



Department for
Communities and
Local Government

Mr Robin Upton
WYG Planning & Design
Hawkridge House, Chelston
Business Park
Wellington
Somerset
TA21 8YA

Our Ref: APP/U1105/A/13/2208393

20 March 2015

Dear Sir

**TOWN AND COUNTRY PLANNING ACT 1990 – SECTION 78
APPEAL BY MILLWOOD HOMES (DEVON) LTD
LAND AT PINN COURT FARM, PINN HILL, EXETER EX1 3TG
APPLICATION REF: 12/0795/MOUT**

1. I am directed by the Secretary of State to say that consideration has been given to the report of the Inspector, Christina Downes MRTPI, who held a public local inquiry on 29 April and dates between 21 and 27 October 2014 into your clients' appeal against a decision of East Devon District Council ('the Council') to refuse planning permission for the development of up to 430 residential units, local centre comprising retail space of up to 240 m² and a community centre, care home of up to 60 bedspaces, specialist care home of up to 60 bedspaces and a park and change facility, together with associated areas of open space (formal and informal), cycleways, footpaths and infrastructure, safeguarded vehicular route to Langaton Lane, served off new access from the highway (B3181), in accordance with application ref:12/0795/MOUT, dated 20 March 2012.
2. On 20 December 2013 the appeal was recovered for the Secretary of State's determination, in pursuance of section 79 of, and paragraph 3 of Schedule 6 to, the Town and Country Planning Act 1990, because it involves proposals for residential development of over 150 units or on sites of over 5 hectares which would significantly impact on the Government's objective to secure a better balance between housing demand and supply and create high quality, sustainable mixed, and inclusive communities.

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Inspector's recommendation and summary of the decision

3. The Inspector recommended that the Secretary of State seeks a revised contribution of £749 per dwelling as the appropriate mitigation to avoid significant impact upon the Exe Estuary Special Protection Area and the Pebblebed Heaths Special Protection Area and Special Area of Conservation. Subject to this being secured, he recommended that appeal be allowed and planning permission granted. For the reasons given below, the Secretary of State agrees with the Inspector's conclusions, except where indicated otherwise, and agrees with his recommendation. He is therefore minded to allow the appeal and grant planning permission subject to the receipt of a satisfactory revised planning obligation.
4. A copy of the Inspector's report (IR) is enclosed. All references to paragraph numbers, unless otherwise stated, are to that report.

Procedural matters

5. The Secretary of State notes that the park and change facility is now to be provided within the new development at Old Park Farm and the area proposed for this facility at the appeal site would be used as a skate park (IR1).
6. The Secretary of State has taken into account the Environmental Statement (ES) and the Addendum to the ES (IR5 and 218), and the Town and Country Planning (Environmental Impact Assessment) Regulations 2011. He agrees with the Inspector that a slight amendment to the main access drawing which was submitted at the Inquiry is a factual correction and does not consider it to have any significance in terms of the assessment of impacts or cause any prejudice to any party. He agrees with the Inspector that this drawing is accepted as relevant to the determination of this appeal (IR6). The Secretary of State is content that the Environmental Statement complies with the above Regulations and that sufficient information has been provided for him to assess the environmental impact of the appeal proposal.

Policy considerations

7. Section 38(6) of the Planning and Compulsory Purchase Act 2004 requires that proposals be determined in accordance with the development plan unless material considerations indicate otherwise. In this case, the development plan comprises the saved policies of the East Devon Local Plan 2006-2011 (LP), which was adopted in 2006. The Secretary of State agrees with the Inspector that the saved policies most relevant to this appeal are those identified at IR15.
8. Material considerations which the Secretary of State has taken into account include the National Planning Policy Framework (the Framework, March 2012) and the associated planning practice guidance issued in March 2014. He has also taken into account the Community Infrastructure Levy (CIL) Regulations 2010 as amended and the Conservation of Habitats and Species Regulations 2010 as amended.
9. The Secretary of State has also taken into consideration the emerging East Devon Local Plan 2006-2026 (ELP) which has been submitted for examination but is currently in abeyance (IR16). He agrees with the Inspector that the most

relevant policies to this appeal are those listed at IR17. As any proposals are liable to change, he attributes little weight to most of the emerging Local Plan. However he gives a considerable degree of weight to ELP Draft Strategy 34 because of the Inspector's reasons referred to at paragraph 15 below.

10. The Secretary of State has also taken into account the Pinhoe Area Access Strategy, a background document to the ELP, updated in July 2013 (IR18).

Main issues

11. The Secretary of State agrees with the Inspector that the main issues regarding this appeal are those listed at IR135.

Housing land supply and the presumption at paragraph 14 of the Framework

12. The Secretary of State has carefully considered the Inspector's assessment at IR136-138 as to whether the proposed development of the site is needed to meet the housing requirements of East Devon District and contribute to any short term housing land supply deficit. He notes that the Council does not dispute that it cannot presently demonstrate that it has a 5 year supply of deliverable housing sites (IR136). The Secretary of State therefore agrees with the Inspector's conclusion that the proposed development of the site would contribute to the short term housing land supply deficit. He also agrees that although the proposal would not be in accordance with LP policies H1 and H2, these policies are out-of-date. The Secretary of State notes that, in such circumstances, the Inspector took the view that the proposal should be considered in the context of Paragraph 14 of the Framework and whether any adverse impacts would significantly and demonstrably outweigh the benefits, when assessed against the policies of the Framework as a whole (IR139). However, the Secretary of State as competent authority under the Conservation of Habitats and Species Regulations 2010 must undertake a Habitats Regulations Assessment for reasons considered at paragraph 22 below. . Paragraph 119 of the Framework states that the presumption in favour of sustainable development does not apply where development requiring appropriate assessment under the Birds or Habitats Directives is being considered, planned or determined. Therefore the Secretary of State has not applied the presumption in this case.

Character and appearance of the area

13. The Secretary of State has considered the Inspector's reasoning and conclusions at IR140-141 on the effect of the proposed development, which is outside the settlement boundary, on the character and appearance of the area. He agrees that the development would result in a significant adverse landscape and visual impact, but that the latter would be relatively localised (IR140).
14. The Secretary of State agrees that the site is not of any particular landscape significance, although much of it is high quality agricultural land. He also agrees with the Inspector that it is inevitable that land outside the LP settlement boundaries will need to be developed to meet the Council's housing requirement. Like the Inspector he notes that the appeal site has been allocated in the ELP and that the Council granted planning permission for a

similar scheme, subject to various stipulations unpalatable to the Appellant. He therefore also agrees with the Inspector that the principle of housing on this land is thus accepted by the Council. The Secretary of State also agrees that LP Policy S5 is of relevance to the supply of housing and that in the absence of a 5 year housing land supply it is out-of-date having regard to Paragraph 49 of the Framework. The Framework is clear that the intrinsic character and beauty of the countryside should be recognised and he agrees with the Inspector that this is therefore a matter to be placed in the planning balance. However he does not agree that there is no development plan policy objection in terms of the loss of countryside in this case because as the Inspector recognises at IR140 the proposal conflicts with saved Policy S5, albeit he agrees that this policy is of relevance to the supply of housing and in the absence of a 5 year housing land supply therefore carries reduced weight (IR141).

Affordable housing

15. The Secretary of State has carefully considered the Inspector's reasoning and conclusions at IR142-167 as to whether the proposed 25% affordable housing provision in this case would be sufficient taking account of housing need, planning policy and viability. For the reasons given at IR142-149, the Secretary of State agrees with the Inspector's conclusions that Draft Strategy 34 of the ELP which proposes a 25% provision can be given a considerable degree of weight (IR148) and is to be preferred to LP Policy H4 which is out-of-date (IR150).
16. For the reasons given at IR151-167, the Secretary of State agrees with the Inspector's conclusion at IR168 that the Appellant's viability assessment is to be preferred to that of the Council's, save that the care home element of the scheme should be included in the valuation. On the basis of 40% affordable housing provision the landowners would receive about 20 times the agricultural land value but the Secretary of State agrees with the Inspector that this would be insufficient to incentivise the landowner to sell and accepts the evidence given that 25% affordable housing would be sufficient for the landowner to sell (IR168). Notwithstanding that the Secretary of State agrees that LP Policy H4 is out of date, on the basis of the viability evidence he agrees that the appeal proposal would comply with that policy (IR168) as well as complying with Draft Strategy 34 of the ELP.

Traffic congestion and harm to highway safety

17. For the reasons given at IR169-194, the Secretary of State agrees with the Inspector's conclusions at IR194 that the appeal scheme is unlikely to result in a severe transport impact and it would therefore comply with saved Policy TA7 and the relevant provisions of the Framework. He also agrees with the Inspector's assessment at IR195 - 196 about the 'Grampian' conditions considered at the Inquiry. Like the Inspector he considers that these are not necessary for the reasons the appellant gives (IR34 - 49 and 196). Moreover, for the reasons given at IR 48 and 196 the Secretary of State considers that the imposition of the Grampian conditions themselves would diminish the likelihood that the Langaton Lane Link Road would be completed and the wider benefits that it would bring to the Pinhoe area realised (IR197).

Residential amenity

18. For the reasons given at IR198-199, the Secretary of State agrees with the Inspector's conclusion at IR200 that the appeal proposal would not have an adverse effect on the living conditions of adjoining residential occupiers.

Effect on schools and medical facilities

19. The Secretary of State agrees with the Inspector's reasoning and conclusions at IR201-202 in regard to schools and medical facilities.

Flood risk

20. The Secretary of State notes that the EIA has concluded that with a sustainable drainage strategy in place there would be no risk of flooding elsewhere and that the Environment Agency has raised no objections to the appeal scheme (IR203). Therefore the Secretary of State agrees that this should be the subject of a planning condition.

Ecology and wildlife

21. For the reasons at IR204-206 the Secretary of State considers that, subject to suitable conditions, the appeal proposal has the potential to enhance local biodiversity (IR206). He notes that this view is shared by the Devon Wildlife Trust (IR105), and that Natural England does not object to the appeal proposal subject to adequate mitigation measures (IR103).
22. The Secretary of State has had regard to the fact that the site is within 8km of the Pebblebed Heaths Special Protection Area and Special Area of Conservation and within about 6 km of the Exe Estuary Special Protection Area (IR207). He has taken note of Natural England's representations (IR103) and its letter to the Council dated 29 June 2012 about planning application 12/07951, which was the same as the current appeal proposal in terms of the site, quantum and type of development. In that letter Natural England expressed the view that the proposal was likely to have a significant effect on the interest features on the Exe Estuary Special Protection Area (SPA). Consequently the Secretary of State, as competent authority for the purposes of the Conservation of Habitats and Species Regulations 2010, considers that he needs to undertake an assessment pursuant to Reg. 61 of the Regulations. His assessment is at Annex A to this letter.
23. On the basis of the conclusions of his assessment he agrees with the Inspector's analysis at IR207 - 208. The Section 106 Agreement dated 28 April 2014 provides a contribution of £492 per dwelling to mitigate any adverse impacts in line with the *South East Devon European Site Mitigation Strategy* (IR207), but in order for the scheme to comply with the Habitats Regulations an increased level of payment of £749 per dwelling would be necessary (IR208). The Secretary of State agrees with the Inspector's conclusion at IR208 that this can be resolved by a new Section 106 Agreement to be submitted within a specific time period.

Conditions

24. The Secretary of State has considered the proposed conditions and the Inspector's assessment at IR110 - 123 and IR209 and agrees with the Inspector's reasoning and conclusion regarding the Grampian conditions and Condition 5 (IR209). He is satisfied that conditions 1 - 19 as proposed by the Inspector at Annex 3 to the IR and set out at Annex B to this letter are reasonable, necessary and comply with the requirements of paragraph 206 in the Framework.

Obligations

25. The Secretary of State has considered the Section 106 Agreements submitted by the appellant and the Inspector's assessment at IR124 - 134 and 210 - 216. He agrees with the Inspector's conclusion that, with the exception of the £50,000 payment towards the third party land acquisition considered at IR213 and 217, and the mitigation payment relating to nature conservation sites considered at IR207 - 208 and paragraph 23 above, the remaining contributions and obligations secured are necessary to make the development acceptable in planning terms, directly related to the development, and fairly and reasonably related in scale and kind to the development; and can therefore be considered to accord with the CIL Regulations 2010 and Paragraph 204 of the Framework (IR217).

Overall conclusions

26. The Secretary of State has had regard to section 38(6) of the Planning and Compulsory Purchase Act 2004 which requires that proposals be determined in accordance with the development plan unless material considerations indicate otherwise. The Secretary of State considers that the proposal does not accord with the development plan taken as a whole, for the reason given at paragraph 14 above. Therefore he has gone on to consider whether there are material considerations which indicate that planning permission should be granted notwithstanding that the proposal is not in accordance overall with the development plan.

27. The Secretary of State has carefully considered the Inspector's conclusions at IR218-224. The Secretary of State also recognises that the District has a serious and significant short term deficit of deliverable housing sites and therefore the housing supply policies in the LP are out of date and insufficient (IR219). For the reasons at paragraphs 12 and 22 above he considers that the presumption in favour of sustainable development at paragraph 14 of the Framework does not apply in this case. Consequently he does not agree that the test as set out at IR220 is applicable in this case. The Secretary of State has given careful consideration as to whether this makes any difference to his decision. He concludes that his decision is not affected because, as set out below, the balance of material considerations falls strongly in favour of the appeal proposal so as to justify development not in accordance with the development plan.

28. As the Inspector notes, paragraph 47 of the Framework seeks to boost significantly the supply of housing. In the light of this and the deficit of

deliverable housing sites, and the housing supply policies in the Local Plan being out of date and insufficient, the Secretary of State agrees with the Inspector that the contribution that the appeal scheme could make in this regard is a matter of considerable weight in the overall balance (IR219). In reaching this conclusion he has taken into account the Inspector's conclusions at IR222 regarding affordable housing.

29. The Secretary of State agrees with the Inspector about the economic and travel sustainability benefits of the proposal identified at IR221 - 222, and he gives these benefits significant weight. He also gives moderate weight to the on-site ecological benefits (IR223).
30. Weighing against the proposal, it would result in the loss of some good quality agricultural land and an area of countryside, but the Secretary of State agrees with the Inspector that that this carries limited weight as the land has no protective designation and the views are relatively localised (IR223).
31. As the Secretary of State has concluded that potential harm to the European sites can be successfully mitigated by an amended contribution (IR223), this is a neutral consideration in the balance.
32. The Secretary of State agrees with the Inspector that whilst the appeal scheme is likely to cause queuing and congestion in the short term, it will not cause a severe transport impact. In reaching this view, like the Inspector he has taken into account the likelihood that the Langaton Lane Link Road will be delivered in a timely manner and the probability that the Exhibition Way Link will be built. Even if the latter scenario does not occur, he agrees that there are also other factors that would tend to reduce the impacts such as peak spreading and the diversion of traffic along Science Park Drive (IR224). Accordingly he gives only moderate weight to any adverse transport impacts.
33. Overall, the Secretary of State considers that the benefits of the appeal proposal clearly outweigh any harm and that the material considerations in this case indicate that the proposal should be determined other than in accordance with the development plan. He agrees with the Inspector's overall conclusion that this would be a sustainable form of development (IR224).

Formal decision

34. Accordingly, for the reasons given above, the Secretary of State agrees with the Inspector's recommendation. He hereby is minded to allow the appeal and grant outline planning permission for the development of up to 430 residential units, local centre comprising retail space of up to 240 m² and a community centre, care home of up to 60 bedspaces, specialist care home of up to 60 bedspaces and a park and change facility, together with associated areas of open space (formal and informal), cycleways, footpaths and infrastructure, safeguarded vehicular route to Langaton Lane, served off new access from the highway (B3181), in accordance with application ref:12/0795/MOUT, dated 20 March 2012, subject to the conditions set out at Annex B. Before proceeding to his final decision, he invites you to amend the planning obligation, submitted under section 106 of the Town and Country Planning Act 1990, to address the issue set out at paragraph 23 of this letter. The Secretary of State proposes to allow five weeks from the date of this letter (i.e. to **Friday 24 April 2015**) for

receipt of a duly signed and dated planning obligation. He then intends to proceed to a final decision as soon as possible. If he does not receive a satisfactory planning obligation by 24 April 2015, he will reconsider his minded to approve position. It should be noted that he does not regard this letter as an invitation to any party to seek to reopen any of the other issues covered in it.

35. An applicant for any consent, agreement or approval required by a condition of this permission for agreement of reserved matters has a statutory right of appeal to the Secretary of State if consent, agreement or approval is refused or granted conditionally or if the Local Planning Authority fail to give notice of their decision within the prescribed period.
36. This letter does not convey any approval or consent which may be required under any enactment, bye-law, order or regulation other than section 57 of the Town and Country Planning Act 1990.
37. This letter serves as the Secretary of State's statement under regulation 24(2) of the Town and Country Planning (Environmental Impact Assessment) Regulations 2011.

Right to challenge the decision

38. A separate note is attached setting out the circumstances in which the validity of the Secretary of State's decision may be challenged by making an application to the High Court within six weeks from the date of this letter.
39. A copy of this letter has been sent to East Devon District Council. A notification letter has been sent to all other parties who asked to be informed of the decision.

Yours faithfully

Julian Pitt

Julian Pitt

Authorised by Secretary of State to sign in that behalf

ANNEX A

RECORD OF THE HABITATS REGULATIONS ASSESSMENT UNDERTAKEN UNDER REGULATION 61 OF THE CONSERVATION OF HABITATS AND SPECIES REGULATIONS 2010 (AS AMENDED FOR AN APPLICATION UNDER THE TOWN AND COUNTRY PLANNING ACT 1990)

Project Title and Location: Development at Pinn Court Farm, Pinn Hill, Exeter EX1 3TG, of up to 430 residential units, local centre comprising retail space of up to 240 m² and a community centre, care home of up to 60 bedspaces, specialist care home of up to 60 bedspaces and a park and change facility, together with associated areas of open space (formal and informal), cycleways, footpaths and infrastructure, safeguarded vehicular route to Langaton Lane, served off new access from the highway (B3181), in accordance with application ref:12/0795/MOUT, dated 20 March 2012.

Assessment completion date: 17 March 2015

Project description

1. The project site and surroundings are described at paragraphs 10 - 13 of the Inspector's report (IR). The project proposal is described in the planning application and in detail in the Environmental Statement referred to at IR 5 – 6 and also in the Ecological impact assessment (Inquiry document PA14).

Competent authority

2. The above project, being a 'recovered appeal', is to be determined by the Secretary of State for Communities and Local Government using his powers under section 78 of the Town and Country Planning Act 1990. The Secretary of State is therefore the 'competent authority' for the purposes of the Conservation of Habitats and Species Regulations 2010.

Screening

3. In a letter dated 29 June 2012 to East Lindsey District Council, Natural England expressed the view that the proposal as submitted is likely to have a significant effect on the interest features for which the Exe Estuary Special Protection Area (SPA) has been classified, in combination with outer residential development within 10km of the SPA. In light of that advice the Secretary of State has undertaken the following assessment. Moreover, the appeal site is within 8km of the Pebblebed Heaths Special Protection Area and Special Area of Conservation (SAC), and in view of the technical information considered below, the Secretary of State has taken the view that the proposal, in combination with other residential developments, is likely to have a significant effect on the interest features for which that SPA/ SAC has been classified.

Assessment

Relevant documentation

4. In this assessment, the relevant technical information is set out in the *South East Devon European Site Mitigation Strategy* (the Strategy) published in June 2014, which drew on a range of studies cited in the document. The Strategy was prepared by consultants with support from many interested parties including advice from Natural England and the RSPB. It states that its aim is to provide a strategy to mitigate for the potential in-combination impacts of new housing development on three European wildlife sites within and in the vicinity of East Devon District, Exeter City and Teignbridge District, namely the Exe Estuary Special Protection Area (SPA) and Ramsar site, Dawlish Warren Special Area of Conservation (SAC) and the East Devon Pebblebed Heaths SAC/SPA.
5. The Strategy provides a comprehensive evidence base and strategy to ensure that European sites are adequately protected whilst taking forward sustainable levels of growth, in appropriate locations. The Strategy is a mitigation and delivery strategy, and was produced following a number of earlier studies and surveys to gather information and evidence relating to the use of European sites in the area for recreation, and the potential disturbance to European site interest features that could be caused by that recreational use.
6. The full set of reports that provide the European site evidence base are listed at paragraph 1.4 of the Strategy. Following that work, the Strategy provides a single overarching document addressing the European sites, the mitigation required for residential development coming forward, and the means to deliver the mitigation, informed by all preceding work. The Strategy describes the particular features of the European designated sites in question and their conservation objectives, and addresses the potential for increased recreational pressure on these sites arising from new residential development across the three administrative areas of Exeter City, East Devon and Teignbridge Districts, the potential impacts on the European sites that could occur as a consequence, and the measures that should be put in place to mitigate for those potential impacts. The study takes a holistic approach to the total quantum of planned development around the designated sites and the in-combination effects of that total quantum which includes the appeal proposal.
7. The Secretary of State has also taken into account more recent reports prepared for the participating local planning authorities on progress with implementing the Strategy including mitigation measures. These documents include Inquiry document IFD15, a report to the Development Management Committee of East Devon District Council.
8. Consideration has also been given to documents on the East Devon District Council website on progress with implementing a Community Infrastructure Levy, which the Secretary of State notes includes provisions for implementation of mitigation measures called for in the Strategy.

Natural England's advice

9. In its letter of 29 June 2012, Natural England advised East Devon Council (being competent authority at that stage, prior to the recovered appeal stage) that:

'If the applicant is willing to follow the Joint Interim Approach (agreed by the relevant local planning authorities) and contribute a financial sum of £350 per dwelling towards mitigation measures, then an adverse effect on the integrity of the Exe Estuary SPA can be avoided.'

