concerns, and I have had careful regard to all those that were relevant.
60. A concern frequently raised was that existing road infrastructure does not have the capacity to cope with the increase in vehicular traffic likely to be generated by the proposed development. However, the documents submitted with the planning application included a comprehensive Transport Assessment, which was subsequently updated to reflect the reduced number of houses proposed. This was in turn assessed by the Highway Authority, which indicated that subject to certain conditions (discussed below) it was satisfied with the proposed access arrangements to the site, and the capacity of the highway network to accommodate safely the consequent increase in traffic. I have not seen any substantive evidence that would support a departure from the Highway Authority's professional judgment.
61. I note that work has begun on a Torquay Neighbourhood Plan, and a Green Infrastructure Delivery Plan has been produced, which will provide supporting evidence for the emerging Core Strategy. I also note that Paragraph 76 of the Framework states that communities should be able to identify 'Local Green Space' for special protection, and I understand that many local residents would wish to see the appeal site receive this designation. However, the Framework states that the Local Green Space designation will not be appropriate for most green areas or open space, and may only be designated when a plan is prepared or reviewed. Both the Neighbourhood Plan and the emerging Core Strategy are as yet a very long way from adoption, with various stages of consultation still to come; there can be no certainty that designation of the site as a Local Green Space would necessarily be achieved. Meanwhile, the Framework makes it clear that proposed development should not be put on hold while future plans are debated. Paragraph 14 states that proposals which accord with the Development Plan should be approved without delay.

The overall planning balance

62. The Framework explains, at paragraph 12, that its existence does not change the statutory status of the Development Plan as the starting point for decision

making. This means that a determination must be made in accordance with the Development Plan unless material considerations indicate otherwise. Further, at the heart of the Framework is a presumption in favour of sustainable development, and as noted above, paragraph 14 explains that for decision taking, this means approving development proposals that accord with the development plan without delay.

63. In my consideration of this appeal, I have not found any conflict with the adopted policies of the Development Plan.
64. I have found that the lack of any mitigation for the increased pressure the new houses would place upon public transport infrastructure, the absence of certainty as to whether the affordable housing would be provided in a socially inclusive manner, and the slight reduction in the overall value of the appeal site as an open space and in the contribution it makes to the quality of its surroundings, are considerations which weigh against the proposal. However, of considerably greater weight, in my view, are the benefits that the proposed development would have in terms of making significant contributions to addressing the clear shortfall in the Council's housing supply, and the pressing need for more affordable housing in Torbay.
65. Taking all of this into account, I conclude that the proposed development would accord with the Development Plan, and the overall balance of material considerations weighs strongly in favour of granting planning permission. I shall therefore allow the appeal.

Conditions

66. The Council put forward a list of the conditions it would consider appropriate if I were to allow the appeal. I have considered these in the light of the helpful discussion session held at the inquiry, and the advice set out in Circular 11/95 *The Use of Conditions in Planning Permissions*.
67. I have imposed the standard conditions concerning time limits for submission of Reserved Matters and commencement of development. I have also attached the standard condition requiring that development be carried out in accordance with the approved plans, to the extent that they concern matters not reserved for later approval. For the avoidance of doubt, information provided by the Parameter Plans listed within this condition has informed the grant of Outline Permission, and so any Reserved Matters applications should accord with the information shown in those plans.
68. I do not share the Council's view that it is necessary to attach a condition requiring the details submitted at Reserved Matters stage to achieve a score of at least 14 in a Building for Life Assessment and to achieve 'Secure by Design' accreditation, since there appears to be no adopted Development Plan policy specifically requiring compliance with these designations. In any event, if the details submitted at Reserved Matters stage are sub-standard in terms of design or security, it would be open to the Council to refuse permission on that basis.
69. I have attached a condition setting out various additional matters to be provided at Reserved Matters stage, but have not included reference to those (such as the layout of on-site cycleways and footpaths) which must in any event be addressed as Reserved Matters. It is reasonable to require details of nesting and roosting facilities, cycle parking provision, and refuse and recycling

