

Appeal Decision

Inquiry held on 3-5 March 2015

Site visit made on 5 March 2015

by David Spencer BA (Hons) DipTP MRTPI

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

Decision date: 19/05/2015

Appeal Ref: APP/X1118/A/14/2224465

Mead Park, Bickington, Barnstaple, Devon EX31 2PF

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant planning permission.
- The appeal is made by Mr Simon Cater of Wainhomes (South West) Holdings Ltd against the decision of North Devon District Council.
- The application Ref 56492, dated 14 October 2013, was refused by notice dated 29 July 2014.
- The development proposed is the erection of 59 dwellings, associated highway and landscape works together with provision of community open space and associated infrastructure.

Decision

1. The appeal is allowed and planning permission is granted for the erection of 59 dwellings, associated highway and landscape works together with provision of community open space and associated infrastructure at Mead Park, Bickington, Barnstaple, Devon EX31 2PF in accordance with the terms of the application, Ref 56492, dated 14 October 2013, and subject to the conditions set out in the schedule at the end of this decision.

Preliminary Matters

2. A completed agreement under Section 106 of the Town and Country Planning Act 1990 (S106) was submitted following the close of the Inquiry. The agreement would provide for public open space, the management of sustainable drainage and the delivery of affordable housing as well as financial contributions towards education and local transport infrastructure. As such the proposed contributions would need to be assessed against the statutory tests set out in the Community Infrastructure Levy (CIL) Regulations 2010.
3. Following the close of the Inquiry the transitional period under CIL Regulation 123(3) for S106 planning obligations designed to collect pooled contributions ended on 6 April 2015. Consequently, the Council was requested to clarify whether any proposed contributions from the appeal proposal would contribute to an infrastructure fund which may already have accrued five prior obligations entered into after 6 April 2010. No clarification was provided and as such my decision, where applicable, has taken a precautionary approach in respect of the five-obligation limit.
4. The S106 was submitted after the Inquiry following final deliberations to ensure that the proposed affordable housing sizes reflected local need. Whilst the overall number of affordable dwellings has remained the same, the scheme has

been amended to include a greater proportion of smaller affordable properties as sought by the Council's housing officer. This has resulted in minor changes to a small number of plots and amended plans were submitted. These amended plans do not materially alter the scale, layout, design and appearance of the appeal proposal and as such I am satisfied that no one would be prejudiced by my taking them into account.

Main Issues

5. The main issues in this appeal are:

- The effect of the appeal proposal on the landscape character and the value to be attributed to the landscape;
- The effect of the appeal proposal on the 'green wedge' between Bickington and Fremington; and
- Whether it is appropriate or not to release the site for residential development having regard to the housing land supply in North Devon.

Reasons

Policy Context

6. The development plan is the North Devon Local Plan 1995 to 2011 which was adopted in 2006 (the LP). Whilst the plan period has expired, it nonetheless remains that there are a number of saved development management policies, to which weight should be given. These policies exist alongside the National Planning Policy Framework (NPPF) which is a material consideration. North Devon Council is working jointly with Torridge District Council on an emerging North Devon and Torridge Local Plan, with a publication draft produced in June 2014 (the NDTLP). The timetable for the NDTLP will see further consultation in 2015 before examination and final adoption in 2016. Accordingly, only limited weight should be applied to the policies in the emerging NDTLP.

Landscape Character

7. The appeal site is part of a larger field in an area of countryside between the settlement of Bickington, which forms the western edge of the wider built-up area of Barnstaple, and the village of Fremington. Open fields sloping down to the estuary of the River Taw adjoin the site to the north with hedged fields to the west and south. The site adjoins Mead Park to the east, a 1970s residential estate consisting of single and two storey dwellings and the established cottages at Clampitts to the north-west corner of the site.
8. The Council's reason for refusal refers to the "unsatisfactory relationship with existing development". The appellant submits that the Council's primary character consideration was the relationship of the appeal proposal to the adjoining housing. However, I am persuaded by the Council's submission that the wording of the refusal referred to the separation of the appeal site from the established built form with its wider landscape implications.
9. To a degree the existing housing at Mead Park influences the character at the appeal site at its eastern fringe. However, I do not share the appellant's submission that there is a wider residential character to the appeal location.

The appellant's Landscape and Visual Impact Assessment prepared by ACD¹ (the ACD LVIA) describes the appeal site from those viewpoints assessed in the vicinity of Mead Park as having a "rural character". From my observations of the site I share this assessment.