10. The Secretary of State, having become the competent authority in this case, contacted Natural England again on 17 March 2015, stating that in view of the publication of the Strategy and the work being undertaken by the relevant Councils in partnership with NE and RSPB to implement that strategy, it is his understanding that, providing the developer commits in a legally binding way (a section 106 undertaking) to pay the relevant developer contribution for mitigation (confirmed by the Council at the Inquiry as having risen to £749 per dwelling) and providing the Secretary of State is satisfied that arrangements to implement the Mitigation Strategy are proceeding satisfactorily, then he can conclude in making his Habitats Regulations Assessment that an adverse effect on the integrity of the Exe Estuary SPA can be avoided.
11. Natural England replied on 18 March 2015 to confirm that its advice regarding this proposal remains unchanged from that given in its letter of 29th June 2012, and that they concurred with the Secretary of State's assessment. Natural England has also confirmed that, as the Strategy and increased contribution also provide for adequate mitigation in regard to the East Devon Pebblebed Heaths SAC/SPA, the Secretary of State can also conclude in making his Habitats Regulations Assessment that an adverse effect on the integrity of the East Devon Pebblebed Heaths SAC/SPA can be avoided.

Consideration and conclusions

12. The Secretary of State has given very careful consideration to the technical information in the Strategy and the advice of Natural England referred to above, and to progress with implementation of the Strategy. He is satisfied that arrangements to implement the Strategy are proceeding satisfactorily and he is confident that the package of proposed mitigation measures will be adequate and can be appropriately secured on a phased basis as housing development in the Exeter area proceeds in order to avoid any adverse effects on the European sites in question.
13. Turning to the specific project at Pinn Court Farm, the Secretary of State has scrutinised the Section 106 Legal Agreement between the appeal site owners and the Council dated 28 April 2014, which makes provision for an 'Exe Estuary SPA and Pebblebed Heaths SPA/SAC Contribution' of £492 per dwelling. The agreement stipulates that no more than 50% of open market housing in any phase of the development shall be occupied until this contribution relating to each dwelling in that phase has been paid to the Council. On this basis he is satisfied that the contribution for mitigation will be suitably phased with the physical development and occupation of the housing. However, in order for the scheme to comply with the Habitats Regulations, he considers that an increased level of contribution of £749 per dwelling would be necessary. He agrees with the Inspector's conclusion at IR208 that this can be resolved by a new Section 106 Agreement. Accordingly, the Secretary of State will invite the appellant to amend the planning obligation to provide for a contribution of £749 per dwelling.

The Secretary of State will not grant planning permission for the Project unless he is satisfied that the increased payment has been secured and unless he remains satisfied that the arrangements to implement the Strategy continue to be implemented satisfactorily.

14. On the basis of the above consideration and conclusions, and his decision to secure an increased contribution towards mitigation, the Secretary of State concludes that the construction and operation of the project as described, with the proposed mitigation actions being secured by implementation of the Strategy, will not adversely affect the integrity of the Exe Estuary SPA or the East Devon Pebblebed Heaths SAC/SPA, either alone or in combination with other plans or projects.
15. Copies of the technical information and correspondence referred to in this Assessment may be obtained by application to the address at the bottom of the first page of the decision letter.

Richborough Estates

ANNEX B: SCHEDULE OF CONDITIONS

APPLICATION REF: 12/0795/MOUT

1. Approval of the details of the layout, scale and appearance of the buildings, and the landscaping of the site (hereinafter called "the reserved matters") for each approved phase or phases of the development shall be obtained from the Local Planning Authority in writing before the development of the relevant phase or phases is commenced.
2. Application for approval of the reserved matters in respect of Phase 1 of the development hereby permitted shall be made to the local planning authority before the expiration of 12 months from the date of this permission.
3. Phase 1 of the development hereby permitted shall be begun either before the expiration of 3 years from the date of this permission, or before the expiration of 1 year from the date of approval of the last of the reserved matters to be approved in respect of that phase, whichever is the later.
4. Subsequent phases of the development hereby permitted shall be begun before the expiration of 1 year from the date of approval of the last of the residential reserved matters to be approved in respect of that phase.
5. A detailed phasing plan shall be submitted to and approved in writing by the Local Planning Authority prior to the submission of the first reserved matters application. The phasing plan shall specify the proposed timing for delivery of the areas of public open space/green infrastructure as well as a construction programme for the housing and other build elements of the development. The development shall be carried out in accordance with the approved phasing plan and delivery programme.
6. No development shall take place until a detailed surface water drainage strategy has been submitted to and approved in writing by the local planning authority. The strategy shall be based upon the principle of sustainable drainage systems as outlined in the *Level 2 Flood Risk Assessment: Final Report – Revised* (June 2012). The strategy shall include a timetable for implementation and details of the management and maintenance of the surface water drainage system. Development shall be carried out in accordance with the approved strategy.
7. No development-related works comprised in a particular approved phase or phases of the development shall take place within the site until a written scheme of archaeological work relating to that phase has been submitted to and approved in writing by the Local Planning Authority. This scheme shall include on-site work, and off-site work including the analysis, publication, and archiving of the results, together with a timetable for completion of each element. All works shall be carried out and completed in accordance with the approved scheme.
8. Before any development commences on a particular approved phase or phases of the development, details of finished floor levels and finished ground levels in relation to a fixed datum relating to that phase shall be submitted to

and approved in writing by the Local Planning Authority. Development shall be carried out in accordance with the approved details.

9. Prior to submission of any reserved matters application for an agreed phase or phases of the development, a detailed Design Code for the agreed phase or phases of the development shall be submitted to and approved in writing by the Local Planning Authority. The Design Code shall follow the *Design Framework* (August 2013). The reserved matters application(s) shall adhere to the approved Design Code(s) relevant to that part of the site.
10. Prior to the commencement of development of an agreed phase or phases of the development hereby approved an Ecological Mitigation Strategy shall be submitted to and approved in writing by the Local Planning Authority. This shall be based on the proposed mitigation in the *Ecological Impact Assessment* (December 2011). Development shall be carried out in accordance with the approved details and the Strategy shall include:
 - a. Details of the design and location of bat tubes and swift boxes in 1 in 20 of the new buildings (plus one bat box in the public building if relevant).
 - b. Details of external lighting, including the design, hours of use, location and management of any temporary or permanent exterior lighting within any public area, including signage, flood lighting and road lighting.
 - c. Details of a scheme for the removal and relocation to a suitable receptor site for reptiles. This shall also indicate how adjacent areas to the relevant phase or phases are being considered in terms of reptile removal.
 - d. Details of those hedgerows that are to be retained and how they will be protected during construction; details of those hedgerows to be removed and how any adverse impact on biodiversity will be mitigated.
 - e. A timetable for implementation.
11. Prior to the commencement of an agreed phase or phases of the development hereby approved, a scheme to demonstrate that the internal noise levels within all residential units will conform to the “good” design range identified by BS 8233:2014 *Guidance on sound insulation and noise reduction for buildings* shall be submitted to and approved in writing by the Local Planning Authority. The development shall thereafter be carried out in accordance with the approved details and be retained thereafter.
12. No development shall take place until a Construction Method Statement has been submitted to, and approved in writing by, the local planning authority. The approved Statement shall be adhered to throughout the construction period. The Statement shall provide for:
 - a. The parking of vehicles of site operatives and visitors.
 - b. Loading and unloading of plant and materials.
 - c. Storage of plant and materials used in constructing the development.
 - d. Wheel washing facilities.

- e. Measures to control the emission of dust and dirt during construction.
- f. No construction work shall be carried out, or deliveries received, outside of the following hours: 0800-1800 Monday-Friday, 0800-1300 on Saturdays, not at all on Sundays and public holidays.
13. No development shall take place until details of how existing trees shall be protected during the course of construction have been submitted to and approved in writing by the local planning authority. The tree protection measures shall be in accordance with BS 5837:2012 *Trees in relation to design, demolition and construction – Recommendations* and shall indicate exactly how and when the trees will be protected during the site works. Provision shall also be made for supervision of tree protection by a suitably qualified arboricultural consultant. The development shall be carried out in accordance with the agreed details and protection measures shall be adhered to throughout the construction period.
14. No development shall take place until a Landscape and Ecology Management Plan for the whole development hereby permitted has been submitted to and approved in writing by the local planning authority. The Landscape and Ecology Management plan shall be carried out as approved for each phase of the development.
15. No development shall take place until details for the provision and future maintenance of the proposed noise bund along the eastern boundary of the site. The details shall include the design and landscaping of the bund along with a timetable for its provision. The bund shall thereafter be provided in accordance with the approved details and timetable.
16. The development hereby permitted shall be carried out in accordance with the following approved plans:
- Location Plan – PL081006 LP-01B
 - Proposed Junction & Swept Path Analysis – 47063396-02
 - Proposed secondary access – D122481-105 Rev 01
 - Masterplan Framework – PL081006 MPF-03T
 - Open Space Plan – PL081006 OSP-01B
17. Should a District Heating Network be provided to the site, the buildings comprised in the development hereby permitted shall be constructed so that their internal systems for space and water heating are capable of being connected to the proposed decentralised energy network. Prior to the occupation of the development, the necessary onsite infrastructure shall be put in place for
18. connection of those systems to the network on points on the site boundary to be first agreed in writing by the local planning authority.
19. The development shall be limited to the occupation of 150 dwellings until a link has been provided between the development and Parkers Cross Lane. This shall be as shown on Drawing No: D122481-105 Rev 01 and in accordance with a specification to be first agreed in writing with the local planning authority. The specification shall include measures to ensure that

the link is only used by buses, emergency vehicles, cyclists and pedestrians and shall be carried out as approved and the measures shall be retained thereafter.

20. No dwelling on the development hereby permitted shall be occupied until a signal controlled access onto the B3181 Road has been designed and constructed fully in accordance with the details on Drawing No: 47063396-02.

Richborough Estates

Report to the Secretary of State for Communities and Local Government

by Christina Downes MRTPI

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

Date: 22 December 2014

TOWN AND COUNTRY PLANNING ACT 1990

EAST DEVON DISTRICT COUNCIL

Appeal made by

MILLWOOD HOMES (DEVON) LTD

Inquiry held on 29 April, 21-24 and 27 October 2014
Site visit held on 28 October 2014

Land at Pinn Court Farm, Pinn Hill, Exeter EX1 3TG

File Ref: APP/U1105/A/13/2208393

CONTENTS

	Page
Abbreviations List	3
Procedural Matters	4
The Site and Surroundings	6
Planning Policy	6
The Case for the Appellants: Millwood Homes (Devon) Ltd	8
The Case for the Council: East Devon District Council	16
Other Oral Representations to the Inquiry	26
Written Representations	
To the Appeal	27
To the Planning Application	27
Consultation Responses	28
Planning Conditions	29
Planning Obligations	32
Conclusions	34
Recommendations	55
Annex One: Appearances	56
Annex Two: Documents and Plans	57
Annex Three: Conditions Schedule	60

Richborough Estates

ABBREVIATIONS LIST

Term

Acronym

Community Infrastructure Levy	CIL
Compulsory Purchase Order	CPO
Devon County Council	The County Council
East Devon District Council	The Council
East Devon Local Plan 2006-2026	LP
Emerging East Devon Local Plan 2006-2026	ELP
Environmental Impact Assessment	EIA
Environmental Statement	ES
Langaton Lane Link Road	LLL
National Planning Policy Framework	the Framework
Passenger Car Unit	PCU
Pinhoe Area Access Strategy	PAAS
Planning Obligation by Agreement	Section 106 Agreement
Planning Obligation by Unilateral Undertaking	Unilateral Undertaking
Planning Practice Guidance	PPG
Statement of Common Ground	SCG
The Highway Authority	HA

Richborough Estates

File Ref: APP/U1105/A/13/2208393

Land at Pinn Court Farm, Pinn Hill, Exeter EX1 3TG

- 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 Millwood Homes (Devon) Ltd against the decision of East Devon District Council.
- The application Ref 12/0795/MOUT, dated 20 March 2012, was refused by notice dated 17 October 2013.
- The development proposed is up to 430 residential units, local centre comprising retail space of up to 240 m² and a community centre, care home of up to 60 bedspaces, specialist care home of up to 60 bedspaces and a park and change facility, together with associated areas of open space (formal and informal), cycleways, footpaths and infrastructure, safeguarded vehicular route to Langaton Lane, served off new access from the highway (B3181).

Summary of Recommendation: That permission be granted

PROCEDURAL MATTERS

1. The park and change facility is now to be provided within the new development at Old Park Farm. The area proposed for this facility at the appeal site would be used as a skate park. An amended description has thus been agreed in the Planning Statement of Common Ground (SCG) (**Document BD 5**).
2. The application was submitted in outline form with all matters apart from access being reserved for consideration at a later stage.
3. The Inquiry was adjourned on its first day (29 April) due to the submission of further evidence relating to the proposed signalisation of the double mini roundabout. This was received close to the start of the Inquiry and could also have implications for viability. In the circumstances it was decided that no evidence should be heard in the interests of fairness and there were no objections to this from the main parties (**Document BD 3**). The Inquiry was therefore resumed in October 2014, which was the earliest date that all parties were available.
4. There were two Planning Obligations made under Section 106 of the Town and Country Planning Act 1990 (as amended). These are considered later in this Report. However I agreed that the parties should be allowed a short period of time following the close of the Inquiry to complete a Deed of Variation so that the obligations regarding the Safeguarded Land within the site for the Langaton Lane Link and the contribution towards the purchase of the third party land needed to construct it, would not be dependent on a finding by the Secretary of State regarding the Community Infrastructure Levy (CIL) Regulations.

The Environmental Impact Assessment (EIA)

5. There is no dispute that the proposal is EIA development. The planning application was accompanied by an Environmental Statement (ES) and following statutory consultation with the Environment Agency, Dorset County Council as Highway Authority (HA) and the Council, an Addendum to the ES was produced (**Document PA 1**). This effectively replaced the chapters relating to the development proposal, planning context, environment, transport, cumulative impact and conclusions. The assessed drawings were as follows:

- Revised site location plan – LP-01 Rev B
 - Masterplan Framework – PL081006 MPF-03 Rev T
 - Open space plan – PL0810006 OSP-01 Rev B
 - Main access – 47063396/01
 - Conceptual block plan – PL081006 CBP-01 Rev A
6. Apart from the conceptual block plan the assessed drawings are those agreed to be the relevant ones for the determination of the appeal in the Planning SCG. However at the Inquiry a slight amendment to the main access drawing was submitted (47063396-02) (**Plan A/1**). This shows the new access into the Old Park Farm estate as it has now been constructed and so is a factual correction. It is not considered that this would have any significance in terms of the assessment of impacts or cause any prejudice to any party. The Council raised no objection and so it is recommended that this drawing is accepted as relevant to the determination of this appeal.
7. There was also a separate Transport Assessment and various additional technical notes and assessments relating to highway matters (**Documents PA 2-PA 7**). The signalisation of the double mini roundabout junction on Main Road has undergone various iterations and the resulting impacts have been dealt with in the evidence to the Inquiry. This is all included as relevant environmental information for the purposes of the EIA Regulations. Other reports provided in association with the planning application include a landscape and visual impact assessment, a flood risk assessment, an ecological assessment, noise and air quality assessments (**Documents PA 8; PA 9; PA 11-PA 16; PA 21; PA 22**). These are all detailed in the background documents. The application was also supported by a Masterplan (**Plan A/3; Document PA 26**).
8. The Council confirmed at the Inquiry that it was satisfied that all necessary publicity has been undertaken and that it is legally compliant. A local resident was concerned that insufficient publicity had been given, due to the location of the site close to Exeter City. However the proposal was widely advertised in local newspapers. There were also site notices and individual letters sent to nearby residents, local ward councillors and the parish council (**Documents BD 1; ID 1**). The Planning SCG confirms that it provided a screening opinion and that the topics suggested have been included in the ES.

APPEAL RECOVERY

9. The appeal was recovered by the Secretary of State for Communities and Local Government for his own determination on 20 December 2013. The reason for this direction was that it involves a proposal for residential development of over 150 units and would be on a site of over 5 ha, which would significantly impact on the Government's objective to secure a better balance between housing demand and supply and create high quality, sustainable, mixed and inclusive communities (**Document BD 2**).

THE SITE AND SURROUNDINGS

10. The appeal site is within the West End Area which lies on the western edge of East Devon District where it adjoins Exeter City. Pinhoe is no longer a discrete settlement but is at the north-eastern end of a continuous built up area radiating out from the city centre. West End is designated as an area of change in the emerging East Devon Local Plan and the appeal site along with Old Park Farm immediately to the west are allocated for large scale residential development. The West End developments also include a large area proposed for housing to the south along with the Science Park, which is currently under construction. Cranbrook is a proposed new settlement further to the east and north of Exeter International Airport.
11. The appeal site comprises about 27 hectares of agricultural land on the north-eastern side of Pinhoe close to the northern edge of the built up area. The house and complex of farm buildings at Pinn Court Farm are towards the southern end of the appeal land but excluded from it. The topography is complex with local undulations and ridges but generally the land slopes down in an easterly and southerly direction. There are a number of treed hedgerows along field boundaries and a substantial band of trees and vegetation along the eastern perimeter with the M5 motorway, which is partly on an embankment at this point.
12. To the south of the site is a large residential area whilst to the west there is a ribbon of houses along the B3181, Main Road North. Old Park Farm is on the western side of Main Road North and is currently under construction. Its signal controlled access is opposite the proposed access into the appeal site. The centre of Pinhoe is around a complicated crossroads served by a double mini roundabout. There are several shops, including a short parade, on the corner of Main Road North and Church Hill. These include a small supermarket, post office, butcher and estate agent. There are also other commercial premises on the Station Road arm of the junction, including a restaurant and take-away, newsagent and chemist. Further along Station Road is Pinhoe Station with services to Exeter and London, Waterloo. There are various bus stops along Main Road and Church Hill. A short distance to the north in Harrington Lane, off Church Hill, is a primary school.
13. Many of the roads in the Pinhoe area are narrow country lanes. These include Langaton Lane and sections of Tithebarn Lane for example. There are some useful photographs and context maps in **Document PA 12**.

PLANNING POLICY

14. The relevant statutory policy document is the **East Devon Local Plan 2006-2011** (LP), which was adopted in 2006 (**Document POE 11, Appendix 17**).
15. The Planning SCG lists the various saved policies that the main parties consider to be relevant (**Document BD 5, Paragraph 3.20**). Whilst all have been taken into account, the most pertinent to this appeal are as follows:
 - **Saved Policy S5** defines the countryside as everywhere outside the Built-up Area boundaries or allocated sites. Development in the countryside will only be permitted in accordance with specific policies and where the

distinctive landscape, amenity and environmental qualities will not be harmed.

- **Saved Policy S7** seeks to ensure infrastructure requirements arising as a direct consequence of development are met in full to serve the needs of the development.
 - **Saved Policy EN14** aims to protect best and most versatile agricultural land unless there is an overriding need for the development.
 - **Saved Policy H1** sets out the housing requirement from 2006-2011. **Saved Policy H2** establishes residential allocations and a sequential approach to site selection with priority to brownfield land in urban areas
 - **Saved Policy H4** sets out the requirement for affordable housing where an up-to-date housing needs survey demonstrates a need. Qualifying sites are defined and the Council will seek to negotiate a minimum of 40% affordable dwellings.
 - **Saved Policy TA1** aims to locate development in accessible locations so that the need for car travel is minimised.
 - **Saved Policy TA4** requires development to include measures to provide and improve facilities for pedestrians and cyclists commensurate with the scale of the proposal.
 - **Saved Policy TA7** seeks to ensure that proposed access and traffic generation would not be detrimental to the safe and satisfactory operation of the highway network.
16. The **emerging East Devon Local Plan 2006-2026** (ELP) has been submitted for examination but is currently in abeyance. Amongst other things the Examining Inspector was concerned about whether the housing target was adequately supported by an up-to-date evidence base reflecting the objectively assessed housing needs of the Housing Market Area over the plan period (**Document POE 11, Appendix 23**). The Council is currently undertaking this work.
17. The Planning SCG lists the various policies that the main parties consider to be relevant (**Document BD 5, Paragraphs 3.22-3.25**). Whilst all have been taken into account, the most pertinent to this appeal are as follows:
- **Draft Strategy 1** sets out the housing and employment provision for the District with a significant amount being accommodated in the West End where the appeal site is located.
 - **Draft Strategy 14** provides for an urban extension to Exeter of 800 houses in Pinhoe comprising the appeal site and Old Park Farm.
 - **Draft Strategy 34** (as proposed to be modified) sets out the district's affordable housing targets, including a minimum of 25% in the larger towns and the strategic West End development sites. In other places, including the rural areas, the starting point is 50% subject to viability considerations.
18. The **Pinhoe Area Access Strategy** is a background document to the ELP and was produced in its updated form in July 2013 (**Document POE 11, Appendix 16**). It seeks to address the traffic implications of 4 major developments in the

Pinhoe area, including 2 in Exeter City (Pinhoe Quarry and Ibstock Brickworks) and two in East Devon District (Old Park Farm and the appeal site). This includes improving the range of sustainable transport options; enhancing the public realm and improving safety and local traffic management; and the provision of new route choices through the Exhibition Way link and the Langaton Lane Link (LLL) to mitigate the impact on the double mini roundabout in the centre of Pinhoe.