facilities to be provided at Reserved Matters stage, when details of layout and design are finalised. I have not at this stage conditioned the timing of their provision; it will be more appropriate for the Council to do that as part of any Reserved Matters approval. I note the Council's suggested condition requiring the submission of an Energy and Efficiency Report prior to commencement of development, which then attempts to secure compliance with 'the agreed energy efficiency targets'. As discussed at the inquiry, in the absence of sufficient clarity as to those targets, I consider such a condition unreasonable. I have instead required submission of an Energy and Efficiency Report as part of the details to be submitted at Reserved Matters stage; if the Council considers the measures incorporated in the detailed design of the scheme unacceptable, it may consider refusing permission on that basis.

70. I agree with the Council that a condition is needed requiring its prior approval of a Phasing Plan, to ensure that on-site infrastructure supporting the development, and the provision of play areas and open space, is addressed in a timely manner. In the interests of concision, and as discussed at the inquiry, I have included as part of this condition the Council's suggested requirements for a lighting strategy and Construction Method Statement, both necessary to minimise the disruption and disturbance caused by the development.
71. Given that securing the provision of the proposed highway works and advance planting is important to the overall acceptability of the scheme, I have attached separate conditions requiring compliance with the specific plans detailing each of these matters, and with implementation timetables to be agreed in advance with the Council. Similarly, the retention and future management, of trees, hedgerows and grassland on the appeal site are of fundamental importance to the acceptability of the scheme, and I have attached conditions requiring the Council's prior approval of protection measures and management regimes.
72. I also agree with the Council, and local residents, that further details are needed concerning measures to ensure that habitats are not degraded by dog-walkers and others using the open spaces for recreational purposes, and have included this requirement in a condition securing ongoing compliance with the approved Ecological Management Plan.
73. Given that the provision of surface and foul-water drainage infrastructure is to be included in the Phasing Plan for the Council's prior approval, and that the matter of its adequacy is in any event governed by Building Regulations, I do not consider it necessary to attach separate conditions governing drainage. Should there be any conflict with the findings of the Flood Risk Assessment, it would be open to the Council to refuse approval. Nor do I consider it necessary to attach a separate condition requiring details of noise attenuation measures; it seems to me that the need, if any, for such measures will not be known until final details of the layout and design of the housing are submitted, and an appropriate condition, if needed, could be attached at that stage.
74. I have attached the Council's suggested condition requiring the implementation of an agreed Travel Plan, since this will play an important role in minimising the impact of the development on the existing highway network.
75. At the inquiry, a condition removing future occupiers' Permitted Development Rights to attach solar panels to the roofs of their houses was suggested, in order to prevent the glare from such panels making the development appear particularly obtrusive within its setting. However, it seems to me that the most

appropriate stage at which to judge the necessity for such a condition will be when final details of the orientation of the dwellings, and the materials to be used in construction of their roofs, are provided at Reserved Matters stage.

Conclusion

76. For the reasons set out above, and subject to the conditions listed in the attached schedule, I determine that the appeal should be allowed.

Jessica Graham

INSPECTOR

Richborough Estates

APPEARANCES

FOR THE LOCAL PLANNING AUTHORITY

Mr G Collett, of Counsel

He called:

Mr P Roberts	BSc MA CMS MRTPI	Major Developments Team Leader
Mr D Pickhaver	BA(Hons) MA MRTPI	Senior Planning Officer, Strategic Planning and Implementation Group
Mr J Cooper	BSc(Hons) DipLD FLI AILA	Managing Director, Cooper Partnership

FOR THE APPELLANT

Mr P Clarkson, of Queen's Counsel

He called:

Mr M Hockaday	BSc PhD FRTPI FCIM FRSA	Director, Nathaniel Lichfield & Partners
Mr J Thomson	BA DipLA(Glos) CMLI	Director, Macgregor Smith