10. The topography of the appeal site is an important factor, being located where land slopes down from the brow of the ridge of the gentle escarpment rising from the shores of the estuary of the River Taw. Public bridleways form boundaries to the appeal site on three sides. These are largely enclosed by double banked boundaries including hedgerows. The field entrance to the appeal site on Mead Park and other gaps in the boundaries of the site provide views from these bridleways over a pastoral landscape towards the estuary.
11. In terms of the immediate surroundings, the appeal proposal would inevitably change the local landscape, particularly when viewed at Clappitts Cottages and for users of the bridleways adjoining the appeal site. Whilst the presence of boundary hedgerows and additional landscaping would have a filtering effect it nonetheless remains that the proximity and scale of the proposed dwellings would be conspicuous and activity associated with these dwellings would be perceptible. I therefore share the assessment of the ACD LVIA² that the appeal proposal would result in a significant effect from immediate viewpoints. There would also be an immediate loss of appreciable rural qualities, particularly for users of Bridleway No.24 to the south of the site.
12. Consideration also needs to be given to the effect on the wider landscape. The appeal site is at a point of transition between the undulating High Culm Ridges³, characterised by its patchwork of irregular sized pastoral field and notable woodland, and the Taw-Torridge Estuary⁴ a sweeping and largely tranquil landscape of water, mudflats, marshes and gradually rising open farmland. Whilst I accept that recent landscape characterisation assessment consistently identifies the appeal site within the upper farmed and wooded valley slopes it nonetheless remains that the land immediately to the north is assessed as being within the estuary landscape.
13. The hedgerow along the northern boundary of the appeal site delineates the two landscape character types. However, when following the topography, and importantly the ridge line coming up from the estuary, it is also the case that the appeal site can be read as part of the wider estuary landscape as reflected in earlier, albeit more broad-brush, landscape character work⁵. Particularly when viewed from the well-used Tarka Trail and South West Coastal Path a short distance to the north as well as from more distant public vantage points on the northern banks of the estuary⁶. In my view, landscape character does not abruptly change at subjectively assessed boundaries and there will be localised variations such that character areas at the edges will borrow from one another.
14. Accordingly, I do not share the appellant's view that the appeal site is firmly within the upper farmed and wooded valley landscape character type. It is

¹ LVIA prepared by ACD August 2013, ref WAIN18073LVIA Rev A

² ACD LVIA Viewpoints 9 and 10, pages 61 and 62

³ Landscape Character Type 3A in the 2012 Devon LCA and in the 2010 Joint LCA for North Devon and Torridge District Councils.

⁴ Landscape Character Type 4A in the 2012 Devon LCA and in the 2010 Joint LCA for North Devon and Torridge District Councils.

⁵ The Devon Landscape 2002

⁶ ACD LVIA viewpoints 1, 2, 4, 5, 19 & 21

located in a sweep of undeveloped pastoral landscape extending from the settlement of Bickington to the River Taw. By virtue of being on the estuary side of the ridge the appeal site is part of a landscape that has an open character with expansive views. It is also a predominantly undeveloped location. Other than the established development at Clampitts and North Down Farm, the vast majority of the settlement at Bickington is obscured from the estuary within a shallow valley behind the ridge line. There is a sense of remoteness at the appeal site, characteristic of the estuary landscape. Therefore, I am persuaded by the Council's evidence⁷ that the local landscape at the appeal site has a notably higher sensitivity to development compared with the appellant's assessments.

15. Whilst recent development at Mead Park breaches the ridge line, it is nonetheless of a scale and orientation which means that generally it is only the outline of the grey rooftops which are visible. By virtue of their low profile and mute colours these features are not prominent. In contrast the appeal proposal would occupy sloping land entirely on the estuary side of the ridge line. An appreciable number of dwellings would be positioned with their gable end towards the estuary, including a group of 2½ storey dwellings extending approximately 8 metres to their ridge height at the 24 metre contour level. As such there would be noticeable differences with generally single storey development at the adjacent Mead Park.
16. The appellant submits that the existing hedgerow boundary to the north of the appeal site together with intervening field boundaries in the lower sloping fields would extensively filter views of the proposed development. However, due to the slope of the site and the positioning of a notable number of dwellings above the sharp incline on the site from the 20 metre to the 24 metre contour I am not persuaded that the height and thickness of the northern hedge would significantly screen the taller parts of the development. Therefore I do not share the appellant's view that only "slivers of the roofline will be visible".
17. When viewed from the Tarka Trail and South West Coastal Path, public footpath No.86 and northern banks of the Taw estuary the appeal proposal would noticeably introduce a built development to the landscape where presently only isolated dwellings feature. Accordingly, the appeal proposal, certainly in its initial years, would be prominent in some views from the estuary. Furthermore, I do not accept that for most people moving through this landscape, particularly along the Tarka Trail and South West Coastal Path, the appeal proposal would be either missed or only obliquely viewed.
18. In arriving at this finding, I observed that the generally low level intervening field boundaries on the lower slopes offered little screening. Whilst there is some established vegetation along the Tarka Trail to the north of the appeal site, it is generally patchy leaving long open sections, elevated on an embankment, which afford clear views towards the appeal site. In particular I noted the clear visibility of the height of the conifers to the south of the appeal site above the hedgerows. As such I share the Council's evidence⁸ that the ridge height of certain dwellings would be comparable to these tree tops and therefore would be clearly visible above the existing hedgerow boundary to the appeal site.