THE CASE FOR THE APPELLANT: MILLWOOD HOMES (DEVON) LTD

The Appellant's case is fully set out in its evidence, including its opening and closing submissions (Document ID 23). The main points are:

19. The overriding context for this appeal is one of a very high degree of agreement on a wide range of matters and a joint ambition on all sides for the appeal site to come forward for residential development. The appeal site is included in the ELP, which is now at an advanced stage of preparation. Moreover it is a site which the Council has resolved to grant permission for precisely the same development. The issues that remain between the parties are not matters which go to the principle of development, nor to the detail or quality of the master planning which lies behind the appeal proposal. The focus is on two main issues, namely traffic impacts and their mitigation, and the level of affordable housing provision.
20. The Council accepts that it does not have a five year land supply and that a 20% buffer is required (**Document BD 5, Paragraph 5.2**). It does not have an objectively assessed housing need and so the housing requirement for the district is unknown. The only available number against which to measure supply is derived from the regional strategy, which is inappropriate and not lawful. Even on that basis the supply is somewhere between 2.2 and 4.3 years. Paragraph 49 of the Framework applies and the policies for the supply of housing land should not be considered up to date. The proposal attracts significant weight in policy terms insofar as it meets identified and urgent housing need in a location which is agreed to be appropriate for housing.
21. The Council agrees that there is no issue in this case as to whether or not development in the open countryside breaches any development plan policy. It has not raised any character and appearance issue. A landscape and visual impact assessment was undertaken as part of the EIA (**Document PA 12**). The Council's position, as recorded in the Officer's report is that the site is not isolated countryside. It observes that there will inevitably be a visual impact but notes that the impact is generally limited to the immediate site and a localised margin bounding the site. Overall, the Council considers that the landscape impact would only be local and in respect of a site which is not designated and is in an area which will see radical change over the next few years. It considers that the area would see benefits arising from the new planting and also areas of open space (**Document POE 11, Appendix 13**).

Affordable housing

Policy position

22. The Council relies upon saved LP Policy H4 in support of its case that 40% of the dwellings should be affordable. However the policy is premised on an up-

to-date housing needs survey demonstrating a need for affordable housing. The Council has no idea what its housing needs are and so it follows that the first clause of the policy has not been satisfied. The Council confirmed that the last housing needs survey was undertaken in 2007 and updated in 2011¹. That is not an up to date housing needs survey.

23. Policy H4 is out of date for the following reasons:

- It was not subject to any strategic viability testing;
- It was adopted prior to the Framework and consequently does not address the requirement in Paragraph 173 for competitive returns to a willing landowner.
- It is in any event aged, even when measured against the date of the saving letter issued in June 2009;
- The Council has failed to adopt any affordable housing supplementary planning document as Paragraph 5.36 of the supporting text to the policy indicates it would do;
- The weight to be given to Policy H4 must be extremely limited by reason of Strategy 34 in the ELP, which is acknowledged to be at an advanced stage and which is supported by detailed and un-criticised evidence.

24. The Framework is a growth orientated policy document. It actively seeks to boost the supply of housing through mechanisms such as a presumption in favour of sustainable development and the provision of a five year supply of housing land. The policy in Paragraph 173 must be read in the context of the Framework as a whole and its growth orientated general thrust (Paragraph 6). That was plainly not the position in national policy terms when Policy H4 was conceived and adopted.

25. The Council commissioned two well respected organisations to undertake a study of the viability of affordable housing provision (**Document POE 11, Appendix 6**). That study is accepted by the District Valuer and the Council's Planning Policy Manager to be technically robust². Indeed, the Council promoted a level of affordable housing at 25% in the area of the appeal site at the ELP Examination. The Council for this appeal contend that Policy H4 is part of the extant development plan and therefore 40% affordable housing should be provided. However, that takes no account of its own, unquestioned and thoroughly researched evidence as to the appropriate level of affordable housing in this area, which has been translated into an emerging policy and widely consulted upon. This provides for exactly the level of affordable housing which the Appellant is content to offer. The emerging policy is at an advanced stage and has gone, so far, un-criticised by the Examining Inspector. There were no more than 5 objections but these were unsupported by any substantive analysis, data or evidence. This material consideration was not considered by the Council in its evidence prior to the Inquiry.

¹ This was confirmed by Mr Dickens in cross-examination by Mr Kimblin.

² This was accepted by Mr Gill and Mr Dickens in cross-examination by Mr Kimblin.

26. In the circumstances there is no proper policy basis upon which to found a refusal on the basis of the affordable housing offer. This is illustrated in the appeal decision by Feniton Park Ltd (**Document ID 7**). Here the Appellant offered 4 affordable dwellings out of the 32 proposed, namely only 12.5%. In that case the Inspector held that the affordable dwellings would be a benefit that carries a small amount of weight in favour of permitting the appeal, albeit not as much as would have been the case had 40% of the proposed dwellings been secured as affordable. The Council could not identify any reason why the Secretary of State should not do likewise here.
27. Clearly, the inspector in that case took the view that Policy H4 was not breached and one can well see why because the policy merely seeks the provision of affordable dwellings and explains that the number to be sought will typically be 40%. Of course, the higher the percentage the greater the weight which attaches to the benefit from providing affordable housing, for which there is a need. Hence, applying the principle in the Feniton Park Limited appeal, the provision of 25% affordable housing, well in excess of 100 units, is a matter that should attract weight in favour of the proposal. It certainly should not result in a finding which is adverse to the proposal and should not result in a finding of failure to comply with the development plan.

Viability assessment

28. In the above context, the evidence in respect of viability has little value. Nevertheless viability assessments were undertaken and various scenarios tested. Many of the inputs were agreed with the Council (**Document BD 5, Appendix 2**). One of the disagreements related to Developer's Profit on the market housing and bearing in mind comparable evidence from other house builders a blended profit of 18.8% on gross development value seems reasonable (**Documents POE 13, Paragraph 5.7; POE 14, Paragraph 4**) The content of the option agreement between the Appellant and the landowners is not relevant because it is commercially sensitive and nobody relies upon it. The Appellant produced a residual land value appraisal of about £685,000 per hectare for a 40% affordable housing scheme³ (**Document POE 13, Paragraph 7.2 and Appendix 7**). This is plainly not a land value which will attract a willing seller. This is plain because the available evidence all points to land prices being considerably in excess of this sum, on any view. The following comparable sites exceeded the residual land value calculated at 40% affordable housing (**Document POE 13, Paragraph 6.2**):
- Hele Park Golf Course, Newton Abbot at £1.658 million per hectare
 - Hill Barton, Exeter at £1.93 million per hectare
 - Rydon Place, Pinhoe at £2.06 million per hectare
 - Ibstock Brickworks, Exeter at £1.13 million per hectare
 - Sandrock Nursery, Exeter at £1.37 million per hectare
29. The only real point taken against these comparables is that they were subject to a 25% and not a 40% affordable housing provision. However even on an

³ This produced an overall residualised price of £9.1m or £11.3m including the care home.

appraisal at 25% affordable housing provision, the residual land price would only be about £898,000 per hectare (**Document POE 13, Paragraph 7.3 and Appendix 8**). So even at this level of affordable housing the landowner would be accepting a residual land value that is substantially below any of the identified comparables.

30. The Council considered that Maer Farm, Exmouth and Cloakham Lawns, Axminster represented the closest comparisons in terms of form, scale and planning circumstances to the appeal site (**Document POE 4, Paragraph 6.44**). However it was conceded⁴ that there were fundamental difficulties with each of these comparables. Maer Farm was a transaction that was not undertaken at arm's length. It was undertaken for tax purposes and was not underpinned by any marketing at all. It is not known what price would have been ascribed to this sale on the open market if there had been a willing seller and a willing buyer. Cloakham Lawns is tainted because it was ultimately a forced sale in which the receivers were involved. These circumstances mean that little or no weight can be placed upon that particular comparable.
31. The Council worked on the basis that the care home element ought to be included in the total development value. However there is neither a policy link nor a functional link between such development and affordable home provision. The only reason that this issue arises is that the care home is a part of the totality of the development proposed and for which permission is sought. If it were to be included a value of £2.2m may be achieved over the initial 0.4ha site but taking account of the limited market and competition from nearby sources, overall a value of about £1.5m ha seems reasonable (**Document POE 13, Paragraph 5.4**).
32. One particular reason for the Council's elevated development value was that the value of the 4 bedroom units had been over-estimated. This was more than £2m above the Appellant's valuation and that of two other agents, who are active in the area. Their evidence and expertise is derived from active professional engagement in the market and the District Valuer's is not. It is no answer to rely upon information from the revenue as to the payment of stamp duty because the data selected is entirely for new build housing to which incentives are known to apply. This often results in prices which are understated by some 5% to 10% because of mortgage and part exchange incentives that are included in the house builder's package (**Documents POE 13, Paragraph 5.2; POE 14, Paragraph 3**).
33. The Council considers that as a rule of thumb the land value can be calculated by a multiplier of the agricultural land value (**Document POE 4, Paragraph 6.32**). However whether the residual land value is 15, 20 or 30 times the agricultural value is no answer to the evidence as to actual sales in the open market as produced in the Appellant's valuation. The reality is that the reasonable vendor can expect to realise at least £1.1 million per hectare. It is unrealistic and inconsistent with the principles in the *Planning Practice Guidance* (PG) to expect a transaction to be incentivised and to occur to deliver housing at a value less than the relevant comparables (**Document ID 5**). Land values should be sufficient to promote economic growth and should be arrived at in a

⁴ This was agreed by Mr Gill in cross-examination by Mr Kimblin.

transparent fashion. Although the return on the basis of 25% affordable housing was still lower than some comparable transactions, the landowners have confirmed that they would be prepared to proceed on this basis (**Document POE 13, Paragraph 8.4 and Appendix 8**). The Secretary of State should give full and proper effect to his own guidance such that he is informed by comparable, market-based evidence wherever possible.

Traffic generation, congestion and highway safety

34. Paragraph 32 of the Framework makes clear that “*development should only be prevented or refused on transport grounds where the residual cumulative impacts of development are severe*”. This is to set a high bar for intervention via the planning system in traffic effects arising from development. The Council agreed that mere congestion and inconvenience was not sufficient to trigger the “severe” test but rather that it was a question of the consequences of such congestion⁵. This can be seen from the Preston appeal decision, which was extensively relied upon by the Council (**Document POE 6, Appendix 20**). When read as a whole it is clear that it is highway safety and the dangerous consequences of congestion which are at the heart of the Inspector’s finding. For example, he found that the nature of the junction precipitated irresponsible and dangerous driver actions and that the junction impinged directly on emergency vehicles going to the hospital nearby. These and other features of the decision are what led to his finding of adverse effects upon highway safety and thus a severe residual effect.
35. In the current situation there is no significant existing congestion to be concerned about. A considerable amount of modelling has been undertaken using a variety of base data (**Documents POE 16, Sections 5-8; POE 19, Section 3**). Having arrived at agreement on using the 2013 traffic flows, predictions have been made taking account of all permitted development and the proposed development (**Document BD 6, Paragraph 12**). It is extremely important to appreciate the assumptions which lie behind that modelling. The Council’s predictions of long queues are on the basis of worst case scenarios during the morning peak hour. Congestion at peak times would be short lived and for most of the day there would be none.
36. A number of factors that will occur in reality are not incorporated into the modelling, largely at the HA’s request. First a park and change facility, which will be provided at the Old Park Farm development, has not been included. Second “peak spreading” where people spread their journey times to avoid peak congestion, has not been included. Third future changes in the highway network have not been included. In particular, there is a route which will open up in Spring 2015 which will permit traffic to divert left from Main Road North, down Parker’s Cross Lane and to connect with Science Park Drive and thus to destinations beyond. Whether or not it would be a “rat run” it is important in understanding how long any queue will in fact be (**Documents POE 16, Paragraphs 4.3.7 and 4.38; POE 17, Appendices 8 and 9**).
37. The reason for refusal relates solely to Main Road North. It does not complain of anticipated congestion anywhere else on the highway network, save that the Council takes some subsidiary points in respect of such congestion as might be

⁵ This was agreed by Mr Pratt in cross-examination by Mr Kimblin.

a secondary consequence of mitigation measures. The Council has resolved to grant planning permission for a similar proposal, subject to certain Grampian conditions (**Document POE 16, Paragraph 2.5**). The first of those accepts that 150 dwellings could be built on the site without any mitigation whatsoever. In that regard, the Council accepts a queue of 184 passenger car units (PCU) or 1.1 km with a delay of just under 13 minutes (**Document POE 16, Paragraph 6.7**)⁶.

38. The calculated queuing would spread across the three “arms” of Main Road North, the appeal site access and the site access from Old Park Farm. This sort of situation would not give rise to any driver frustration. Observations indicate that drivers in the area are courteous and to the extent that it is necessary for one driver to let out another that is the sort of thing which is common place on the highway in this area. It is simply not correct to say that the sort of short term queues that would ensue from the permitted developments without any substantial mitigation measures would amount to a severe residual impact in Framework terms. No safety critical feature has been identified as it was in the Preston appeal decision, merely a generalised assertion that such queuing would be dangerous.
39. The Appellant has sought, responsibly, to assist the Council in its wider objectives for growth in this area. This has taken two forms:
 - Signalisation of the double mini roundabout, and
 - Putting in place a large section of the LLL.
40. It should be emphasised that the Appellant does not seek permission for a signalisation scheme even though the level of detail would suggest this is the case. It has been prompted by the HA seeking ever more options and assessment. The upshot has been to gold-plate the works which are intended merely as an interim solution pending the construction of the LLL. The modelling shows that signalisation would significantly increase the junction capacity such that the queue length and delay would be less with the appeal scheme and Old Park Farm Phase 2 in place than the 2019 Base with the existing double mini roundabout (**Document POE 16, Table 8.5**).
41. The real difficulty that arises is the HA’s insistence upon signalised pedestrian crossings and signalised accesses to the shops and private drives. While such features may be desirable in facilitating sustainable modes of movement, the only existing pedestrian facility at the junction is a toucan crossing set back some distance north up Main Road North. The introduction of the pedestrian facilities would have the effect of significantly reducing the capacity of the junction (**Document POE 16, Tables 7.6 and 8.5**). Signalising the accesses to the shops is overly robust when on-site observations show that traffic enters from Church Hill and exits onto Main Road North, given the orientation of the parking bays (**Document POE 19, Paragraph 2.7 and Section 3**).
42. There is a limited time resource available at the junction which has to be prioritised and divided between pedestrians, the shops and highway traffic. It

⁶ Inspector’s Note: It should be noted that this was based on the modelling using 2010 traffic survey data. If the agreed 2013 data is used 100 dwellings could be built without mitigation. This is the basis for the Grampian conditions suggested for the appeal proposal.

is really a matter for the HA how that is divided but it is unfair to require a gold-plated standard for pedestrians as against a nil base and then to hold the consequences against the appeal scheme.

43. The parties agree that the provision of the LLL is a suitable form of mitigation and is desirable and beneficial in broader terms. It is a feature of the Council's *Pinhoe Area Access Strategy* (PAAS), the purpose of which is to set out the likely transportation improvements that will be needed to support growth planned in the Pinhoe area (**Document POE 11, Appendix 16**). It forms part of the evidence base for the ELP. The LLL would be a solution that over-mitigates the impact of the appeal scheme as it would also attract existing traffic from the B3181 and from Old Park Farm. It is estimated by the HA that it would divert about 157 trips from the B3181 in the morning peak, including 26 of the 132 trips from the appeal site using that road (**Document ID 3**). The PAAS indicates that with the growth in jobs east of the motorway there may be wider benefits to traffic reduction along the B3181 corridor.
44. The appeal proposal seeks to deliver a very large part of the LLL and therefore to enable those wider benefits to be felt and their advantages to become a part of the new framework of growth in this part of East Devon and Exeter. The Planning Obligation by Agreement (Section 106 Agreement) with the County Council includes a provision to safeguard the necessary land within the site and prevent the owners from constructing anything on it for a period of 15 years. The County Council would have a right under the terms of the Section 106 Agreement to enter the land and once it has been constructed, to require the landowners to grant an easement and dedicate the land as a public highway (**Document ID 16**). This right is not conditional upon the LLL being found to be necessary and therefore compliant with Regulation 122 of the CIL Regulations (**Document ID 18**).
45. A secure mechanism is thus in place for the land to come forward to provide for the LLL on the appeal site. The remaining issue involves the 0.02 hectares of land owned by Wain Homes. This lies between the appeal site and the highway land on Langaton Lane and is not within the Appellant's or landowners control (**Document ID 6**). In the event that planning permission were granted for the appeal scheme there would be no ransom value associated with this land and the agricultural land value would be very low indeed, being some hundreds of pounds. Even if the relevant value was as extensions to the adjacent residential gardens, the land would only be valued at some low thousands of pounds. It is inconceivable that use of Compulsory Purchase Order (CPO) powers would be necessary in respect of a scrap of useless land, held by a developer which then had no ransom value. However, even if that were not the case, the making of a CPO would be a course of action which is supported by the ELP policies for the provision of housing in Pinhoe. There is no requirement for residual traffic congestion to be severe in order to make a CPO. Rather an acquiring authority would have to show a compelling case in the public interest. It has already done so by producing its PAAS and permitting much of the housing growth in the area. Moreover, the acquiring authority evidently has a clear idea of how the land would be used and has the necessary funding.
46. The contention by the Council that the Appellant should have approached Wain Homes to purchase the land is fanciful. In such circumstances there would be

a ransom in respect of part of the development, taking account of the principles in *Stokes v Cambridge*, and the range of values is easy to calculate from the residual valuations. The Appellant has undertaken to provide a sum to a maximum of £50,000 to accommodate the land purchase costs and associated legal costs, including the making of a CPO (**Document ID 17**). There is simply no reason why that which the Council has planned for in the PAAS should not be realised with this modest degree of cooperation from the County and District Councils.

47. There is plenty of time for this to occur. There would be a period of a year during which reserved matters would be submitted. The evidence is that a sales rate of 3 market dwellings per month would be the maximum achievable which would result in 36 a year. It would therefore be three years before the 100th dwelling were occupied. This is the amount of housing that the Council has agreed can take place on the appeal site without any unacceptable highways effects. Hence, there is no reason as to finance, statutory powers or the necessary time being available for the relevant parties to cooperate to bring forward the LLL. All of these points are in the context of there being the alternative route of Science Park Drive coming forward in the Spring of 2015 which has not been modelled but which is acknowledged by all parties to play a role in providing a further choice of routes away from the B3181.
48. The upshot of the Council's highways position is to either result in no development at all to assist in rectifying its perilous housing land supply position, or a development that would be very severely compromised as to its viability. That is because the imposition of the proposed Grampian condition would create a ransom and would take out very significant sums from the development value which would necessarily have to be balanced by the removal of planning obligations and/or affordable housing provision. Both of those alternative outcomes are highly undesirable from the points of view of all of the parties and of the wider community which needs the development which has been proposed.
49. Ultimately this is a simple case and one is not to be distracted by the issues surrounding the 0.02 ha of third party land. A very high quality illustration has been produced of what can be achieved by signalisation of the Pinhoe double-mini roundabouts. That may not be needed having regard to the opening of Science Park Drive in the spring of 2015, or if Exhibition Way emerges from its Village Green litigation (**Document POE 16, Paragraph 2.6**). However it is quite wrong to take a negative and gold-plating approach to the signalisation and its associated mitigation. It is wrong to so configure the signals as to remove the benefits which are achievable. Further, and in any event, the necessary land and financial provision is entirely in place and secure to both fully mitigate the impact of the appeal proposal and to provide some further benefit in that regard via the LLL. In resisting the appeal proposal the Council is creating exactly the difficulties which are preventing the agreed optimal solution, namely the LLL.

Sustainable development

50. The appeal scheme has been carefully designed with a high quality Masterplan. That process was achieved after detailed and extensive discussion and cooperation with the Council, including providing for the Council to obtain

significant external urban design advice (**Documents PA 24-PA 26**). This is agreed to be a high quality scheme on a sustainably located site that has been allocated for residential development in a reasonably advanced ELP (**Document BD 5, Section 8**).

51. The appeal site is within an area which is subject to significant planned growth both in housing and employment terms. The associated infrastructure is in the course of construction. If the necessary housing is not provided for the associated employment then anticipated economic growth can not happen. This is a fundamental point in the context of a planning authority which has neither a five year supply of housing land nor any idea what its objectively assessed housing need is. It is most important that the necessary housing is made available in order to support economic growth and also to take advantage of the economic growth associated with the fact of building and construction in itself.
52. The social dimension is equally important and the provision of over 100 units of affordable accommodation is a significant and weighty matter in assessing the sustainability of the proposal. The provision of both market and affordable housing is key to planning and central to the objective of boosting supply significantly in accordance with Paragraph 47 of the Framework. None of this is in dispute. The only point taken against the appeal site is the traffic point. For the reasons given above that is resolvable. Upon that resolution there is nothing but a wholly sustainable site which benefits from the assumption in Paragraph 14 of the Framework.

THE CASE FOR EAST DEVON DISTRICT COUNCIL

The Council's case is fully set out in its evidence, including its opening and closing submissions (Document ID 22). The main points are:

53. The Council resolved to grant planning permission on this site for 430 houses on 25 March 2014. The benefits of that development results from a scheme that delivers the target level of affordable housing in the adopted LP and the LLL, which the County and District Councils consider is necessary infrastructure. The appeal scheme does not provide these benefits.
54. It is agreed that there is not a 5 years supply of housing land and that the shortfall is between 2.2 and 4.3 years (**Document BD 5, Paragraph 5.2**). Although it is not possible to work out where in the range it is, if household projections are used it is likely to be at the top. The highway and affordable housing policies are not housing supply policies so the deficit is less important in this case.