INTERESTED PERSONS

Cllr B McPhail	Chair of Council's Planning Committee
Mr C Charlwood	Local resident, past Councillor
Ms A Berrie	Torquay Museum Botany Group
Cllr M Kingscote	Member for Shiphay and The Willows
Mr P Alford	Local resident
Mr A Griffey	Torbay Friends Of The Earth
Mrs M Forbes-Hamilton	Torbay Local Access Forum and Greenspace Forum
Ms S Colley	Torquay Neighbourhood Plan
Mr R Cherry	Local resident
Mr B Dunnage	Edginswell Residents Association
Ms A Brooks	Local resident
Mr G Melbourne	Campaign for the Protection of Rural England
Dr S Moss	Torbay Green Party
Cllr R Pentney	Member for Clifton with Maidenway
Ms J Brandon	Torquay resident
Mr M Edgell	Scotts Meadow Group

DOCUMENTS SUBMITTED AT THE INQUIRY

- 1 The Council's list of appearances and approximate timings
- 2 Copy of opening submissions made on behalf of the appellant
- 3 Copy of opening submissions made on behalf of the Council
- 4 List of interested persons wishing to address the inquiry, submitted by Mr Edgell
- 5 Copy of the Council's letter dated 9 January 2012 which notified interested parties that the appeal had been lodged
- 6 Copy of the Council's letter dated 16 January 2012 which notified interested parties of the date and venue of the inquiry
- 7 Transcription of the Area 4 South Development Management Committee Meeting of 17 October 2011, provided by the appellant
- 8 Annotated version of the plan contained at Appendix 14 of Mr Roberts' proof
- 9 Copy of Plan L5 of Mr Cooper's proof, showing respectively the photograph locations used in his own evidence and that of Mr Thomson
- 10 Copy of plan contained in Mr Thomson's proof showing the location of "Moderate Impact Residential Properties", annotated by Mr Cooper to show additional properties he considered should be included in that description
- 11 List of suggested conditions agreed between the Council and the appellant
- 12 An updated draft of the S.106 Undertaking proposed by the appellant
- 13 Updated version of Document 1, provided by the Council
- 14 Extracts from *Guidelines for Landscape and Visual Impact Assessment* (second edition)
- 15 List of speakers for the Wednesday evening session of the inquiry, and those wishing to speak on Thursday morning, provided by Mr Edgell
- 16 Copy of speech made to the inquiry by Cllr McPhail
- 17 Copy of speech made to the inquiry by Mr Charlwood
- 18 Written submissions made by Mr B Carter
- 19 Letter from Mr E Hall dated 21 March 2012
- 20 Copy of speech made to the inquiry by Cllr M Kingscote
- 21 Copy of speech made to the inquiry by Mr P Alford
- 22 Copy of speech made to the inquiry by Mr A Griffey
- 23 Copy of speech made to the inquiry by Ms Forbes-Hamilton
- 24 Copy of speech made to the inquiry by Ms S Colley
- 25 Copy of speech made to the inquiry by Mr R Cherry, with photographs
- 26 Written submissions made by Mrs Mooney
- 27 Copy of Appendix 1 of Mr Pickhaver's proof of evidence, annotated to show the housing sites which were not included in the housing land supply spreadsheet provided to the Wall Park inquiry
- 28 An updated draft of the S.106 Undertaking proposed by the appellant, showing tracked changes
- 29 An updated draft of the S.106 Undertaking proposed by the appellant, not showing tracked changes
- 30 List of submitted plans, agreed by the Council and the appellant
- 31 Copy of speech made to the inquiry by Mr G Melbourne
- 32 Copy of speech made to the inquiry by Dr S Moss
- 33 Copy of speech made to the inquiry by Cllr R Pentney
- 34 Copy of speech made to the inquiry by Ms J Brandon, with a copy of "Find a Property" newspaper dated 16 February 2012
- 35 Extract from Local Plan showing the extent of the Berry Head ULPA, with accompanying photographs, submitted by the appellant