Affordable housing

Policy position

55. It is not disputed that there is a considerable need for affordable housing in East Devon as set out in the LP (**Document POE 11, Paragraphs 5.26-34**). The ELP also recognises it as a critical issue as is evidenced in *the Examination Topic Paper 2* (January 2014) (**Document POE 11, Appendix 8, Section 2**). In recent years affordable housing delivery has been relatively low and has fallen well short of the identified need, even under a low growth scenario (**Document POE**

- 1, Section 5**). In the Feniton appeal decision the need for affordable housing was said to be overwhelming (**Document ID 7, Paragraph 106**).
56. LP Policy H4 deserves the most weight, bearing in mind Section 38(6) of the Planning and Compulsory Purchase Act 2004 and Paragraph 215 and 216 of the Framework. It is the saved adopted policy and it is the policy that Inspectors are applying in East Devon (**Documents POE 1, Appendix 1, Paragraph 31; ID 7, Paragraphs 99, 106, 129, 135**). In the Feniton appeals the ELP was before the Inspector but Policy H4 was applied in preference to the emerging policy. Policy H4 is also entirely consistent with Paragraph 50 of the Framework. There is an undisputed need and the policy has a preference for on-site provision but off-site provision can be considered in exceptional circumstances. The Framework requires policies to be sufficiently flexible to take account of changing market conditions over time. When read with Paragraph 5.38, Policy H4 seeks 40% but allows for flexibility if that would jeopardise viability. Paragraph 173 of the Framework requires a competitive return to a willing landowner and that is obviously able to be considered under Policy H4 because that was the whole focus of the Council's viability evidence.
57. Policy H4 is not a supply of housing policy. The proposal would not comply with the policy and therefore would not comply with the development plan. If a scheme does not provide 40% but it is clearly viable to provide that quantum, as here, there would obviously be conflict with Policy H4. If that is not the position then no developer would bother to provide the full amount of affordable housing and that would be a bizarre and untenable reading of the policy. The language of Paragraph 99 of the Feniton Park Ltd appeal decision needs a little thought in the context of that appeal. It should be read in the context that the Council contended there was no need for affordable housing in Feniton. There were also issues of viability based on the contributions to an all-weather pitch, the relocation of a power cable as well as a substantial contribution to flood relief. The Council had agreed the number of affordable houses in negotiation and that is why the Inspector concluded that the lower provision could be treated as a benefit and given some weight. Less weight should be given to this appeal decision as to the construction of Policy H4 because it was not controversial in that appeal. In the present case it is viable to provide 40%, there is no negotiated settlement with the Council on affordable housing and it is clearly contrary to the policy not to provide 40%.
58. The weight to be given to Strategy 34 in the ELP is limited having regard to the factors in Paragraph 216 of the Framework. The ELP is at the stage where the Examination is still underway and has been delayed for further work. That further work has not yet been reported back to Members. There are also unresolved objections, some seeking more affordable housing and some seeking less. There are 3 very strong representations from knowledgeable parties where a greater percentage of affordable housing is supported (**Document POE 2, Section 3 and Appendices 1-3**). That is in addition to CPRE, Cllr Wright, David Boyle and if properly analysed Tetlow Planning at the consultation draft stage (**Document POE 12, Table 1**).
59. The Appellant put forward a number of reasons why Strategy 34 in the ELP should be preferred to saved Policy H4 in the adopted LP (**Document POE 11, Paragraph 6.3.12**). These are rejected as follows:

- Paragraph 211 of the Framework makes it plain that policies in a local plan are not out of date just because they were adopted prior to the publication of the Framework. Whilst the policy was not subject to viability testing this is built in so that it could be done at application stage.
 - Policy H4 may not have been adopted after the Framework but it can still consider competitive returns which were certainly considered as part of this application.
 - Policy H4 may not be saved indefinitely but it is saved now and should be applied.
 - Paragraph 5.36 refers to the production of supplementary guidance to provide advice on the application and implementation of Policy H4. Just because this was not produced does not mean the policy should not be applied.
 - The *Affordable Housing Viability Study*, which is part of the ELP evidence base, was more optimistic about higher values on land close to Exeter being able to support higher levels of affordable housing (**Document POE 11, Appendix 6, Paragraphs 4.29-4.32, 7.2**). It is thus perfectly possible faced with this evidence that the Examining Inspector will look at the areas in a careful way.
 - There are some representations that want more affordable housing and others that want less. The Council's current position is that Strategy 34 in the ELP is robust, although it originally wanted to have a flexible policy where the level of affordable housing could go up if viability demonstrated that⁷.
 - Policy H4 is not in direct conflict with Paragraphs 158 and 173 of the Framework. By allowing viability to be considered it clearly enables the question of whether there is a competitive return to be dealt with.
60. The Appellant's contention that the ELP should be given more weight involves speculating about what the Examining Inspector will do with objections. The other matter that is unknown is what further evidence will be submitted to the Examining Inspector. For example if the conclusion of this appeal is that a careful bespoke assessment concludes that 40% is viable, those seeking a higher percentage are likely to draw it to the attention of the Examining Inspector. He would then be faced with a clear example that when matters are gone into in more detail, 40% is achievable. Thus faced with an overwhelming housing need the Inspector may well take that matter into serious consideration in his recommendations on the ELP.

Viability assessment

61. Here there has been a bespoke viability assessment of this very scheme by the experienced District Valuer who concludes that it is viable (**Document POE 4, Section 6**). That should be given great weight. This shows that the reasonable

⁷ In relation to the areas where a minimum of 25% affordable housing is required, Strategy 34 in the ELP is proposed to be modified to remove the words "*unless viability evidence shows that a higher percentage is achievable*"

landowner making about 31 times the current use value would be incentivized to go ahead (**Document POE 4, Paragraph 8.4**). The alleged comparators relied upon by the Appellant are not helpful and are all in different local authority areas with permissions for lower amounts of affordable housing.

62. There was no dispute that the acid test on viability in Paragraph 173 of the Framework is whether there is a competitive return to the landowner⁸. Further advice is given in the PG (**Document ID 5**). The Council has then applied it to the facts of this case. Even on the basis of the Appellant's assessments, with a policy compliant 40% affordable housing the scheme returns £9.1m (**Document POE 13, Appendix 7**). This excludes the value of the care home which even the Appellant values at £2.22m (**Document POE 13, Paragraph 5.4.12**). It was agreed that this totalled about £11.3m⁹. If the District Council is correct, the value of the scheme to the landowner would be £17m (**Document POE 4, Appendix S1**).
63. The PG advises that this should be compared with the current use value. This was agreed as being agricultural and being about £20,000 per hectare. If that is applied to the whole site the current use value would be about £545,000. There would clearly be a competitive return even on the Appellant's figures because:
- If only the return on the residential element is considered this would be about 17 times the current use value land value (£9.1m ÷ £545,000).
 - If the care home is added the return would be about 21 times the current use value (£11.3m ÷ £545,000).
 - If the District Valuer's figures are correct then the development value would be about £17m and the return would be about 31 times the current use value (£17m ÷ £545,000).
64. The landowner would therefore make between 17 and 31 times the current use value or between 21 and 31 times if the care home were added. The benchmark for what is a reasonable incentive to release a greenfield site is of the order of 10-20 times agricultural values. This was set out in the Peter Brett Associates and Three Dragons report for the CIL (2013) and guidance from the Homes and Communities Agency (2010) (**Document POE 4, Paragraph 6.32**). Thus in terms of current use value there is plenty of incentive to proceed for the landowner.
65. The other matter that the PG advises should be considered is whether there is a realistic alternative use that complies with planning policy. Here the landowner does not have a realistic alternative and this was accepted by the Appellant¹⁰. Thus when the return is compared with the other available options as the Government advises, it is clear that the landowner would make an excellent return. If this scheme is delivered the landowner would make between £11.3m and £17m. That is vastly preferable to the £545,000 current use value with no alternative use.

⁸ This was accepted by Mr Eke in cross-examination by Mr Ground.

⁹ This was agreed by Mr Eke in cross-examination by Mr Ground.

¹⁰ This was accepted by Mr Eke in cross-examination by Mr Ground.

66. Care is needed when considering the actual landowner's position, because the PG is careful to look at the reasonable landowner otherwise the affordable housing policy would be toothless. A letter on behalf of the landowner contended that it was unlikely that the land would be released if based on a residual land value resulting from greater than 25% affordable housing (**Document POE 13, Appendix 9**). It is unknown how many £m the actual landowner would be satisfied with and it seems bizarre that any normal definition of a satisfactory planning permission would not be met if a developer agreed the affordable amount in the adopted LP. In any event the Appellant's valuation witness did not know the actual terms of the option agreement. The Appellant did not say why the contract was legally privileged or commercially sensitive. It may well show that if permission is granted on the basis of 40% the site will be delivered and the owner bound to continue.
67. It is highly unlikely that the option agreement really does preclude anything more than 25%. It was signed before August 2013 when the developer was offering 30%¹¹. The developer also applied in the application that was resolved to be granted in March 2014 for 40% affordable housing. It would have been a waste of time and money if this was an option that meant the developer could not buy in those circumstances. In the August 2013 appraisal it was stated that £700,000-£750,000 ha on the net developable residential land would represent a fair value for the site. It was agreed that the option agreement was in place by then and had not changed. Also that many of the comparable sites had already been transacted by the time of the August 2013 appraisal so if they were real comparables they would have been considered in that appraisal¹². The value the landowners are going to make is more than a fair value.
68. If the Appellant is correct about everything the current valuation assessment shows that with 40% affordable housing, the landowners would make £9.138m from the residential part of the scheme and a further £2.22m from the care home (**Document POE 13, Paragraph 5.4.12 and Appendix 7**). The total area of both would be 14.814 hectares and thus the landowner would make a return of £767,000 per hectare. This is more than the top of the range of a fair value according to the August 2013 report. If the Council's valuation evidence is correct then the landowner would make £1.1m, which is a considerable premium over what was originally described as a fair value for the subject site by the Appellant (**Document POE 4, Appendix S1**).
69. The Appellant also seeks to rely on comparators but these are sufficiently dissimilar that none were relied on in the August 2013 report (**Document POE 13, Paragraphs 6.2-6.3**). They are not available alternatives to this landowner for this site. They are in different local authority areas with different, and lower, requirements for affordable housing (**Documents POE 4, Paragraph 6.35; POE 5, Paragraph 6.3**). There are also factors which go the other way, such as the percentage of affordable rent. They do not accordingly meet the tests in the PG relating to "Land Value" (**Document ID 5, Page 6**). In reality these sites

¹¹ Inspector's Note: This was from a viability appraisal submitted to the Council in August 2013 but not put into the Inquiry as an evidential document. Mr Eke explained that it was based on a different instruction and was not undertaken as a robust viability assessment.

¹² This was agreed by Mr Eke in cross-examination by Mr Ground.

are all so different that they do not comply with the PG on looking at “comparable market based evidence” that “reflect policy requirements”.

70. Furthermore, all of those sites had planning permission, which differs from the current appeal situation. The market value would be at today’s date for the purposes of the affordable housing calculation. There is no extant planning permission merely a resolution to grant at 40% affordable housing with Grampian conditions for the LLL. That is what should be valued. It is very far from being a planning permission for 25% affordable housing. Land value is an input in the model for the purpose of working out the affordable housing contribution. It is difficult to see why the landowner should get more than the value of the land now when working out what the affordable housing contribution should be. In any event the site value certainly should not be based on an assumption of less than 40% affordable housing under the RICS guidance (**Document POE 4, Paragraph 6.29**). It should be a competitive return based on 40% affordable.
71. The Council’s comparable sites have considerable advantages (**Document POE 4, Paragraphs 6.37-6.44**). First many were in East Devon District and all had a requirement for 40% affordable housing. At Cloakham Lawns, Axminster allowance was made for the forced sale element by taking the bid before the financial problems. With land at Maer Farm, Exmouth there were two RICS valuers involved and it satisfied the tax man. Land at Young Hayes Farm, Broadclyst was in the same market area. The site did not have planning permission and was purchased by a house builder. It was an actual transaction at £250,000 per gross hectare. There are other examples in the evidence of the District Valuer which were transacted for less than the landowner will take here.
72. There were various other differences in the viability appraisals as follows:
- It is normal to consider the entirety of the application proposal and this includes the care home. There would be shared infrastructure and both elements would provide the incentive to the landowner and the return. The values of the care home were based on comparable transparent evidence (**Document POE 4, Paragraph 6.5 and Appendix S3**). The Appellant referred to competition from a new care home on the Ibstock Brickworks site. However the care home market is a large one and cannot be that adversely affected by one care home in the vicinity of a populous and relatively affluent area.
 - The Council’s approach complied with the PG “comparable market based evidence” by using the 2014 sale price of new build houses in the same post code area (**Document POE 4, Paragraph 6.3 and Appendix S2**). By contrast the Appellant’s sales evidence included a long list of second hand and new houses but the most relevant and recent ones were not there and reliance was placed on marketing prices rather than actual sales prices (**Document POE 13, Section 5.2 and Appendix 1**). The Council’s values were based on the amount that stamp duty was paid on, which is likely to exclude any incentives offered by the developer. However the market is now buoyant enough that very few inducements are being given.
 - The affordable rent has been agreed. There is a small difference in the value of the intermediate units. The Council used the market values for

50% and for the other half capitalised up agreed rents. This compared favourably with two real transactions (**Document POE 4, Paragraph 6.4**).

- The District Valuer had the considerable advantage of having 100 formal tenders as to what developers would accept on developer profit. The average across the whole country was 17.2% for the market and 5% for the affordable (**Document POE 4, Paragraph 6.19**). Clearly this is a buoyant area and this is not an unusually difficult site. The Council has taken 17.5% and 6% (market/ affordable) which is more than the average and more than accepted in a recent appeal decision at Red House School, Stockton-on-Tees (**Document POE 4, Paragraph 6.18-6.22**). The Holsworthy appeal referred to by the Appellant was a Section 106BC application which reviews the assessment submitted with the planning application and tries to leave the assumptions the same. In addition that was a stalled site. (**Document POE 14, Paragraph 4.4 and Appendix 3**).
 - Contingency is agreed at 4% and the experience, expertise and reliability of the District Valuer makes his 7% figure for professional fees preferable.
73. Ransom does not make a difference to viability. If there is a ransom situation such that the full site includes the ransom strip then the owner of the ransom part is a landowner for the purposes of the exercise. The landowner of the site together with the ransom part makes the same amount of money. Any comparable value would be with a similar ransomed site. The Council has been careful to try to help the Appellant not get into a ransom situation and has suggested options the developer can pursue such that a ransom situation will not arise (**Document POE 17, Appendix 4, Page 2**).

Traffic generation, congestion and highway safety

74. The issue is whether the scheme would cause unacceptable congestion and harm to highway safety. The Appellant provided no evidence of the effect of the development traffic on to the double mini roundabout without mitigation¹³. There was no equivalent to the Council's figure that the 103 PCU queuing along Pinn Hill in the morning peak would increase to 220 PCU. The queue would be 1,320 metres long and extend beyond the site entrance, which is about 800 metres from the double mini roundabout (**Document POE 8, Paragraphs 6.14-6.16 and Table 2**). The Appellant contended that the queue beyond the site entrance would actually comprise 3 smaller queues because it would include vehicles coming in from the appeal site and Pinn Court Farm as well as vehicles coming down Main Road North. However, drivers would still have to join the queue on the main road after they had negotiated the queue out of the site access. Paragraph 32 of the Framework includes a separate requirement for a safe and suitable access to the rest of the network suggesting a higher standard is required at the site access. If the site access is gridlocked there will be driver frustration and danger. The access is also one where pedestrians will be crossing.

¹³ Mr Blair accepted in cross-examination by Mr Ground that he had no figures for the queues that would arise with the development traffic added and no mitigation to the double mini roundabouts.

75. The residual effects of having such a queue on the facts of this case would be severe. They would cause the site access to fail to operate in a safe and suitable way. A similar conclusion was reached in the Preston appeal decision where the Inspector found that blocking back at the junction would cause it to be locked and to precipitate irresponsible and dangerous driver actions (**Documents POE 8, Paragraph 6.17; POE 6, Appendix 20**).
76. The Appellant suggested that buses would not be affected in the appeal scheme. However the frequent bus service goes down Main Road North and will not be diverted through the site. There are 6 buses per hour all serving mid-Devon on the B3181 and no dedicated bus lanes. There is no evidence about the frequency of emergency vehicles going down Main Road North.
77. The length of time that the morning peak queue backs up past the site entrance has been assessed through an Arcady analysis. This shows that this would happen between 0830 and 0845 until after 0915 as it would take some time to dissipate a queue of over 200 vehicles (**Document POE 8, Appendix 9, Page 15**). This queue of over 45 minutes is longer than in the Preston appeal.
78. The HA had agreed that 100 of the new dwellings could go ahead without mitigation of the double mini roundabouts. However this was an attempt to be flexible and allow development to get underway. It did not form a new base position and was on the basis that it was highly unlikely that a developer with a planning permission for 430 dwellings would stop when 100 had been built (**Document POE 9, Paragraphs 4.3-4.4**). This would be a temporary situation on the basis that the committed schemes were still being built, so for a short while the problem may not be as bad anyway. The only reliable base to use is 103 PCU, which includes commitments (**Document POE 8, Table 2**). The Appellant's figure of 133 PCU is too high for various reasons, including that it does not concur with other transport analyses for new developments in the area (**Document POE 9, Paragraph Paragraphs 4.1-4.3**). In comparison the 220 PCU with the appeal development in place supports the conclusion that the unmitigated development would stop safe and suitable access and would be a severe impact. This is not disputed in the written evidence of the Appellant, which is presumably why a mitigation scheme for the double mini roundabouts is being promoted.
79. Unfortunately the proposed mitigation makes matters even worse in terms of queuing traffic and safety when reasonable assumptions are made. It is necessary to put a pedestrian phase within the lights so that people can cross safely. Paragraphs 29 and 35 of the Framework makes clear that it is necessary to make proper provision for pedestrians at a new junction. Policy TA4 in the LP is clear that proposals should include measures to provide improved and extended facilities for pedestrians (**Document POE 11, Appendix 17**). In addition the new scheme removes a toucan crossing on Main Road South just north of the double mini roundabout (**Document POE 18, Appendix 21**).
80. The number of people crossing the new arms of the lights would justify running the pedestrian phase every cycle, which would be once every two minutes. It was predicted that in the morning peak, 95 people would cross at the lights without the Old Park Farm Phase 2 development in place and 126

with it in place (**Document POE 9, Paragraphs 5.14, 5.15**). This was not disputed¹⁴ and no reason was given why the pedestrian cycle should not be on every cycle.

81. The shop and residential accesses are in a live traffic light system and are shown on the drawings with traffic lights although this has not been included in the modelling (**Document POE 9, Paragraphs 5.4-5.5**). There clearly needs to be time in the cycle for those to be called and once every third cycle is reasonable. When the modelling included the pedestrian and access phases the queues along Main Road north became very much longer, not just on the Main Road North arm but also along Main Road South locking the junction with Cumberland Way and extending along Church Hill/ Harrington Lane past the primary school. It is not normal to have stationary traffic in front of a primary school when young children are arriving. It may be that the Main Road North queue could also be spread so that there would be long queues in addition at the site accesses of the appeal site and Old Park Farm. The situation would not be sufficiently improved to prevent the above effects even with the Exhibition Way Link in place (**Document POE 19, Tables 3.2 and 3.4**).
82. If Old Park Farm Phase 2 is built with its associated improvements to the double mini roundabout, the Appellant has put forward a slightly different scheme (**Document POE 18, Appendix 27**). However with pedestrian phases and accesses included the queues would still encounter the same problems as identified above, with and without the Exhibition Way Link in place (**Document POE 19, Tables 3.6 and 3.8**).
83. So in every scenario the queues in the morning peak would go well past the site access if pedestrian and access phases are allowed for in the signalisation. Furthermore there would be long queues along Main Road South through the Cumberland Way junction and past the school in Harrington Way. The signalisation of the junction would not prevent significant highway impacts and would also result in an increase in accidents and reduction in air quality (**Document POE 9, Paragraph 5.21**). A yellow box would not address the problem as it would only assist the small proportion of those turning right out of the access and in any event as the exit is only 1 lane the right turner would probably be stuck behind a blocked left turner.
84. The Appellant's oral evidence was that the model was a worst case scenario and did not take account of peak spreading, increased sustainable measures in the area and traffic diverting down Parkers Cross Lane once Science Park Drive was opened. On the latter point, the trip distribution, which was agreed in SCG Transport, did not show any vehicles using this route (**Document BD 6, Section 13**). It is a roundabout route along estate roads and it is unlikely that it would provide a very popular "rat run" either for existing or new traffic. The Appellant's assessment of 2019 base flows (base plus commitments) was the most pessimistic numerically (**Document POE 8, Table 2**). Also the saturation flows were based on default saturation values calculated from the junction geometry. These were over-optimistic and 20-25% better than the reality as confirmed by surveys at comparable junctions (**Document POE 8, Paragraphs 6.47-6.64**).

¹⁴ Mr Blair did not dispute the pedestrian figures put forward by Mr Pratt.

85. In addition the traffic lights would be likely to increase accidents by 250% (**Document POE 9, Paragraphs 4.6-4.15**). Thus the mitigation scheme of traffic lights would worsen the existing position, would create a severe residual impact and would not provide a safe and suitable operating access. It would also worsen safety. This is based on an optimistic model and would not comply with Paragraph 30 of the Framework.

Delivery of the LLL

86. The LLL is necessary to mitigate the traffic impacts of the appeal development. The number of trips that would be diverted has been agreed (**Documents BD 6, Paragraph 7; ID 3**). The HA has been extremely pro-active in putting forward the solution but the Appellant has still not progressed the LLL, having not even spoken to the relevant landowner to try to acquire the remaining land (**Document POE 8, Paragraph 6.87 and Appendix 10**). It was agreed that the £50,000 capped sum did not indemnify the Council or County Council for the cost of this land¹⁵. There is no evidence that it would be enough to buy the land either on the open market or through compulsory purchase. All of the risk was thus being transferred to the acquiring authority. The County Council was careful to help avoid a ransom situation but still the Appellant has done nothing to advance that last bit of the LLL (**Document POE 17, Appendix 4, Page 2**). Worse still, if the Appellant's evidence is accepted the LLL would not be necessary because there would be another form of mitigation. The result of this is that it would be almost impossible to make a compelling case in the public interest to compulsorily acquire the land.
87. In any event it cannot be that the HA is duty bound to provide necessary infrastructure to mitigate development. Paragraph 173 of the Framework, for example, envisages that developers would provide the necessary infrastructure.
88. The Appellant considers that some of the £700,000 Offsite Highway Works Contribution in the Section 106 Agreement could be used for the acquisition of the Wain Homes land by the Council (**Document ID 6, Page 3**). However that money was intended to cover the improvements to the existing Langaton Lane, east of the M5 Motorway. In the PAAS there were 3 costed options for this work. The 2 of those that did not have planning difficulties were costed at £650,000 and £700,000 but that only included works costs and not the cost of surveys, service diversions and the like. Also they were based on 2010-2011 costs which will have increased (**Document POE 11, Appendix 16**). The £700,000 would also need to cover the signalisation of the double mini roundabouts which could be about £350,000. In the circumstances there would be none left over for acquiring the Wain Homes land.
89. The Appellant also suggested that access to Langaton Lane could be via the secondary access intended in this application for pedestrians, cycles and buses. However, that is not part of this proposal, no consultation has taken place and the Appellant did not seek to amend the application. Any later Traffic Regulation Order that may be sought is not part of this application and

¹⁵ Mr Blair agreed in cross-examination by Mr Ground that the sum would not provide an indemnity against the cost of acquiring the Wain Homes land.

would have to go through consultation so it cannot be relied upon as an alternative solution to the Wain Homes land.

90. Grampian conditions are needed to ensure the Langaton Lane Link is provided at the appropriate time, depending on other road improvements including the Exhibition Way Link and the capacity changes to the double mini roundabouts in connection with Old Park Farm Phase 2 (**Document ID 12**). This is to avoid a severe residual impact and ensure a safe and suitable access.

Sustainability

91. The economic benefits are very much less than they should be because the appeal scheme would have the considerable economic disadvantage of causing gridlock at the critical peak hour. It also would not have the benefit of 40% affordable housing for which there is an overwhelming need. It would not provide the infrastructure that is needed and which the Framework sets out should be part of the economic role. The LLL has long been envisaged as required with this development in the PAAS and yet the development would not provide it in full. The development would be viable with 40% affordable housing and so in terms of the social dimension the scheme would underperform. The congestion would also cause environmental harm.
92. The benefits that the development would bring could easily be brought about if the full level of affordable housing were provided and if the LLL were provided in full. The proposal would conflict with saved Policies H4 and TA7 in the LP, which are up-to-date, consistent with the Framework and are not housing supply policies. The proposal should be determined in accordance with the development plan as there are no material considerations that indicate otherwise. However if the appropriate test is in Paragraph 14 of the Framework the adverse impacts significantly and demonstrably outweigh the benefits.

OTHER ORAL REPRESENTATIONS

The main points are:

93. **Mrs S Landers** also submitted written objections at application and appeal stage (**Documents BD 4; BD 7**). She is a long term resident who has lived in the area for many years. She currently occupies a house along Pinn Court Lane, which also serves Pinn Court Farm. She is concerned about its potential future use as it is within the red line of the application site. She has seen many changes in the vicinity, including the building of a number of new housing estates. The centre of the village is a focal point. There are many shops and services that are well used by the local community, including the doctor's surgery which is always busy. The toucan crossing on Main Road North originated from a petition in the 1960's.
94. One of the problems is that, rather than using the M5 Motorway, traffic takes short cuts, including through Pinhoe. Many of the roads leading to the B3181 are country lanes, which were extensively used for walking although that is less possible as they become upgraded to urban roads. The road system is already badly congested and the proposal, along with other planned development, would make matters much worse and increase the amount of pollution.

95. More open space is needed within the area, which presently only has 2 playing fields. Mrs Landers is concerned about the lack of green spaces between the houses and the motorway. The loss of countryside and agricultural land is very regrettable. She also raised concerns that the effect on the water table had not been properly considered, especially with other planned development.

WRITTEN REPRESENTATIONS

Written Representations to the appeal

These are at Document BD 7. The main points are:

96. **Mrs C J Ham** also wrote at application stage. She is a local resident who is very concerned about the loss of local farmland and an area of attractive countryside. She believes that the local roads, which are already heavily congested, would grind to a halt, especially taking account of the recent approval of the Old Park Farm Phase 2 development.
97. **Mrs M Henkus** lives on Main Road North and makes similar points about traffic and congestion. She pointed out that Langaton Lane is part single width and unsuitable for development traffic. She also pointed out that the local school is full and that the medical facilities are at capacity. She does not know where the new residents would work. There is also concern about the loss of countryside and wildlife. Mrs Henkus objects to the excessive amount of new building taking place within Pinhoe.
98. **Broadclyst Parish Council** also wrote at application stage and does not consider that the traffic issues could be resolved by the signalisation of the double mini roundabout. Major infrastructure improvements are needed as highlighted in the LP Inspector's report. This is just one small junction and the changes would make little difference to the congested conditions on the wider network. Concerns were also raised about flood risk and the lack of medical and primary school provision, amongst other things.
99. **Alderman John Landers** also wrote at application stage. He lives close to the centre of Pinhoe and adjacent to the site. He made a number of points, including that the scheme would be at a far higher density than its surroundings, with little thought given to the need for level playing areas. He does not consider that there should be any vehicular access from Pinn Court Lane and that houses should not be more than 2 storeys high. He points out that there are a number of other planned developments, including Old Park Farm Phase 2. The existing congestion and tailbacks from traffic travelling through Pinhoe towards Exeter would be made much worse by the appeal development. He is further concerned about whether cars could be prevented from using the bus access onto Parkers Cross Lane.

Written representations to the planning application

These are at Document BD 4. The main points are:

100. There were many objections from **local residents**. Increased traffic and congestion onto an already overloaded network was of particular concern. This reflected the objections of others reported above. It was considered that the signalisation of the double mini roundabouts would make the situation worse. Amongst other things there were also objections to the loss of countryside and

agricultural land, the detrimental effect on wildlife, residential amenity, flood risk and the inadequate existing provision of schools, hospitals and doctor's surgeries. The creation of a rat run along Parkers Cross Lane was an issue for some people whilst others raised the need for more affordable homes.

101. **Exeter Civic Society** objected to siting the play and games areas near to the main road for reasons of safety and pollution. A more central location, perhaps closer to the Linear Park, was suggested. There were also concerns about traffic impacts, especially in relation to junctions closer to the city.

Consultation responses

These are at Document BD 4. The main points are:

102. The **Environment Agency** has no objections subject to development being in accordance with the Flood Risk Assessment (**Document PA 15**).
103. **Natural England** does not object to the scheme. The appeal site is relatively close to the Exe Estuary Special Protection Area and Ramsar Site and the Dawlish Warren Special Area of Conservation. Natural England is satisfied with the proposed mitigation and has concluded that the proposal would be unlikely to have a significant effect on the European sites either alone or in combination with other plans and projects. The relevant contribution should be made on commencement of development and the mitigation should be delivered in a timely manner. Natural England welcomes the provision of a Linear Park which will contribute to the biodiversity value of the site. It is pointed out that the pedestrian/ cycle links should be delivered to ensure a sustainable movement network between the site and its environs.
104. **South West Water** has no objections. It confirmed that the public foul sewerage network has insufficient capacity to serve the proposals but that the Appellant has agreed to fund the necessary improvements. A Consultant's Report confirmed that a contribution of £704,000 would be necessary in order to carry out the necessary improvements to the sewerage infrastructure (**Document ID 14**).
105. **Devon Wildlife Trust** considers that the proposal is likely to result in a net gain to biodiversity. Conditions were suggested, including one for the long term management of habitat.
106. The **Police Crime Prevention Officer** is encouraged to see that the principles of *Secured by Design* would be incorporated into the scheme and suggested that an appropriate condition should be imposed.
107. **Exeter City Council** objects strongly to the proposal on traffic grounds. Many of the new residents would travel into Exeter but the effect of the additional traffic on the Air Quality Management Area has not been assessed either individually or cumulatively with other new development in the area. There are similar concerns about noise emission.
108. **Poltimore Parish Council** objects on the grounds of the impact on traffic flows on the B3181 and questions the accuracy of the Transport Assessment which was undertaken in poor weather conditions. The Parish Council considered that it would cause further congestion and that the frustration and delay would result in more drivers using the rat run through the village.

Objections were also raised about the loss of good quality agricultural land, lack of adequate foul sewerage and inadequate medical provision, especially in view of the care home proposal.

109. The **Devon County Archaeologist** points out that this is an area of known high significance with features associated with prehistoric settlement and funerary activity. A condition was recommended in accordance with Paragraph 141 of the Framework. The archaeological works should take place prior to construction given the extent and significance of the deposits. The **Devon County Education Officer** seeks a contribution towards the provision of a primary school.

PLANNING CONDITIONS

110. The Council and Appellant produced a list of agreed conditions. There was also a set of phasing conditions provided by the Appellant at my request. In addition the Council wished to see a set of Grampian conditions with various triggers that it considered would mitigate the highway impact. The Appellant objected strongly to these (*Documents ID 12/1-ID 12/3*).
111. The conditions were discussed in detail at the Inquiry and I suggested various changes in the interests of precision and enforceability and otherwise to accord with the provisions of the Framework and PG. The conditions that I recommend if the Secretary of State is minded to allow the appeal are contained in the Schedule in Annex 3. The numbering does not accord with that within the *ID 12 documents* as some conditions have been deleted whilst others have been combined and re-worded. For the avoidance of doubt the condition numbers in this section of the Report and hereafter concur with those in the Annex 3 Schedule.
112. Whilst I have considered the conditions against the tests in Paragraph 206 of the Framework, I consider them further in my Conclusions, especially the Grampian conditions and phasing conditions relating to highway issues.
113. **Conditions 1-4** are the reserved matters and implementation conditions and **Condition 5** requires details of the phasing. It seems appropriate that the development should commence expeditiously, not least because it would be contributing to the housing land supply deficit in the Housing Market Area. It is understood that the development would be likely to be undertaken in 4 or 5 phases and the Appellant was agreeable to a shorter period for the submission of reserved matters and the implementation of Phase 1. It was not possible to be sure of the timing of subsequent phases as this would depend on their size. However it is reasonable to expect each phase to be commenced within a year of the reserved matters for that phase. The phasing plan needs to be approved before the first reserved matters submission because the timing in Condition 2 is specifically related to the phasing. The condition refers to layout and this effectively means that this reserved matter would be dealt with in totality at the start. This would conflict with the agreed Condition 1 and seems unreasonable. It is to be noted that the Council has advanced an amended phasing condition which is disputed by the Appellant because it relates to the Grampian conditions, which are considered below.
114. The appeal site is in Flood Zone 1 where residential development is normally acceptable. The Environment Agency does not object to the proposal provided

the details set out in the revised Flood Risk Assessment are implemented (**Document PA 15**). This recommends a surface water drainage strategy based on sustainable drainage principles. With this in place the EIA concludes that the development would not increase flood risk elsewhere. The details of the surface water drainage strategy form the subject of **Condition 6**. The evidence indicates that the site has archaeological significance and a programme of works on a phased basis is thus necessary as set out in **Condition 7**. The EIA indicates that subject to such mitigation impacts would be negligible.

115. The proposal is in outline form but it is necessary to ensure that some details are provided at this stage in order to ensure that the whole scheme is to a high quality and integrates satisfactorily with its surroundings. These include floor and site levels and detailed Design Codes (**Conditions 8 and 9**). There are other details which I consider can be provided at reserved matters stage. These include landscaping details, materials, internal road layout and means of enclosure. Although the Council wanted to see permitted development rights removed for walls and fences within the curtilage of the dwellings it seems to me that there is insufficient justification to be satisfied that this would be necessary at this stage. If required I see no reason why such restrictions could not be imposed on the reserved matters.
116. The EIA considers the impact on ecology and biodiversity and concludes that any adverse effects could be successfully mitigated. The importance of the mature trees and hedgerows to nesting birds and bats was highlighted along with the possible injurious effect on slow-worms. However adverse effects could be successfully mitigated and there is the opportunity for biodiversity enhancement through management of open spaces and hedgerows. The Ecological Impact Assessment sets out a number of recommendations and I have combined the various ecological conditions suggested by the parties into one that requires submission of an Ecological Mitigation Strategy (**Condition 10**).
117. Parts of the site would be affected by road noise, especially on the eastern side close to the M5 Motorway. As outlined in the EIA a 4.5-6m high bund would be provided to achieve the necessary noise attenuation. This is provided for in **Condition 15**. As this is an outline scheme the detailed layout is not known at this stage. **Condition 11** provides the necessary requirement for mitigation so that the internal noise environment of individual dwellings conforms to BS 8233:2014 *Guidance on sound insulation and noise reduction in buildings*. This site is likely to take some years to build out and therefore cause a prolonged period of inconvenience and disruption to new occupiers of an earlier phase as well as existing residents living close by. Whilst this cannot be prevented it can be controlled through the submission of a Construction Method Statement as detailed in **Condition 12**. The condition has been changed slightly to be more comprehensive and relevant to this site.
118. There are a number of trees on the site, mostly within the field hedgerows, which are shown on the Masterplan as intended for retention. These would contribute to the landscaped framework of the developed site as well as being important for biodiversity. Their protection during construction is the subject of **Condition 13**. The suggested condition has been re-worded in the interests of precision. Once development is complete it would be necessary for the

Council to consider whether the amenity value of the retained trees would warrant a Tree Preservation Order to ensure their long term protection. I have reworded the condition to omit reference to the hedgerows themselves as these are covered by **Condition 10**.

119. The Open Spaces Plan (Drawing No: PL081006 OSP-01B) shows various open areas, including play spaces, food growing areas and a community green. It is important to ensure that these areas and the ecology associated with them are maintained and managed in perpetuity and this is covered by **Condition 14**. However reference to the Linear Park has not been included as that is covered by one of the Section 106 Agreements. There is no evidence that this greenfield site, which has been in longstanding use for agricultural purposes suffers from contamination to justify a condition relating to the matter.
120. The Council explained that progress is being made on establishing a District Heating Network and several developers are on board, including the Appellant. This would be a local and sustainable solution to energy provision but, if it is to be utilised, the new buildings would need to be constructed in such a manner to allow connection to the decentralised energy source. This is controlled through **Condition 17** and one of the covenants in the Section 106 Agreement with the Council requires reasonable endeavours to be made to secure the connections. If this is not possible the covenant requires energy savings from other sources.
121. The proposal includes a secondary access onto Parkers Cross Lane. This would be built to a similar specification, including a 6 metre wide carriageway and a 2 metre wide footway. The application made it quite clear that this would be for bus and emergency vehicles only. There was no consultation on a wider use and this has not been assessed in the EIA. In the circumstances **Condition 18** is necessary to ensure that the use of this access is limited and that general vehicular use is not permitted. The main access is from the B3181, Main Road North and it is required in the interests of highway safety to ensure it is provided in accordance with the submitted details before any dwelling is occupied. This is the subject of **Condition 19**.
122. **Condition 16** lists the plans which are included as part of the permission. These include the Masterplan, Open Spaces Plan and access drawings. They help ensure that the EIA remains relevant to the details submitted at reserved matters stage.
123. The disputed Grampian conditions establish a set of triggers and also an expanded phasing condition in place of **Condition 5**. This requires details of the layout for each of the trigger points but this would be problematical for the reason given in Paragraph 113 above. I discuss this further and the merits of Conditions 20-23 in my Conclusions because they are central to the highway issue, which is a main point of dispute in this appeal. In essence the trigger points are as follows:
- **Condition 20:** No more than 100 dwellings to be occupied until:
 - The LLL has been completed; or
 - The Exhibition Way Link Road has been constructed; or

- Improvements to the capacity of the double mini roundabout have been made as proposed in the Old Park Farm Phase 2 development.
- **Condition 21:** No more than 140 dwellings to be occupied until:
 - The LLL has been completed; or
 - The Exhibition Way Link Road has been constructed; or
- **Condition 22:** No more than 270 dwellings to be occupied until:
 - The LLL has been completed; or
 - The Exhibition Way Link Road has been constructed; and
 - Improvements to the capacity of the double mini roundabout have been made as proposed in the Old Park Farm Phase 2 development.
- **Condition 23:** No more than 310 dwellings to be occupied until:
 - The LLL has been completed.

PLANNING OBLIGATIONS

124. There were two main Section 106 Agreements between the Appellant, the landowners and the Council and County Council. There were other supplemental provisions as explained below. The Secretary of State can be satisfied that the documents are legally correct and fit for purpose. I consider whether the obligations are in accordance with the statutory provisions of Paragraph 122 of the CIL Regulations and the policy tests in Paragraph 204 of the Framework in my Conclusions.

Section 106 Agreement with Devon County Council (*Document ID 16*)

125. This contains financial contributions of £700,000 towards off-site highway works. These are defined as being works designed to mitigate the impact of development on the double mini roundabout. It would include improvements to Langaton Lane east of the M5 motorway and also the signalisation of the double mini roundabouts that has been proposed by the Appellant. There is a further contribution of £440,000 towards bus service improvements, which would extend one of the existing bus services into the development. The first instalment is due upon occupation of the 150th dwelling and three more equal sums are due annually thereafter. There is also a Travel Plan contribution of £550,000 payable to the County Council to administer the Travel Plan.

126. Provision is made for a strip of safeguarded land in a position to be agreed for the purpose of providing the section of the LLL which crosses the site. This land would be protected from any other development for 15 years and provision is made for the County Council to enter the land for the purpose of constructing the LLL and thereafter dedicating it for that purpose. There is also a contribution of £3,000 per dwelling of 2 or more bedrooms to provide primary education facilities. This is triggered by the occupation of 50% of the dwellings on any particular phase.

127. A **Planning Obligation by Unilateral Undertaking** (Unilateral Undertaking) was submitted during the course of the Inquiry by the Appellant and landowners to the County Council (*Document ID 17*). This includes a

contribution of up to £50,000 towards the compulsory acquisition of land to complete the LLL. In effect this means the Wain Homes land shown on **Document ID 6**.

128. A **Deed of Variation** was submitted following the close of the Inquiry which removed the conditionality clause in the main Section 106 Agreement and the Unilateral Undertaking so that it would not apply to the covenants relating to the safeguarded land and the contribution paid towards the compulsory acquisition. In effect this means that even if these obligations were found not to comply with the CIL Regulations they would still come into effect and would be enforceable. Such an approach would be lawful as shown in the Court of Appeal decision *Millgate Development v Wokingham Borough Council* (**Document ID 22**).

Section 106 Agreement with East Devon District Council (Document ID 19)

129. This contains the provision for the provision of 25% affordable housing with a tenure split of 70:30 affordable rent to shared ownership. The covenants include various provisions to ensure that the homes remain affordable. There are also trigger points for their provision on a phased basis, which relates to the occupation of the market houses. All of the affordable homes have to be transferred to a Registered Provider before more than 80% of market houses are occupied. The external appearance of the affordable homes has to be materially undistinguishable from the market dwellings.
130. A contribution of £492.62 per dwelling is made towards the Exe Estuary Special Protection Area and the Pebbled Heaths Special Protection Area and Special Area of Conservation. The background to the tariff payment is provided by the *South East Devon European Site Mitigation Strategy*. Since the Section 106 Agreement was signed however the contribution per dwelling has increased to £749 per dwelling (**Documents ID 11; ID 15**).
131. A contribution of £698 per dwelling is made to improve sports facilities within a 10 mile radius of the site. This contribution would be paid on a phased basis and triggered by the occupation of 50% of the market houses. A contribution of up to £704,000 is provided towards upgrading the foul sewerage system. This is payable when requested by the Council, but not before 150 dwellings have been occupied.
132. Provision is made for a phased specification for the laying out, access arrangements and future maintenance provisions of all the open spaces, broadly in accordance with the Open Space Plan (**Plan A/4**). Provision is made for the transfer of all or part of the open spaces to the Management Company Alternatively transfer may be made to the Council in which case a commuted sum for future maintenance would be payable. The Linear Park is envisaged to be managed and maintained by a Linear Park Body with a commuted sum of £325,754 for this purpose and in accordance with the Community Nature Park Management Plan. The latter would be part of the Landscape and Ecology Management Plan required by Condition 14. The layout and management of the food growing areas is to be in accordance with a specification to be approved by the Council. These areas may be transferred to the Parish Council for use as allotments.

133. Covenants are also included for provision of the local centre, either by the Appellant or by means of a marketing strategy. If the former option is chosen there would be a reduction in the contribution towards sports facilities. There are also provisions relating to sustainable construction. These concern connection to the District Heating Facility or alternatively to supply a proportion of the supply through renewable or low carbon energy sources. Also, affordable dwellings are to achieve a minimum of Level 3 of the Code for Sustainable Homes whilst the commercial buildings are to achieve BREEAM "very good" rating.
134. A **Supplemental Agreement** was submitted during the course of the Inquiry (**Document ID 20**). This was because provisions regarding the links between the site and the adjoining land to the north and south of the site had inadvertently been omitted from the main Section 106 Agreement.

CONCLUSIONS

The numbers in square brackets refer back to earlier paragraph numbers of relevance to my conclusions.

135. Taking account of the oral and written evidence and my site observations, the main considerations in this appeal are as follows:
- **Consideration One:** Whether the proposed development of the site is needed to meet the housing requirements of the District and contribute to any short term housing land supply deficit.
 - **Consideration Two:** The effect of the proposed development, which is outside the settlement boundary, on the character and appearance of the area.
 - **Consideration Three:** Whether the affordable housing provision would be sufficient taking account of housing need, planning policy and viability.
 - **Consideration Four:** Whether the traffic generation associated with the appeal proposal would result in unacceptable congestion and harm to highway safety.
 - **Consideration Five:** Other Matters
 - **Consideration Six:** Whether any conditions and obligations are necessary to make the development acceptable.
 - **Consideration Seven:** Overall conclusions and planning balance to determine whether the proposal would be a sustainable form of development taking account of the three dimensions in the Framework.

Consideration One: Whether the proposed development of the site is needed to meet the housing requirements of the District and contribute to any short term housing land supply deficit

136. The Council does not dispute that it cannot presently demonstrate that it has a 5 year supply of deliverable housing sites. Furthermore it agrees that it has a record of persistent under delivery, which results in a 20% buffer being applied in accordance with Paragraph 47 of the Framework. The purpose of such a

buffer is to bring forward sites from later in the plan period in order to ensure choice and competition in the market for land [20; 54].