- 36 Table setting out comparative land supply calculations using Option 1 figures and DCLG 2010 Projections
- 37 Table of figures extracted from ONS 2008 concerning vacant dwellings in 2008, provided by the appellant
- 38 Figures for Torbay housing vacancy rates in 2011 and 2012, provided by the Council
- 39 Further extracts from *Guidelines for Landscape and Visual Impact Assessment* (second edition)
- 40 Highway works plan (drg. no. 31065/PHL-02) submitted by the appellant
- 41 Advanced Planting Parameters Plan (drg. no. PA10) submitted by the appellant
- 42 Appellant's written representations on the implications of the National Planning Policy Framework for this proposal, submitted during the adjournment between Days 4 and 5 of the inquiry
- 43 Bundle of documents submitted by the Council during the adjournment between Days 4 and 5 of the inquiry, comprising
 - (a) A copy of the Council's S.106 justification document dated 16 March 2012
 - (b) A copy of the draft of the S.106 Undertaking dated 15 March 2012 as amended by the Council
 - (c) A copy of the draft of the S.106 Undertaking submitted by the appellant on 20 March 2012 [Document 12]
 - (d) The Council's written response to Document 12
 - (e) A copy of the draft of the S.106 Undertaking submitted by the appellant on 22 March 2012 [Document 29]
 - (f) The Council's written response to Document 29
- 44 Copy of e-mail correspondence between Mr Edgell and the Council, setting out properties from which the Inspector should view the appeal site during the course of her site visit
- 45 Suggested itinerary for the Inspector's site visit of 12 April 2012
- 46 Table of ONS 2012 (2010 based) population projections
- 47 Summary of appellant's amendments to its proposed S.106 Undertaking
- 48 Summary of the obligations contained in the appellant's proposed S.106 Undertaking
- 49 Copies of e-mail correspondence between the appellant and Sovereign Housing Association concerning the proposed mix of affordable housing types on the appeal site
- 50 Appellant's written response to the Council's S.106 justification document dated 16 March 2012, concerning transportation matters
- 51 Certified copy of S.106 Undertaking executed by the appellant on 11 April 2012
- 52 Copy of closing submissions made by Mr Edgell on behalf of the Scotts Meadow Group, with supporting documents
- 53 Copy of closing submissions made on behalf of the Council
- 54 Copy of closing submissions made on behalf of the appellant

SCHEDULE OF CONDITIONS

- 1) Details of the appearance, landscaping, layout, and scale, (hereinafter called "the reserved matters") shall be submitted to and approved in writing by the local planning authority before any development begins and the development shall be carried out as approved.
- 2) Application for approval of the reserved matters shall be made to the local planning authority not later than three years from the date of this permission. The development hereby permitted shall begin not later than two years from the date of approval of the last of the reserved matters to be approved.
- 3) Subject to the provisions of conditions 6 and 7 below, the development hereby permitted shall be carried out in accordance with the following approved plans:

ACH5466/500_101 Rev C	Site Location Plan
ACH5466/PA2 Rev E	Developable Area Parameters Plan
ACH5466/PA03 Rev D	Density Parameters Plan
ACH5466/PA4 Rev D	Maximum and Minimum Building Heights Parameters Plan
ACH5466/PA05 Rev D	Key Frontages Parameters Plan
ACH5466/PA06 Rev E	Landscape and Open Space Parameters Plan
ACH5466/PA07 Rev D	Pedestrian and Cycle Access and Movement Parameters Plan
ACH5466/PA08 Rev E	Vehicle Access and Movement Parameters Plan
ACH5466/PA09 Rev D	Phasing Parameters Plan
981-007 Rev B	Tree and Hedgerow Removal Drawing
981-005 Rev F	Sections AA-BB through Hedgerow
981-013 Rev A	Landscape Sections CC-DD
981-006 Rev E	Sections EE-FF Play Area
981-008 Rev H	Southern Boundary Sections FF
981-016 Rev C	Garden Sections GG-HH
981-0017 Rev A	Garden Sections JJ-KK
1065 PDL/01 Rev H	Surface Water Strategy Plan
1131065/SK/08A	Preliminary Access Design (Tie into Plantation Way)

but only in respect of those matters not reserved for later approval.

- 4) The details to be submitted pursuant to condition 1 above shall include nesting and roosting facilities as detailed in the Revised Ecological Management Plan (May 2011); an Energy Efficiency Report detailing the

measures incorporated in the design of the scheme to maximise the energy efficiency of the site; details of the cycle parking provision for each property, and a refuse strategy for the site, demonstrating that each property has adequate and accessible provision for the disposal of waste and recyclable material.

- 5) Prior to the commencement of development a Phasing Plan, setting out details for the implementation of the scheme in relation to a timetable of works, shall be submitted to and approved in writing by the local planning authority. Development shall only be carried out in accordance with those approved details. The Phasing Plan shall include details of pre-construction ecological management operations, and the implementation and timing of all highway works, parking facilities, landscaping works and foul and surface water drainage infrastructure relevant to each phase. It shall also include a Lighting Strategy and Construction Method Statement (to include hours of work) for each phase, and a timetable for the completion of the Play Areas and Trim Trail, and the provision of the Public Open Space.
- 6) Prior to the commencement of development, a timetable for the delivery of the Highway Works, in accordance with the details shown on drg. no. 31065/PHL-02 Rev C, shall be submitted to and approved in writing by the local planning authority. Development shall only be carried out in accordance with the approved timetable.
- 7) Prior to the commencement of development, full details of the advance tree and hedge planting shown on drg. no. ACH5466/PA10 shall be submitted to and approved in writing by the local planning authority. The details shall include sizes, species, densities, a 5 year management strategy and a timetable for planting. Development shall only be carried out in accordance with the approved details. Any of these trees or plants that die, become damaged, diseased, or are removed within 5 years of planting shall be replaced with others of a similar size and species in the next available planting season.
- 8) Prior to commencement of development, full details of measures to be taken to protect the trees and hedgerows identified for retention shall be submitted to and approved in writing by the local planning authority. The details shall include a plan identifying the trees and hedgerows to be retained, and a Method Statement setting out how works are to be implemented adjacent to retained trees and hedgerows, and how the retained hedgerows will be managed during the construction period. Development shall only be carried out in accordance with the approved details.
- 9) Prior to commencement of development, details of management regimes for the retained hedgerows and retained grassland areas shall be submitted to and approved in writing by the local planning authority. The hedgerow management regime shall include details of supplementary planting to ensure continued health, and measures to be taken to ensure that the hedgerows continue to provide screening opportunities and remain of ecological benefit. The grassland management regime shall include details of any necessary turf-stripping and re-seeding to ensure that priority habitat status is maintained, and measures to be taken to ensure that the wild orchid populations on the highway bank are

retained. The approved management regimes shall be implemented within one month of their approval, and shall continue thereafter.

- 10) Prior to commencement of development, details of measures to be taken to ensure that habitats, grassland, the meadow, and other public open space are not degraded through site usage for recreational purposes, shall be submitted to and approved in writing by the local planning authority. The ecological management of the site shall then be implemented in accordance with the approved details, and the details contained in the approved Revised Ecological Management Plan (May 2011), at commencement of development. The ecological management of the site in accordance with these approved details shall continue in perpetuity unless otherwise agreed in writing with the local planning authority, and shall be subject to five-yearly reviews, the details of which are to be made available to the local planning authority on request.
- 11) Prior to commencement of development, a Travel Plan, following the format set out in the Transport Assessment and including a timetable for its implementation and mechanisms for its future review, shall be submitted to and approved in writing by the local planning authority. The Travel Plan shall be implemented in accordance with the approved details and timetable, and shall thereafter be reviewed in accordance with the approved details.

Richborough Estate