137. The statutory plan comprises the LP, which was adopted in 2006 and covers the period 1995-2011. The housing requirement in the LP was based on the now revoked Structure Plan and does not give an up-to-date picture of objectively assessed housing needs as required by the Framework. The ELP has been submitted for examination but the Examining Inspector was critical of the housing target, which he considered was not based on a current evidence base for the housing market area. The Council is presently undertaking work on this and so the ELP is not at a stage where its housing requirements can be relied upon. Various documents, including the 2013 Strategic Housing Land Availability Assessment, suggest figures for housing supply, ranging between 2.2 and 4.3 years. However until the target requirement is settled through the development plan process it would be very difficult to come to any meaningful conclusion about where in the range the true position lies. In any event it is not crucial in this case because, even if the supply is 4.3 years, that is still a serious and significant deficit. It means that homes are not being provided in the housing market area for those that need them [14; 16; 20; 54].
138. Paragraph 47 of the Framework seeks to boost housing delivery significantly. Although the whole development of 430 houses would not be completed within the next 5 years a significant number could be, especially with the shorter implementation periods agreed by the Appellant. In the circumstances the delivery of these houses would be a significant benefit of the scheme. Paragraph 49 of the Framework establishes that housing applications should be considered in the context of the presumption in favour of sustainable development. It goes on to say that relevant policies for the supply of housing should not be considered up-to-date if a five year supply of deliverable housing sites cannot be demonstrated. That is the case here [113].
139. It is therefore concluded that the proposed development of the site would contribute to the short term housing land supply deficit. Although the proposal would not be in accordance with LP Policy H1, which sets out the housing requirement and the components of supply and LP Policy H2 concerning residential land allocations, these policies are out-of-date. In such circumstances the appeal proposal should be considered in the context of Paragraph 14 of the Framework and whether any adverse impacts would significantly and demonstrably outweigh the benefits, when assessed against the policies of the Framework as a whole. This matter is considered under Consideration Seven [15].

Consideration Two: The effect of the proposed development, which is outside the settlement boundary, on the character and appearance of the area

140. The appeal site is within an area of countryside and outside the built up area boundary for Exeter in the LP. It comprises open greenfield land and it is clear from the representations of local people that many value it as an attractive area of rural farmland between the settlement edge and the M5 Motorway. Saved Policy S5 in the LP seeks to restrict development in the countryside to specific purposes and the proposal would not accord with its provisions. There is no doubt that a development of 430 houses, even with the provision of

generous amounts of open space and a Linear Park, would result in a significant adverse landscape and visual impact. The latter would however be relatively localised due to the containment of the site, the nature of the topography and the backcloth of existing and proposed new development [10; 11; 15; 21; 96; 100; 108].

141. The appeal site is not within an area distinguished in the LP as being of any particular landscape significance, although much of it is high quality agricultural land. It seems inevitable that land outside the LP settlement boundaries, and therefore covered by saved Policy S5, will need to be developed to meet the Council's housing requirement. The appeal site is not only allocated in the ELP but also has been granted planning permission for a similar scheme, albeit with various stipulations unpalatable to the Appellant. The principle of housing on this land is thus accepted by the Council. I note that the Inspector in the Feniton appeals concluded that saved Policy S5 is of relevance to the supply of housing and that in the absence of a 5 year housing land supply it is out-of-date having regard to Paragraph 49 of the Framework¹⁶. That is also the case here although the Framework is clear that the intrinsic character and beauty of the countryside should be recognised. This is therefore a matter to be placed in the planning balance, albeit that there is no development plan policy objection in terms of the loss of countryside in this case [17; 53].

Consideration Three: Whether the affordable housing provision would be sufficient taking account of housing need, planning policy and viability

Policy context

142. Policy H4 in the LP establishes that the Council will seek to negotiate a minimum level of 40% affordable housing, subject to thresholds in terms of settlement and site size. Paragraph 5.38 of the supporting text indicates that the negotiations will take account of viability. Draft Strategy 34 in the ELP, as proposed to be modified, takes a rather different approach with a minimum 25% provision in a number of towns as well as the major strategic West End development sites, which include the appeal land. Elsewhere the starting point is 50%, subject to viability considerations [15; 17].
143. The Framework does not change the statutory position, which is that a proposal must be determined in accordance with the development plan unless material considerations indicate otherwise. Paragraph 211 also makes clear that development plan policies are not out-of-date just because they were adopted prior to the Framework. The relevant matter is to consider their consistency with the policies in the Framework.
144. There is no dispute that there is a substantial affordable housing need within the housing market area. This was identified in the LP and continues to be the case as is shown in the evidence base to the ELP. It seems clear that annual need is far greater than past delivery and this means that the unmet provision is currently increasing year-on-year. Although saved Policy H4 does allow some flexibility this is on the basis of the developer being able to satisfactorily demonstrate that 40% provision would not be viable. This policy requirement

¹⁶ The relevant reference in the Feniton appeal decision is at Paragraph 24 (**Document ID 7**).

- is district-wide but was not subject to any viability testing prior to adoption to see whether it would allow the development in the plan to be delivered [23; 55].
145. As was apparent from the evidence to this Inquiry, viability assessment of an individual development proposal is far from being an exact science. Indeed it includes informed judgements to be made and on which professional valuers often disagree. This inevitably increases risk by introducing uncertainty and possible delay to the process and does not sit comfortably with the Government's objective of significantly boosting housing supply. Furthermore Paragraph 5.38 in the LP indicates that the residual land valuation will be compared with alternative acceptable uses. In the present case it was agreed that there are no alternatives that would be acceptable in policy terms, other than the existing agricultural use [65].
146. Paragraph 173 of the Framework requires that local plans should not be subject to policy burdens that threaten the ability to deliver development viably. Affordable housing is given as an example. Furthermore, the viability assessment should be based on providing competitive returns to a willing landowner and a willing developer. The terms of saved Policy H4, for the reasons given above, do not sit comfortably with either of these requirements and these factors are a serious shortcoming [23].
147. Strategy 34 in the ELP on the other hand is underpinned by the *Affordable Housing Viability Study* by Peter Brett Associates and Three Dragons. Unsurprisingly the Council does not dispute that it is a robust piece of work, undertaken by the consultants on its behalf. The appeal site is one of the strategic West End sites in the ELP where the draft policy sets a minimum level of 25% affordable housing. Paragraph 216 of the Framework indicates that the weight to be given to emerging policies depends, amongst other things, on whether there are unresolved objections. There were a few representations that considered 25% was too low. Following the Examination hearing sessions earlier in 2014 the Examining Inspector wrote to the Council raising a number of points of concern. Amongst other things his letter referred to housing need and the lack of an up-to-date Strategic Housing Market Assessment. It did not however raise any issue with the proposed affordable housing provision [25; 28].
148. The Council has pointed out that the *Affordable Housing Viability Study* commented that higher values on land closely associated with Exeter may generate higher residual values. However it did not suggest a different level of affordable housing to the 25% promulgated. It seems to me that if the Examining Inspector had considered that the policy was not soundly based he would have drawn this to the attention of the Council in the same way as his other concerns. Of course this may happen once the matters already raised by the Inspector have been addressed. Further changes may be discussed once the new Strategic Housing Market Assessment has been produced. Ultimately until his Report has been submitted to the Council, the Examining Inspector's final conclusions on Strategy 34 will not be known. Nevertheless, on the evidence as it exists at present, there is nothing to suggest that the policy is other than Framework-compliant or that the Examining Inspector has concerns about its soundness, having considered the oral and written representations

that have been submitted to date. In the circumstances I consider that draft Strategy 34 can be given a considerable degree of weight [25; 59; 60].

149. It is the case that the Feniton appeal decision relied on saved Policy H4 and it seems likely that the Inspector would have had the ELP policy before her even though it is not relied on in her decision. However it does not appear that affordable housing policy was a controversial issue in that appeal and so my colleague did not have to grapple with the weight to be given to draft Strategy 34 or whether Policy H4 was Framework-compliant [56].
150. Policy H4 is not a housing supply policy but it is out-of-date and draft Strategy 34 is to be preferred in this case. If the Secretary of State agrees then there is no need to consider viability issues further because the proposal would provide 25% affordable housing in accordance with the draft policy. However the Secretary of State may not agree with my reasoning on this matter and I therefore go on to consider whether the appeal scheme would be viable on the basis of 40% affordable housing provision as required by LP Policy H4 [57].

Viability assessment

151. There is no agreement between the two main parties. The Council's position is that the appeal scheme could support a level of 40% affordable housing and the Appellant's position is that it could not. Both the District Valuer and the Appellant's expert witness provided their own residual valuations. A number of the inputs were agreed, including build costs, contingencies and marketing fees. A number of scenarios were undertaken but the comments below relate to the assessments with 40% affordable housing included [28; 61].

Basis for assessment

152. The Appellant's view was that the assessment should be solely on the residential part of the scheme because the commercial uses, including the care home element, could be developed separately and have no affordable housing requirement attached to its delivery. I do not concur with this argument because it seems to me that the various parts of the development would be interlinked, relying on joint access arrangements and at least some elements of the infrastructure. The planning application, whilst it may be residential-led, included a mix of uses which would ultimately contribute to the overall value of the land. In the circumstances I concur with the Council that the viability appraisal should consider the costs and values of the scheme in total and not just the residential part [31; 72].
153. It was agreed by both parties that the viability assessment should be undertaken on current costs and values. This is on the basis of providing competitive returns to a willing land owner and a willing developer to enable the development to be deliverable as established in Paragraph 173 of the Framework.

Development value

154. For the purposes of the viability assessments the housing mix was agreed. The main difference related to the value of the 4 bedroom units, with the Council's valuation being markedly higher than that of the Appellant. The PG advises that wherever possible specific evidence from comparable developments should be used. The Council has based its conclusions on actual

sales of new build properties. However it is not clear whether the price takes account of incentives, which are often offered by the developer to attract new purchasers. There is no evidence to support the Council's view that such inducements are no longer commonplace because of improvements in the housing market. Overall I find the Appellant's assessment more convincing. It includes the advice of several estate agents active in the local area as well as sales information involving both new and second hand properties [32; 72].

155. The value of the affordable rented units is agreed. The dispute lies with the value of the intermediate homes where the Council's value is about £400,000 higher than that of the Appellant. The Appellant has applied a value of 40% of the market value but the Council has made a more complex calculation by taking 50% from the market sales value and 50% from the capitalisation of the affordable rent. As the latter is agreed, the main difference is due to the market values, which are higher in the Council's assessment. The cross-check with actual bids from affordable housing providers did not provide information on 4 bed units. As I have concluded that overall the Council has over-estimated the value of the 4 bedroom market homes I do not consider that its assessment of the intermediate houses is as reliable as that of the Appellant [72].
156. The care home element would include standard and specialist facilities over about 1.5 hectares of land. The Council's valuation was about £2.2m per hectare but its comparable sites were much smaller. It does not seem unreasonable to surmise that for larger sites the pool of potential purchasers in this particular market would be limited and that this would be likely to influence the overall price. The cost of building specialist and assisted care facilities may well be higher but the income could also be expected to be greater. The site proposed for the facilities is quite extensive and it is noted that a new care home is being built on a development site nearby. In a limited market the Appellant has concluded that whilst the first 0.4 hectare may command a value of £2.2m, overall the value would be around £1.5m per hectare. This does not seem unreasonable [31; 62].
157. Drawing this together I find that the Appellant's assessment of the overall value is more convincing, subject to an addition being made for the care home element.

Development costs

158. Many of the development costs have been agreed between the parties. On the matter of developer's profit the dispute relates to the market housing element of the scheme. The Council favour a profit of 17.5%, which gives a blended profit of 15% on gross development value, taking account of the agreed 6% for the affordable element. The Appellant considers that a blended profit on gross development value of 18.8% would be more appropriate. The acceptable level of profit for the developer is directly related to the risks involved in the project [28; 72].
159. In this case the site is greenfield and there are no specific development constraints. Indeed outline planning permission has been granted subject to conditions, including the provision of 40% affordable housing. No flats are envisaged, which could increase the risk. On the other hand the project is substantial in size and would take some years to build out. Furthermore it

would be taking place within a competitive market where a substantial amount of new houses are being built. This includes the new settlement of Cranbrook, which is not far away. The PG advises that comparables should be used where possible and both parties provided such evidence [10].

160. The Council took the national average from tender bids sought by the Homes and Community Agency on benchmark appraisal inputs. The basis of the tenders is unknown. For example if a number of sites were included in a tender this would spread the risk between them. The Appellant on the other hand sought information from several developers local to the area. Whilst I note the conclusion of the Inspector in the Red House School appeal decision where a blended return of 15% was considered appropriate, the site was a very different one and the scheme was much smaller. From the information provided I consider that overall the Appellant's assessment is more reasonable and to be preferred in this particular case [28; 72].

Land value

161. The land value is the residual sum that is left for the purchase of the land. Whilst there are some other differences between the assessments, overall I consider that the Appellant's analysis is to be preferred, albeit that the care home element should also be included. On the basis of providing 40% affordable housing, the Appellant's assessment is that the residual value would be about £9.1m or £11.3m with the care home element included [28; 62].
162. It is agreed that the existing use of the land is agricultural, which has a value of about £20,000 per hectare. The site is about 27.2 hectares so the overall site value would be worth about £545,000. In view of the low value of agricultural land in comparison with residential land, it is reasonable to expect a substantial uplift in order for the landowner to be willing to sell. The Council has referred to a commonly used benchmark value of 10-20 times agricultural use value. On this basis the landowner would receive about 20 times current use value on the Appellant's assessment. The PG however indicates that land value should be informed by comparable, market-based evidence wherever possible. On the basis of both the residential and care home uses, the residual value in the Appellant's assessment would be about £767,000 per net developable hectare [63; 64; 68].
163. Both parties produced evidence of schemes that they considered to be comparable. The Council's examples were all in the East Devon area and most were similar sized sites with a 40% affordable housing requirement. However for the following reasons I am concerned that they are not good comparables. Maer Farm, Exmouth involved a sale within the same group of companies and so was not an open market transaction. Land at Monkton Heathfield involved significant infrastructure costs. Land at Young Hayes Farm, Broadclyst comprised staged transactions some years ago. There was no planning permission, even in principle, and so the price comprised mainly the "hope value" attributed to the land. Land at Bishops Court Quarry, Exeter was designated in the Local Plan for a number of non-residential purposes, including employment land. It also did not benefit from any planning permission for housing. Cloakham Lawns, Axminster was a forced sale due to financial difficulties suffered by the landowner. Whilst there was a bid price of

about £719,000 per hectare this was an initial offer price and is not reliable as a basis for considering market value [30; 71].

164. The examples provided by the Appellant were near to the appeal site even though they were not within East Devon district. This does not seem to me unreasonable given that the appeal land is very close to the District boundary with Exeter City. Of more significance is that these sites all had lower affordable housing requirements of between 20-25% and so residual values would be expected to be higher. This may well be compensated to a degree by the fact that a high proportion of the affordable housing was social rent, which has a significantly lower capital value than an affordable rented product. This would tend to result in lowering land values, although it is not known whether grant aid was available. The various examples provided by the Appellant show land being sold at between £1.37m and £2.06m per hectare. Even if this was too high it is very different from the £767,000 per hectare achieved in the Appellant's valuation. Furthermore, even on the basis of the Appellant's assessment with 25% affordable housing, the residualised price per hectare would only be about £898,600 or about £946,000 with the care home included. This would still be well below the value of the Appellant's comparable sites [28; 29; 69].
165. Both parties provided examples of market-based evidence to support their assessment of land value. Both had drawbacks in terms of comparability but overall it is considered that the Appellant provided a more convincing picture of the type of land values that could reasonably be expected to be achieved through an open market transaction on the appeal site.

The Option Agreement

166. There was a considerable amount of discussion at the Inquiry about this and what contractual conditions it contained. However none of the Appellant's witnesses had seen the document and it was not submitted to the Inquiry, even in redacted form. Indeed the only available information was a short letter from the owners' Land Agent saying that they would be unlikely to release the land based on a residual value of more than 25% affordable housing. This does not seem to me to add much to an understanding of the situation or to be particularly helpful in considering the value at which a willing landowner would sell the land to a willing developer. The option agreement is based on the achievement of a satisfactory planning permission but the calculation of how much will be paid for the land will not be undertaken until after planning permission has been granted [28; 66].

August 2013 assessment

167. Reference was made at the Inquiry to viability work that was submitted to the Council in August 2013. The Appellant contended that this was not a robust viability assessment but had rather been undertaken on instructions from the landowner to test the proposition of 30% affordable housing. The Council contended that at this time the Appellant considered that such a level would be viable and that the land value on the basis of it would be acceptable to the landowners. However, as I understand it the comparable site assessment now provided by the Appellant had not been undertaken at that time. In any event, the August 2013 analysis was not submitted in evidence and the Appellant objected to it being put forward as an Inquiry document. This may

be considered unfortunate but on the other hand the Council has not suggested that 30% affordable housing would be acceptable. The only viability evidence that is available is that based on either 25% or 40% [67-69; FN11].

Conclusions

168. For the reasons given above, the Appellant's assessment is to be preferred to that of the Council, save that the care home element of the scheme should be included in the valuation. On the basis of 40% affordable housing provision the landowners would receive about 20 times the agricultural land value. However in my opinion this would be insufficient to incentivise the landowners to sell, based on the best available comparable evidence. If 25% affordable housing were to be provided the land value would still be less than the Appellant's comparable sites but the evidence was given that it would be sufficient for the landowner to sell. On the basis of my findings on the viability evidence the appeal proposal would comply with Policy H4 in the LP [33].

Consideration Four: Whether the traffic generation associated with the appeal proposal would result in unacceptable congestion and harm to highway safety

169. There is currently peak period queuing in the Pinhoe area, as referred to in local representations. This will undoubtedly get worse with the additional traffic generated by housing commitments and Park Farm Phase 2, which has recently been permitted subject to some capacity improvements to the double mini roundabout. The proposed entrance to the appeal site is virtually opposite that of Old Park Farm and some 800m to the north of the double mini roundabout. Taking account of existing development commitments, the HA has estimated that there would be queues well back past the site entrance once the traffic generated by the appeal development is added. The problem of queuing traffic along Main Road North from the double mini roundabout is identified in the PAAS. One of the reasons is the large number of right turning vehicles from Church Hill [18; 74; 96; 98-100].

The Langaton Lane Link (LLL)

170. One solution suggested by the PAAS is the construction of the LLL. This would provide a new route for traffic travelling south towards the A30 and M5 Motorway, avoiding the centre of Pinhoe and the double mini roundabout. The HA has estimated that the new road would remove around 157 trips from the B3181 in the morning peak. This is considered by the HA to mitigate the highway impact of the 132 trips travelling south along the B3181 in the morning peak. Provision is made in the appeal scheme to safeguard a route through the appeal site for the purposes of providing this road. This would be secured by the covenant in the Section 106 Agreement with Devon County Council. Furthermore the Deed of Variation means that it is not necessary for this covenant to be found CIL compliant [18; 43; 44; 126; 128].

171. The main problem with the provision of the LLL is that it depends on a small piece of land between the appeal site and Langaton Lane, which provides access for the farm and is owned by a third party, Wain Homes. It is therefore likely that in order to provide the LLL in totality the Council or County Council will need to use its powers of compulsory purchase. The Appellant was criticised for not approaching the owner of this land to see whether it could be

purchased privately. However the reason why such an approach was not made is understandable. Any such action would have instantly inflated the value of the land as being necessary to unlock the full development potential of the site. Taking the principles of *Stokes v Cambridge* this would be likely to be considerable and could thus have a serious impact on the viability of the development with implications for the provision of affordable housing or other contributions [45; 46; 86].

172. There was some discussion at the Inquiry about the use of the bus and emergency access into Parkers Cross Lane as a temporary access for vehicles. However such a scenario was not included in the planning application and there has been no consultation with affected residents. Furthermore as this is EIA development any impacts arising from such a scenario have not been assessed. In the event this proposition was not taken forward and all agreed that it could not provide a solution, even on a temporary basis, within the terms of the appeal scheme [89].
173. The Unilateral Undertaking to the County Council provides a sum of £50,000 towards the compulsory acquisition of the Wain Homes land although the basis for contribution was not explained. The Council was in any event critical as it was considered insufficient to provide a proper indemnity of the likely costs that would be involved in terms of compensation payments. That may well be the case if the land accrues a ransom value. On the other hand if there is an alternative option that would mitigate the transport impact then the ransom element would fall away. In such circumstances the land would be likely to be worth very little indeed due to its size [45; 86; 127].
174. It is however appropriate to comment that on the HA's own figures, the LLL would have a benefit beyond mitigating the highway impacts of the appeal development. The HA has made it clear that it is anticipated to carry a proportion of the existing B3181 traffic as well as a proportion of the Old Park Farm development traffic. Even though Old Park Farm Phase 2 proposes its own mitigation at the double mini roundabout it seems to me that the LLL would result in a significant environmental improvement to the centre of Pinhoe and a benefit beyond that necessary to mitigate the impact of the traffic generated by the appeal scheme. In the circumstances it is not unreasonable that some costs associated with the LLL should be funded by the public purse [43; 82].

Existing and unmitigated situation

175. If the LLL is not in place the only alternative for development traffic travelling into Exeter would be out of the main site entrance and down the B3181. The 2019 base position is the starting point and this is taken to include existing commitments. The Appellant's 2019 base position was significantly higher than that of not only the HA but also other developers building in the area. One reason may be because the park and change facility at Old Park Farm, which will remove some trips off the B3181 when built, has not been included in the Appellant's assessment. The Appellant estimated that this would take about 12 trips off the highway during the peak period¹⁷. If this is taken into

¹⁷ This was from oral evidence given by Mr Blair.

account, which is not unreasonable, the queue would not extend as far as the two residential site entrances [74].

176. The Appellant has not provided any evidence of what delay would occur if the traffic from the appeal development were added but no mitigation provided. The only assessment is by the Council and this indicated that the queue would rise to 220 PCU, which would stretch for about 1.3 km back along the B3181 from the double mini roundabout. This would be well beyond the appeal site entrance and that of Old Park Farm. The Appellant pointed out that this queue would be made up of 3 components. In part it would comprise vehicles on the B3181 already but it would also include vehicles joining from the two residential developments. Nevertheless this does not alter the position that stationary traffic would extend back beyond these junctions. Whether this would be of importance in terms of road safety is considered later [38; 74].

Proposed mitigation

177. The Appellant has put forward a scheme for the signalisation of the double mini roundabout in order to improve capacity. Although this was considered in fine detail it is important to remember that it is not part of the appeal proposal. Rather it was suggested as an option to satisfactorily accommodate the development traffic in the event that the LLL was unable to be completed or as an interim solution until the LLL is completed. There is no reason to doubt that the Appellant is keen to do as much as is reasonably possible to ensure that the LLL does come forward. The Appellant is confident that the new road will be built and that the signalisation of the double mini roundabout will not be required [40; 44].
178. The evidence shows that the signalisation would increase the capacity of the junction. Taking the 2019 base position plus the traffic from the appeal development, queues along Main Road North, which is the section of the B3181 north of the double mini roundabout, would be reduced. If Old Park Farm Phase 2 is also included, the Appellant's modelling indicates that a signalised junction would result in an improvement on the unmitigated situation but that the queue would be over 1km long and stretch back beyond the site entrances. The HA considered that the saturation flow used in the Appellant's modelling on the Main Road North arm of the signalised junction was too high. However taking account of the various surveys undertaken and the new junction design I am not convinced that the values used are overly optimistic [40; 84].
179. There is an existing toucan crossing on Main Road North, a short distance to the east of the double mini roundabout. I understand that this was put in place many years ago as a result of a petition to assist people crossing between the shops and facilities either side of the junction. The pedestrian counts indicate that the crossing is relatively well used in peak periods and my observations on site confirmed this was the case. It also seems likely that pedestrian movements will increase as a result of the new housing developments planned for the Pinhoe area. Saved Policy TA4 seeks to ensure that development proposals provide, and if possible improve, facilities for pedestrians and cyclists. The Framework encourages priority to pedestrian and cycle movements and the creation of safe and secure layouts that minimise conflicts between traffic, cyclists and pedestrians. The HA is

concerned that if the toucan crossing were to remain in place there would be driver confusion between the two sets of lights and that this would result in danger to pedestrians. This is a reasonable concern and it therefore makes sense to include a pedestrian phase into the signal sequence [15; 41; 79; 80; 93].

180. If a pedestrian phase is introduced the capacity of the junction would decrease. The Appellant has modelled a scenario whereby the pedestrian phase is called at every 2 minute cycle to allow people to cross Church Hill as well as Main Road North. If the proposed zebra crossing over Station Road is also taken into account this would result in a significant improvement for pedestrians to what exists at present. However it would also significantly increase the queues, not only along Main Road North but also along Church Hill and Main Road South [41; 42].
181. The HA also considered that the private drives and shop access, which would emerge within the live junction should be signalised. It was agreed that this only need be every third cycle. This would introduce further delays and thus result in a further deterioration in terms of capacity. I am not convinced that this is necessary however. From my observations and considering the angle of the parking spaces on the forecourt to the shops it seems likely that most vehicles would exit onto Pinn Hill rather than travelling through the junction. Also, it seems rather excessive for signalisation to be provided for the small number of dwellings served by the private drives [41; 81].

Severe residual transport impact

182. Paragraph 32 of the Framework indicates that development should only be refused on transport grounds where the residual cumulative impacts are severe. It was agreed that an increase in queuing may be inconvenient but that in itself would not provide the necessary justification to refuse permission. Rather it was the consequence of queues in terms of driver behaviour, risk and safety that was the matter at issue. The main concern of the HA was the increase in queues along Main Road North extending back beyond the entrance to Old Park Farm and the appeal site, which would be signalised junctions virtually opposite each other. On the Appellant's analysis this is likely to occur with the addition of the development traffic once Old Park Farm Phase 2 also comes on stream and with a signalisation of the double mini roundabout including pedestrian phasing. The length of the queue along the main road would mean that the junction is unlikely to clear during the green cycle and joining traffic would be impeded by vehicles queuing back from the double mini roundabouts. The exit from the appeal site would be a single lane wide and so those wanting to turn right would have to wait in the secondary queue. Furthermore traffic already on the main road could also have difficulty progressing through the junction. In such a situation the junction would become locked [34; 74].
183. It is not difficult to see how such a situation could lead normally considerate drivers to act in an aggressive or irrational manner and attempt to get through the lights as they were changing to red. Others may be keen to advance forward as soon as the green phase starts and the potential for conflict is not difficult to imagine. Furthermore pedestrians crossing the bellmouth could also be put at risk. The Preston appeal decision was different in many ways from

the current proposal, not least because the Inspector found the existing traffic conditions of considerable concern before any additional traffic was added from the development in question. Nevertheless my colleague identified certain behaviours that can arise from congested situations resulting in junctions becoming locked and traffic unable to move through them on the green phase of the signals. In this respect his observations are relevant to the present appeal and his conclusions concur with my own [34; 38; 75].

184. Whilst the queue referred to above would only occur in the morning peak, the evidence from the HA's Arcady modelling shows that the critical queue of 800m or more would be present for a period of around 45 minutes or perhaps longer within the morning peak period. The use of box markings would discourage stationary vehicles from stopping within the junction and would help the movement of right turning traffic once it reached the front of the secondary queue out of the appeal site. However it would not allow more traffic through the junction itself or prevent the stationary traffic on the western side. A queue detector loop could be installed to vary green time on the approaches but this could be confusing and reduce the confidence of drivers that they would be able to clear the lights, again resulting in the potential for uncertainty and risk [35; 77; 83].
185. Whilst the impact on other approaches to the double mini roundabouts was not raised by the HA at the time planning permission was refused, further modelling by the Appellants indicates that there would also be significant queues along Main Road South which would be likely to block back to the Cumberland Way junction. Furthermore, the queues along Church Hill and Harrington Way would extend to beyond the primary school at a time when young children are arriving. These all add to the concerns that the appeal development could give rise to a severe traffic impact [81; 83].
186. The HA raised concerns that the signalised junction would result in more accidents than the double mini roundabout. This was on the basis of a COBA analysis and a comparison with other 4 arm signalised junctions. It was estimated that the accident rate would more than double although the number of annual personal injury accidents would remain relatively low [85].

Other relevant factors

187. The HA has agreed that based on 2013 base data, up to 100 dwellings could be built on the site without any mitigation being necessary. The HA contended that this was in order to be reasonable and allow development to get underway and that it did not form a new base position. The argument was that committed development will be unlikely to come on-stream all at once. The HA is therefore satisfied that any risk to highway safety would be acceptable for a temporary period of time. However it cannot be guaranteed that such a situation would be temporary. It is not impossible to envisage that the development would only be partially built out even though planning permission was granted for a larger scheme [37; 78].
188. There was no modelling available as to the queuing situation that would arise from the unmitigated position with 100 dwellings from the appeal site. This is because up until near the end of the Inquiry the HA had agreed that 150 dwellings could be built without mitigation. The figure was lowered when it came to light that this had been based on 2011 traffic data and not the 2013

data, which had been agreed should be used. The Appellant did assess the situation with commitments and 150 dwellings and this was found to result in a queue of over 1 km in length, well back beyond the site entrance. 100 dwellings would result in less of a queue but this would probably still be greater than 800m in length. The HA has further agreed that if the capacity improvements to the double mini roundabout are implemented as part of Old Park Farm Phase 2, then the junction would have additional capacity to accommodate 40 more dwellings on the appeal site [37].

189. The Appellant considers that from the grant of planning permission it would take about 3 years to build out 100 dwellings. This would give a reasonable time for the compulsory acquisition to take place in order for the LLL to be put in place. If that happens the Section 106 Agreement with the County Council covenants to pay £700,000 towards offsite highway works, which can include measures identified in the PAAS. This would go a long way towards improving the alignment and conditions on the existing country lane east of the M5 Motorway in order to provide the full LLL between the B3181 and Tithebarn Lane [47; 88; 125].
190. Science Park Drive will provide a link from Tithebarn Lane to the A30 and would be an alternative option for south bound traffic wishing to travel in the direction of the M5 Motorway. This link road is due to be open in Spring 2015. It is not unreasonable to surmise that the 157 peak hour trips the HA estimated would be diverting from the B3181 along the LLL would use this route until the LLL is operational. This would involve drivers cutting down Parkers Cross Lane but it would reduce the time spent in the queue to get through the double mini roundabouts. This was not included in the Appellant's modelling in order to provide a robust assessment [36; 49; 84; 100].
191. The construction of the Exhibition Way Link would result in a significant improvement because it would reduce the vehicular flow from the Church Hill arm onto the double mini roundabout. Part of the land required for this new road was subject to a Village Green proposal. Although it was not registered the matter is currently subject to a legal challenge. However following the Supreme Court decision in the *Barkas* case and also the case of *Naylor v Essex County Council* it seems unlikely that the legal challenge will succeed. Whilst there is no certainty in the situation at the moment, funding is available for this new road link and it could be brought forward relatively quickly¹⁸. In such circumstances the queue along Main Road North would reduce substantially and would only just extend beyond the residential site entrances [49].
192. The traffic conditions referred to above would be restricted to about 45 minutes in the morning peak period. It is probable that those with flexibility to plan their journeys would choose to travel outside these busy periods. This is known as peak spreading and would help to reduce the size of the queue at peak times [35; 36].

Conclusion

193. Drawing together the above points it is clear that there is the potential for a severe residual transport impact and that the safety of the access with the

¹⁸ This was from oral evidence given by Mr Pratt.

B3181 may be compromised. These impacts are likely to occur if the double mini roundabout is signalised with a pedestrian phase on every cycle. They would only occur for part of the morning peak, but nevertheless this would not be an insignificant period of time. Nevertheless the HA has agreed that 100 dwellings could be built with no mitigation at all and that a further 40 more could be built if the Old Park Farm Phase 2 improvement to the double mini roundabout takes place. Whilst the HA consider this as a short term and expedient solution there is no guarantee that this would be the case. Once commitments were built the resultant traffic queue would be likely to block the junction between the appeal site and the B3181 and thus cause similar harmful consequences.

194. In reaching a conclusion on the highway issue it is necessary to weigh up what is likely to happen in reality. The first point to make is that the signalisation scheme is not part of the appeal proposal and there may be other options available to reduce queues like, for example reducing the call on pedestrian time. Furthermore there is every chance that the LLL will be built. The existence of an alternative option for site traffic along the B3181 means that the small section of third party land needed for its completion would be likely to have little or no ransom value. Furthermore there is every possibility that the Exhibition Way Link will be built and in that case there would be a considerable reduction in the traffic entering the junction in the centre of Pinhoe from the Church Hill direction. There is also the probability that if the LLL is delayed the traffic that would have taken that route would use Parkers Cross Lane and Science Hill Drive instead. So taking all of these factors into account it is concluded that, on balance, the appeal scheme is unlikely to result in a severe transport impact. It would therefore comply with saved Policy TA7 and the provisions of the Framework.
195. However the Secretary of State may not agree with that conclusion and if that is the case there is the option to impose the conditions put forward by the HA. These effectively provide 4 triggers linked to the occupation of specific numbers of dwellings. The triggers depend on certain road improvements being carried out other than the signalisation of the double mini roundabout. In brief this would allow 100 dwellings to be built with no mitigation at all and up to 140 with the Old Park Farm Phase 2 improvements in place. However the total number of dwellings proposed would not be able to be built without the LLL being fully completed. Assuming that the Exhibition Way Link Road goes ahead it would be the last 120 homes that would be at issue [123].
196. The Appellant is opposed to the 4 Grampian conditions and for the reasons given I do not consider them necessary. It seems likely that certainly the final trigger would significantly increase the value of the third party land required to complete the LLL. What effect this would have on the overall viability of the appeal scheme is not known. A sum of £50,000 is offered by the Appellant for the compulsory purchase of the Wain Homes land. However it is difficult to see how this sum was arrived at and therefore how it could be justified. In such circumstances it cannot be taken into account as a reason to grant planning permission as it would be contrary to Regulation 122 of the CIL Regulations. The legal agreements include a provision that removes the conditionality clause but the Council is likely to be correct that it would be insufficient to provide the necessary indemnity in a ransom situation. Whilst it may not be unreasonable to expect some contribution from the public purse

the land value in such circumstances would be likely to be substantial [48; 86; 128].

197. For these reasons the Secretary of State will wish to consider whether the imposition of the Grampian conditions themselves would diminish the likelihood that the LLL would be completed and the wider benefits that it would bring to the Pinhoe area realised.

Consideration Five: Other Matters

Residential amenity

198. There are a number of residential properties that adjoin the appeal site to the west and south. Inevitably these existing residents would experience a considerable change in outlook, with built development replacing open fields. However that in itself is not a reason to refuse permission because no-one has a right to a view across third party land. The scheme is in outline form and matters such as appearance and layout are reserved for future consideration. The height, position and orientation of buildings and the provision of intervening spaces and landscaping are matters that would be in the control of the Council and subject to consultation with those affected [100].
199. There is a proposed bus, cycle and emergency access at the southern end of the site into the residential area around Parkers Cross Lane. The appeal scheme does not propose a general use of this access for car traffic and a condition is proposed to ensure that such a restriction would remain in place. Pinn Court Lane is a narrow sunken lane that would continue to serve Pinn Court Farm as well as a number of other properties at its western end. It would not be suitable as a vehicular access to serve the site and indeed is not intended for that purpose. It would however provide a pedestrian link between the southern part of the site and Main Road North [93; 99].
200. For all of the above reasons it is concluded that the appeal proposal would not have an adverse effect on the living conditions of adjoining residential occupiers.

Effect on schools and medical facilities

201. There is local concern that education infrastructure would not be sufficient. Devon County Council as Education Authority is satisfied that there is sufficient capacity in the nearby secondary school to accommodate the children from the development. However this is not the case with primary school provision. There is land provided for a new primary school on Old Park Farm. Information has been submitted¹⁹ that is sufficient to be confident that the contribution in the Section 106 Agreement would provide the necessary funding for the primary education needs of the appeal development [97; 100].
202. Several local objectors are concerned about the impact of the additional population on medical facilities. The difficulty of getting a doctor's appointment is not unique to this area and there is no specific evidence that the needs of the development cannot be reasonably accommodated. No

¹⁹ See Document ID 13.

specific requirement for mitigation in this respect has been requested by the Council or the health authority [97; 100].

Flood risk

203. The appeal site is in Flood Zone 1 which has the lowest risk of flooding from fluvial and tidal sources. The accompanying Flood Risk Assessment has considered all sources of flooding, including from groundwater and surface water. It is proposed to drain the site using a sustainable drainage strategy and this could be the subject of a planning condition. The EIA has concluded that with this in place there would be no risk of flooding elsewhere and it is noted that the Environment Agency has raised no objections to the appeal scheme [7; 100; 114].

Ecology and wildlife

204. The appeal site has no ecological designation and is not identified in the LP as being of particular importance to wildlife. An Ecological Impact Assessment was undertaken in 2011 and concluded that no protected species would be significantly affected by the appeal development. Mature hedgerows and trees border individual fields and it is proposed that these would mainly be retained to provide a landscape framework within which development would take place. There is no reason therefore why bat corridors or foraging grounds should be disturbed. A condition could ensure that suitable lighting is provided to public areas to prevent harm in terms of inappropriate illumination to darker areas where bats may feed or commute [7; 100; 116].

205. The Ecological Impact Assessment dates back to 2011 and recommends a further protected species survey by January 2013 if development has not commenced. Whilst it would have been better if this had been undertaken before, I note that the planning application was submitted in March 2012 and a further survey was not a requirement of the Council in its decision notice. This is not a site with any nature conservation protection and any dormice that may subsequently be found would be likely to be within hedgerows which are proposed to be retained. There is no specific evidence that the mitigation suggested is not still applicable or that the situation has materially changed to require permission to be withheld on this basis. An Ecological Mitigation Strategy could be required by condition and seems a proportionate response in this case [116].

206. The proposal includes various open spaces and a Linear Park on the eastern side of the site. There would also be provision for food growing areas, which are likely to be managed as allotments. These features would have the potential to enhance local biodiversity [132].

207. The site is within about 8 km of the Pebblebed Heaths Special Protection Area and Special Area of Conservation and within about 6 km of the Exe Estuary Special Protection Area. These are sites of international importance to nature conservation and under European legislation it is necessary to ensure that planning permission is not granted for a development that would have a significant adverse effect either on its own or in combination with other plans and projects. The Section 106 Agreement with the Council provides a contribution in this respect, which is in accordance with the *South East Devon European Site Mitigation Strategy*, agreed with Natural England for all sites

within 10km of the designated sites. The Council explained at the Inquiry that the agreed cost per dwelling has increased from the £492.62, which was current when the Section 106 Agreement was signed in April 2014, to £749 [130].

208. It is appreciated that the Linear Park is a relatively large open space that would provide new occupiers with recreational provision on the site itself thus avoiding some trips to the protected sites for such activities as dog walking. However this was not considered by Natural England to provide suitable mitigation. In order to be sure that the appeal scheme would comply with the Habitats Regulations, an increased level of payment would be necessary as set out above. If the Secretary of State otherwise agrees with my recommendation to grant planning permission for the scheme the Appellant suggested that the matter could be resolved by a new legal document to be submitted within a specific time period. This seems a reasonable suggestion in the circumstances.

Consideration Six: Whether any conditions and obligations are necessary to make the development acceptable.

209. The planning conditions are set out in Annex Three. Justification has been provided in **Paragraphs 110-123** and there are also references to specific conditions, where relevant, in my Conclusions. For the reasons I have given I do not consider that the Grampian conditions (Conditions 20-23), relating to highway impact, are either necessary or reasonable. Furthermore, I have considerable concerns about the references to layout in the phasing condition (Condition 5). This is because it would require the layout of the whole site to be approved at the start, notwithstanding that the reserved matters (including layout) are to be approved on a phased basis under Condition 1. The conditions would therefore conflict and Condition 5 would be unreasonable, in my opinion. I have therefore revised Condition 5 accordingly²⁰. Apart from these, it is considered that the conditions are reasonable, necessary and otherwise comply with the provisions of Paragraph 206 of the Framework and the PG for the reasons given. I recommend that they are imposed if the Secretary of State decides to allow the appeal.
210. There are two main Section 106 Agreements, which include a variety of provisions as set out in **Paragraphs 126-134** above. They have been referred to in the previous sections of my Conclusions and are put forward to mitigate adverse impacts, meet the needs of the development and enable the scheme to go ahead. The Planning Obligations were discussed in detail at the Inquiry. I am satisfied that the documents are legally correct and fit for purpose.
211. The policy context for the infrastructure contributions is provided by saved Policy S7 in the LP. However it is necessary to consider whether the obligations meet the statutory requirements in Paragraph 122 of the Community Infrastructure Levy (CIL) Regulations and the policy tests in Paragraph 204 of the Framework in order to determine whether or not they can be taken into account in any grant of planning permission. The requirements are that the obligations must be necessary, directly related and

²⁰ If the Secretary of State wishes to see the wording of the original conditions, these are at **Document ID 12/2**.

fairly and reasonably related in scale and kind to the development in question. It is noted that all of the obligations, save for those relating to the safeguarded road and CPO payment, contain a clause that they are conditional on the Secretary of State's finding that they comply with the CIL Regulations.

212. There are various highway contributions. The £700,000 towards off-site highway works is to mitigate the impact of the development on the double mini roundabout. This was intended to pay for improvements to Langaton Lane east of the M5 Motorway and has been based on the highest costed option in the PAAS. However there is no reason why part could not be used for a signalisation scheme. This would be likely to cost less but there is the provision for paying back any unspent sum if it is not used within a specified time period. Travel planning is administered by the County Council for the wider strategic growth area with each site making a contribution. This has been based on the cost of providing travel vouchers, welcome packs and the services of a travel Plan Co-ordinator. The Bus Service Contribution is based on the cost of extending one of the existing town centre services into the site. It would require extra buses and has been discussed and agreed with the provider, Stagecoach, on the basis of pump priming for a 4 year period after which the service is expected to be viable.
213. The obligation to safeguard the land within the site for the LLL and also the provisions which allow the County Council to enter the land and construct the road are necessary for all the reasons given in Consideration Three. A financial contribution towards the compulsory acquisition of the third party land seems to me reasonable and necessary in principle. My overall conclusions relating to traffic impact take account of the likelihood of the LLL being constructed in its entirety. However the cost of this is not known and therefore whether the £50,000 offered is reasonable or proportionate. In the circumstances it cannot be concluded that it complies with Regulation 122 of the CIL Regulations or Paragraph 204 of the Framework. Whilst it cannot therefore be taken into account as a reason for granting planning permission it would be paid anyway because the conditionality clause would not apply on account of the Deed of Variation.
214. There is a need for primary education provision. The justification for the contribution is discussed in Consideration Five. The requirement for affordable housing, the policy basis and justification for the level of provision is discussed in Consideration Three. The tenure split is agreed by the Council to meet local needs and the phasing of provision, which is tied to the market dwellings, is considered reasonable in order to ensure that the affordable homes are delivered expeditiously. The contribution towards the sites of international nature conservation importance is considered to be too low to ensure the necessary mitigation as discussed in Consideration Five. However the Appellant is willing to increase these to the necessary level if the Secretary of State finds the scheme acceptable in all other respects.
215. South West Water confirmed that the existing foul sewerage system was not sufficient to serve the development. A Consultant's report indicated that a payment of £704,000 would be necessary to undertake the necessary improvements. The appeal development would include various areas of open space, including a Linear Park on the eastern side running up to the embankment with the M5 Motorway. There are obligations relating to the

specification of the open spaces and its future management and maintenance. A commuted sum of £325.754 has been provided towards the long term cost of managing and maintaining the Linear Park. It is expected that this will be undertaken by the County Wildlife Trust and the costing has been provided on the basis of 8 years, after which it is expected to become self funding. These provisions all seem reasonable and necessary in order to ensure that the open spaces provide attractive and functional places for those living on the new development.

216. There are several sustainability provisions. These relate to the potential connection to the District Heating Facility or else the provision of a proportion of the energy supply from decentralised and/or renewable or low carbon energy sources. Also to build dwellings to Level 3 of the Code for Sustainable Homes and achieve a Very Good BREEAM rating for the commercial buildings. These seem necessary requirements in order to ensure that the development is sustainable and energy efficient.
217. In conclusion it is considered that the obligations provided in the various legal agreements are in accordance with Regulation 122 of the CIL Regulations and Paragraph 204 of the Framework. The exception relates to the £50,000 payment towards the third party land acquisition and the mitigation payment relating to the nature conservation sites. The latter would be too low in order for the appeal scheme to satisfy the requirements of the Habitats Regulations. The former should not be taken into account as a reason for granting planning permission, but would be paid due to the removal of the conditionality clause.

Consideration Seven: Overall conclusions and planning balance to determine whether the proposal would be a sustainable form of development

218. The appeal proposal is EIA development and the planning application was accompanied by an ES. This has been adequately publicised in accordance with the Town and Country Planning (Environmental Impact Assessment) (England and Wales) Regulations 1999. Under Regulation 3 planning permission cannot be granted for EIA development unless the environmental information has been taken into account. This includes not only the Environmental Statement but also the written and oral evidence to the Inquiry. This environmental information has been taken into account in my consideration of this appeal and my recommendation to the Secretary of State [5-8].
219. The Framework establishes that sustainable development should be seen as a golden thread running through both plan-making and decision-taking. It has been concluded that the District has a serious and significant short term deficit of deliverable housing sites. The housing supply policies in the LP are thus out-of-date and in such circumstances the relevant policy comes from Paragraph 14 of the Framework. This establishes that decisions should be made in accordance with the presumption in favour of sustainable development. Paragraph 47 seeks to boost significantly the supply of housing and the contribution that the appeal scheme could make in this regard is a matter of considerable weight in the overall balance.
220. The appeal site is not within one of the areas where specific policies indicate that development should be restricted. In such circumstances the appropriate test set out in Paragraph 14 of the Framework is whether there are any

adverse impacts that would significantly and demonstrably outweigh the benefits when assessed against the policies of the Framework as a whole.

221. In considering this matter it is important to have in mind the three interdependent dimensions to sustainable development set out in Paragraph 7 of the Framework. In terms of the economic dimension I have already highlighted the important contribution that the scheme would make to the Council's housing land supply deficit. The shorter implementation period agreed by the Appellant would ensure that a timely start was made and that houses would appear on the ground in an expedient manner. New residents would also contribute to the local economy and of course the provision of jobs during the construction period would be beneficial for a number of years.
222. The scheme would make a significant contribution to affordable housing and the mix of affordable rent and intermediate homes would be in accordance with identified needs. It is appreciated that the Council would have liked to have seen a greater provision. However for the reasons given that would not be viable, regardless of whether the policy requires it or not. There is no reason why the appeal scheme should not provide a high quality built environment and the potential to link to the district heating network would be a local and sustainable solution to energy provision. There are opportunities within this location to travel by modes other than the car. The site is accessible to local shops and services in Pinhoe. There are a number of bus services available to new occupiers which travel into Exeter. It is the case that several routes are down Main Road North and, in the absence of dedicated lanes, the buses would get caught in the traffic queues in the morning peak period. At other times however this would be a realistic option for travel into the city centre. Furthermore the scheme would provide a financial contribution so that one of the bus services could travel through the site. This seems to me a very accessible location that offers new residents realistic choices of travel mode.
223. The appeal scheme would result in the loss of good quality agricultural land and an area of countryside. However it seems to me inevitable that greenfield land will be needed if the district is to meet its housing needs. Whilst it is appreciated that the site is valued by existing local residents it has no protective designation and views are relatively localised. This is a disadvantage but one that therefore has limited weight. There are also some environmental advantages, including the provision of the Linear Park, the retention and management of most hedgerows and trees and the enhancements to biodiversity. The potential harm to the European sites could be successfully mitigated by an amended contribution.
224. Whilst the appeal scheme is likely to cause queuing and congestion in the short term it is not considered that it would cause a severe transport impact or that the access would be other than safe and suitable. This is a balanced judgement taking account of the likelihood that the LLL will be delivered in a timely manner and the probability that the Exhibition Way Link will be built. Even if the latter scenario does not occur there are also other factors that would tend to reduce the impacts such as peak spreading and the diversion of traffic along Science Park Drive. In my judgement the adverse impacts would not significantly and demonstrably outweigh the benefits when assessed against the policies of the Framework as a whole. My overall conclusion is that

this would be a sustainable form of development and that the appeal should be allowed.

RECOMMENDATION

225. That the Secretary of State seeks a revised contribution of £749 per dwelling as the appropriate mitigation to avoid significant impact upon the Exe Estuary Special Protection Area and the Pebblebed Heaths Special Protection Area and Special Area of Conservation.
226. Subject to the above, it is recommended that outline planning permission be granted for residential development of up to 430 units including a local centre comprising retail (up to 240 m²) and community space, care home of up to 60 bedspaces, specialist care home of up to 60 bedspaces, skate park and a visitor car park together with associated open space (formal and informal), cycleways, footpaths and infrastructure, safeguarded vehicular route to Langaton lane served off a new access from the B3181 subject to the conditions in Annex Three.

Christina Downes

INSPECTOR

Richborough Estates

ANNEX 2: DOCUMENTS

PA: Planning Application Supporting Documents

PA 1	Environmental Statement, Non Technical Summary and Environmental Statement Addendum
PA 2	Transport Assessment with Appendices
PA 3	Transport Assessment Addendum (January 2013)
PA 4	Access junction final Stage 1 Road Safety Audit (July 2013)
PA 5	Double mini roundabouts Technical Notes (August 2013)
PA 6	Technical Note on capacity of revised site access (August 2013)
PA 7	Transport explanatory note
PA 8	Archaeological evaluation/ Results of a historical archaeological assessment/ Results of an archaeological gradiometer survey
PA 9	Geo-technical Phase 1 Desk Study and Phase II Report
PA 10	Planning statement
PA 11	Tree survey and constraints plan
PA 12	Landscape and visual impact assessment
PA 13	Noise assessment
PA 14	Ecological impact assessment
PA 15	Flood risk assessment
PA 16	Air quality assessment
PA 17	Sustainability statement
PA 18	Linear Park management framework
PA 19	Waste management policy
PA 20	Utilities assessment
PA 21	Hydro geological risk assessment
PA 22	Heritage asset statement of significance
PA 23	Statement of community involvement
PA 24	Design and access statement
PA 25	Design framework
PA 26	Supplementary information – revisions to the Masterplan

BD: Background Documents

BD 1	Council's notification of the appeal and Inquiry and list of persons notified
BD 2	Secretary of State's recovery letter (20 December 2013)
BD 3	Inspector's note to the parties (30 April 2014)

BD 4	Questionnaire
BD 5	Statement of Common Ground: Planning
BD 6	Statement of Common ground: Transport
BD 7	Letters received in response to the appeal notification

POE: Proofs of Evidence

POE 1	Proof of evidence and Appendices of Mr Dickens
POE 2	Rebuttal and Appendices of Mr Dickens
POE 3	Proof of evidence (superceded) and Appendices of Mr Gill
POE 4	Supplementary proof of evidence and Appendices of Mr Gill
POE 5	Rebuttal proof of evidence of Mr Gill
POE 6	Proof of evidence (superceded) and Appendices of Mr Pratt
POE 7	Rebuttal proof of evidence (superceded) and Appendices of Mr Pratt
POE 8	Proof of Evidence and Appendices of Mr Pratt
POE 9	Rebuttal proof of evidence and Appendices of Mr Pratt
POE 10	Proof of evidence and Appendices of Mr Upton
POE 12	Supplementary proof of evidence and Appendices of Mr Upton
POE 13	Proof of evidence and Appendices (July 2014) of Mr Eke
POE 14	Rebuttal proof of evidence and appendices of Mr Eke
POE 15	Proof of evidence and Appendices of Mr Grist*
POE 16	Supplementary proof of evidence of Mr Blair
POE 17	Appendices 1-14 of Mr Blair
POE 18	Appendices 15-29 of Mr Blair
POE 19	Rebuttal proof of evidence and Appendices of Mr Blair

ID: Inquiry Documents

ID 1	Note regarding the publicity for the EIA provided by the Appellant
ID 2	Note regarding the Arcady model and Table 6.7 of Mr Blair's evidence
ID 3	Note by Mr Pratt on the expected use of the Langaton Lane Link
ID 4	Appeal decision: Red House School, Stockton-on-Tees
ID 5	Extract from the Planning Practice Guidance on Viability
ID 6	Plan showing the extend of the land owned by Wain Homes
ID 7	Appeal decisions: Sites at Feniton, Devon
ID 8	Extract from the East Devon Local Plan, including Policy EN4
ID 9	East Devon Open Space Study and Appendices



East Devon Open
Space Study - Appen



East Devon Open
Space Study.pdf



East Devon Open
Space Study - Appen

ID 10 Development Management Committee Agenda Item on the Open Space Study (12 June 2012)

ID 11 South East Devon European Site Mitigation Strategy



S.E.Devon European
Site Mitigation Strategy

ID 12 Proposed list of conditions, including those not agreed between the parties and additional conditions suggested by the Appellant regarding phasing

ID 13 Background information provided by the Council in relation to education contributions

ID 14 Report by Pell Frischmann regarding the impact of the proposed development on the sewerage system

ID 15 Development Management Committee Report regarding mitigation of impacts on the protected habitats of the Exe Estuary and Pebblebed Heaths

ID 16 Planning Obligation by Agreement between the site owners, developer and Devon County Council (29 April 2014)

ID 17 Unilateral Undertaking between the site owners, developer and Devon County Council (21 October 2014)

ID 18 Deed of Variation between the site owners, developer and Devon County Council (7 November 2014)

ID 19 Planning Obligation by Agreement between the site owners, developer and East Devon District Council (28 April 2014)

ID 20 Supplemental Agreement between the site owners, developer and East Devon District Council (20 October 2014)

ID 21 Summary of Section 106 Agreements

ID 22 Closing submissions on behalf of the Council

ID 23/1 Opening and closing submissions on behalf of the Appellant

ID 23/2

* Mr Grist was present on the first day of the Inquiry but presented no evidence when it resumed. The highway evidence was given by Mr Blair on behalf of the Appellant.

PLANS

A Application plans

B Revised access junction plan (47063396-02)

ANNEX 3: SCHEDULE OF CONDITIONS

1. Approval of the details of the layout, scale and appearance of the buildings, and the landscaping of the site (hereinafter called "the reserved matters") for each approved phase or phases of the development shall be obtained from the Local Planning Authority in writing before the development of the relevant phase or phases is commenced.
2. Application for approval of the reserved matters in respect of Phase 1 of the development hereby permitted shall be made to the local planning authority before the expiration of 12 months from the date of this permission.
3. Phase 1 of the development hereby permitted shall be begun either before the expiration of 3 years from the date of this permission, or before the expiration of 1 year from the date of approval of the last of the reserved matters to be approved in respect of that phase, whichever is the later.
4. Subsequent phases of the development hereby permitted shall be begun before the expiration of 1 year from the date of approval of the last of the residential reserved matters to be approved in respect of that phase.
5. A detailed phasing plan shall be submitted to and approved in writing by the Local Planning Authority prior to the submission of the first reserved matters application. The phasing plan shall specify the proposed timing for delivery of the areas of public open space/green infrastructure as well as a construction programme for the housing and other build elements of the development. The development shall be carried out in accordance with the approved phasing plan and delivery programme.

or in the alternative to accompany Conditions 20-23:

A detailed phasing plan shall be submitted to and approved in writing by the Local Planning Authority prior to the first reserved matters application. The phasing plan shall specify the proposed timing for delivery of the areas of public open space/green infrastructure as well as a construction programme for the housing and other build elements of the development. The phasing plan shall show which parts of the development would be constructed in each of the phases referred to in Conditions 20-23 and how each phase would be designed so as to form a satisfactory form of development in its own right that also integrates into the wider development on the site. The development shall be carried out in accordance with the approved phasing plan and delivery programme.

6. No development shall take place until a detailed surface water drainage strategy shall have been submitted to and approved in writing by the local planning authority. The strategy shall be based upon the principle of sustainable drainage systems as outlined in the *Level 2 Flood Risk Assessment: Final Report – Revised* (June 2012). The strategy shall include a timetable for implementation and details of the management and maintenance of the surface water drainage system. Development shall be carried out in accordance with the approved strategy.
7. No development-related works comprised in a particular approved phase or phases of the development shall take place within the site until a written

- scheme of archaeological work relating to that phase has been submitted to and approved in writing by the Local Planning Authority. This scheme shall include on-site work, and off-site work including the analysis, publication, and archiving of the results, together with a timetable for completion of each element. All works shall be carried out and completed in accordance with the approved scheme.
8. Before any development commences on a particular approved phase or phases of the development, details of finished floor levels and finished ground levels in relation to a fixed datum relating to that phase shall be submitted to and approved in writing by the Local Planning Authority. Development shall be carried out in accordance with the approved details.
 9. Prior to submission of any reserved matters application for an agreed phase or phases of the development, a detailed Design Code for the agreed phase or phases of the development shall be submitted to and approved in writing by the Local Planning Authority. The Design Code shall follow the *Design Framework* (August 2013). The reserved matters application(s) shall adhere to the approved Design Code(s) relevant to that part of the site.
 10. Prior to the commencement of development of an agreed phase or phases of the development hereby approved an Ecological Mitigation Strategy shall be submitted to and approved in writing by the Local Planning Authority. This shall be based on the proposed mitigation in the *Ecological Impact Assessment* (December 2011). Development shall be carried out in accordance with the approved details and the Strategy shall include:
 - a. Details of the design and location of bat tubes and swift boxes in 1 in 20 of the new buildings (plus one bat box in the public building if relevant).
 - b. Details of external lighting, including the design, hours of use, location and management of any temporary or permanent exterior lighting within any public area, including signage, flood lighting and road lighting.
 - c. Details of a scheme for the removal and relocation to a suitable receptor site for reptiles. This shall also indicate how adjacent areas to the relevant phase or phases are being considered in terms of reptile removal.
 - d. Details of those hedgerows that are to be retained and how they will be protected during construction; details of those hedgerows to be removed and how any adverse impact on biodiversity will be mitigated.
 - e. A timetable for implementation.
 11. Prior to the commencement of an agreed phase or phases of the development hereby approved, a scheme to demonstrate that the internal noise levels within all residential units will conform to the "good" design range identified by BS 8233:2014 *Guidance on sound insulation and noise reduction for buildings* shall be submitted to and approved in writing by the Local Planning Authority. The development shall thereafter be carried out in accordance with the approved details and be retained thereafter.
 12. No development shall take place until a Construction Method Statement has been submitted to, and approved in writing by, the local planning authority.

The approved Statement shall be adhered to throughout the construction period. The Statement shall provide for:

- a. The parking of vehicles of site operatives and visitors.
 - b. Loading and unloading of plant and materials.
 - c. Storage of plant and materials used in constructing the development.
 - d. Wheel washing facilities.
 - e. Measures to control the emission of dust and dirt during construction.
 - f. No construction work shall be carried out, or deliveries received, outside of the following hours: 0800-1800 Monday-Friday, 0800-1300 on Saturdays, not at all on Sundays and public holidays.
13. No development shall take place until details of how existing trees shall be protected during the course of construction have been submitted to and approved in writing by the local planning authority. The tree protection measures shall be in accordance with BS 5837:2012 *Trees in relation to design, demolition and construction – Recommendations* and shall indicate exactly how and when the trees will be protected during the site works. Provision shall also be made for supervision of tree protection by a suitably qualified arboricultural consultant. The development shall be carried out in accordance with the agreed details and protection measures shall be adhered to throughout the construction period.
14. No development shall take place until a Landscape and Ecology Management Plan for the whole development hereby permitted has been submitted to and approved in writing by the local planning authority. The Landscape and Ecology Management plan shall be carried out as approved for each phase of the development.
15. No development shall take place until details for the provision and future maintenance of the proposed noise bund along the eastern boundary of the site. The details shall include the design and landscaping of the bund along with a timetable for its provision. The bund shall thereafter be provided in accordance with the approved details and timetable.
16. The development hereby permitted shall be carried out in accordance with the following approved plans:
- Location Plan – PL081006 LP-01B
 - Proposed Junction & Swept Path Analysis – 47063396-02
 - Proposed secondary access – D122481-105 Rev 01
 - Masterplan Framework – PL081006 MPF-03T
 - Open Space Plan – PL081006 OSP-01B
17. Should a District Heating Network be provided to the site, the buildings comprised in the development hereby permitted shall be constructed so that their internal systems for space and water heating are capable of being connected to the proposed decentralised energy network. Prior to the occupation of the development, the necessary onsite infrastructure shall be put

in place for connection of those systems to the network on points on the site boundary to be first agreed in writing by the local planning authority.

18. The development shall be limited to the occupation of 150 dwellings until a link has been provided between the development and Parkers Cross Lane. This shall be as shown on Drawing No: D122481-105 Rev 01 and in accordance with a specification to be first agreed in writing with the local planning authority. The specification shall include measures to ensure that the link is only used by buses, emergency vehicles, cyclists and pedestrians and shall be carried out as approved and the measures shall be retained thereafter.
19. No dwelling on the development hereby permitted shall be occupied until a signal controlled access onto the B3181 Road has been designed and constructed fully in accordance with the details on Drawing No: 47063396-02.

Grampian Conditions:

20. No more than 100 dwellings hereby permitted as specified within a phasing plan to be submitted for the prior written approval of the local planning authority, shall be occupied until:
 - a. The local planning authority has approved in writing a scheme of works to provide a new vehicular transport link from the site to Langaton Lane (LLL) and the approved works have been completed; or
 - b. A new vehicular transport link on Eastern Fields to connect Exhibition Way to Harrington Lane, the "Exhibition Way Link Road" (as identified in the Pinhoe Area Access Strategy dated July 2013) has been constructed and is open for traffic; or
 - c. An improvement scheme to the Pinhoe double mini roundabout junction has been carried out:
 - as required by the planning permission granted for the Old Park Farm Phase 2 development (Ref:13/0001/MOUT) or any subsequent planning permission granted for this development which requires the same improvement scheme for the double mini roundabout junction; or
 - as required by any planning permission which requires an improvement scheme for the double mini roundabout junction provided that the local planning authority's written approval is obtained first to confirm that any such scheme is adequate to allow occupations beyond that restricted by this condition.
21. No more than 140 dwellings hereby permitted as specified within a phasing plan to be submitted for the prior written approval of the local planning authority, shall be occupied until:
 - a. The local planning authority has approved in writing a scheme of works to provide the LLL and the approved works have been completed; or
 - b. The Exhibition Way Link Road has been constructed and is open for traffic.

22. No more than 270 dwellings hereby permitted as specified within a phasing plan to be submitted for the prior written approval of the local planning authority, shall be occupied until:-
- a. The local planning authority has approved in writing a scheme of works to provide the LLL and the approved works have been completed; or
 - b. The Exhibition Way Link Road has been constructed and is open for traffic; and
 - c. An improvement scheme to the Pinhoe double mini roundabout junction has been carried out:
 - as required by the planning permission granted for the Old Park Farm Phase 2 development (Ref:13/0001/MOUT) or any subsequent planning permission granted for this development which requires the same improvement scheme for the double mini roundabout junction; or
 - as required by any planning permission which requires an improvement scheme for the double mini roundabout junction provided that the local planning authorities written approval is obtained first to confirm that any such scheme is adequate to allow occupations beyond that restricted by this condition.
23. Notwithstanding Conditions 20, 21 and 22 above, no more than 310 dwellings hereby permitted as specified within a phasing plan to be submitted for the prior written approval of the local planning authority, shall be occupied until:-
- a. The local planning authority has approved in writing a scheme of works to provide the LLL and the approved works have been completed.

End of conditions



Department for Communities and Local Government

RIGHT TO CHALLENGE THE DECISION IN THE HIGH COURT

These notes are provided for guidance only and apply only to challenges under the legislation specified. If you require further advice on making any High Court challenge, or making an application for Judicial review, you should consult a solicitor or other advisor or contact the Crown Office at the Royal Courts of Justice, Queens Bench Division, Strand, London, WC2 2LL (0207 947 6000).

The attached decision is final unless it is successfully challenged in the Courts. The Secretary of State cannot amend or interpret the decision. It may be redetermined by the Secretary of State only if the decision is quashed by the Courts. However, if it is redetermined, it does not necessarily follow that the original decision will be reversed.

SECTION 1: PLANNING APPEALS AND CALLED-IN PLANNING APPLICATIONS;

The decision may be challenged by making an application to the High Court under Section 288 of the Town and Country Planning Act 1990 (the TCP Act).

Challenges under Section 288 of the TCP Act

Decisions on called-in applications under section 77 of the TCP Act (planning), appeals under section 78 (planning) may be challenged under this section. Any person aggrieved by the decision may question the validity of the decision on the grounds that it is not within the powers of the Act or that any of the relevant requirements have not been complied with in relation to the decision. An application under this section must be made within six weeks from the date of the decision.

SECTION 2: AWARDS OF COSTS

There is no statutory provision for challenging the decision on an application for an award of costs. The procedure is to make an application for Judicial Review.

SECTION 3: INSPECTION OF DOCUMENTS

Where an inquiry or hearing has been held any person who is entitled to be notified of the decision has a statutory right to view the documents, photographs and plans listed in the appendix to the report of the Inspector's report of the inquiry or hearing within 6 weeks of the date of the decision. If you are such a person and you wish to view the documents you should get in touch with the office at the address from which the decision was issued, as shown on the letterhead on the decision letter, quoting the reference number and stating the day and time you wish to visit. At least 3 days notice should be given, if possible.