⁷ Peter Leaver Proof of Evidence pages 23-25

⁸ Peter Leaver Proof of Evidence Appendix 1, Figure 3

19. The appellant submits that the hedgerow could be reinforced by further planting and landscaping within the proposed significant area of open space on the lower part of the appeal site. However, this would take some time to achieve a height that would provide effective screening. I was referred to the Guidelines for LVIA (3rd Edition) which advises a 15 year timeframe for the establishment of effective landscaping. Given the rising topography of the site and the height of some of the proposed dwellings I consider that it would take that period of time for the proposed landscaping to have any notable screening effect. Consequently, there would be a considerable period of time when the high gable ends and roof profiles of the appeal proposal would remain harmfully visible in the wider Taw estuary landscape.
20. In considering the landscape impact of the appeal proposal, the Council submits that the Taw estuary is a valued landscape for the purposes of paragraph 109 of the NPPF and as such the planning system should contribute to its protection and enhancement. I have carefully considered the Council's assessment of its value including the fact that it is one of a small number of estuarine landscapes between Land's End and Bridgwater Bay and the appreciable recreational value including the Tarka Trail and South West Coastal Path.
21. However, it nonetheless remains that the Taw Estuary is not covered by either a national or local landscape designation, including identification as an "area of great landscape value" in the LP, and the appeal site is not close to any such designations. I therefore consider that the Council's reference to an appeal decision in the Slad valley near Stroud⁹ offers little comparison to the circumstances at the appeal site. Furthermore, I find merit in the submission that to be of value, the landscape needs to be something more than the ordinary. I therefore generally share the assessment of the appellant¹⁰ that the landscape at the appeal location has a primarily local value. Accordingly, it is my judgment, based on the evidence before me, that the appeal site does not form part of a "valued landscape" which would benefit from specific protection in accordance with paragraph 109 of the NPPF.
22. Reference was made to suggested inconsistencies in the Council's approach to new housing development in the estuary landscape including the proposed allocation for 65 dwellings and subsequent resolution to grant planning permission¹¹ at site BAR7 in the emerging NDTLP, a short distance to the east of the appeal site, and a recommendation to approve 135 dwellings at West Yelland¹², a few miles to the west of the appeal site. In terms of the BAR7 site I observed that this is on the landward rather than estuary side of the ridge, such that development here would not be as widely visible as the appeal proposal. This topographical difference, in my view, significantly limits any comparison. I also observed the site at West Yelland which fronts onto the B3233 and occupies land sloping towards the estuary. However, intervening topography and notable blocks of woodland generally inhibit any strong inter-visibility to the estuary thus limiting comparison with the appeal site. As such I am persuaded that the Council has considered each of these sites on their own merits in terms of landscape impact and as such there is no notable inconsistency.

⁹ APP/C1625/A/13/2197307 & APP/C1625/A/14/2213711

¹⁰ Table TG1, pages 15-17 Clare Brockhurst Proof of Evidence

¹¹ Doc 4

¹² Doc 10

23. Whilst I am persuaded that the appeal site is not part of a valued landscape for the purposes of paragraph 109 of the NPPF, this does not mean there would be no harm to the landscape. However, it does affect the weight I can attribute to the harm identified. When taking all of the above into consideration, I conclude that there would be moderate harm to the landscape character at the appeal location. Accordingly, the appeal proposal would be contrary to LP Policy ENV1(c) in that it would not protect or enhance the beauty of the countryside or diversity of the landscape. Whilst I attach them only limited weight the appeal proposal would also be contrary to Policies ST09 and ST14 of the emerging NDTLP which seek to protect the local landscape character including the unspoilt estuary character. It would also not accord with paragraph 17 of the Framework which requires planning to take account of the different roles and character of different areas, including recognising the intrinsic character and beauty of the countryside.

Green Wedge

24. The appeal site is part of an area of countryside which separates the communities of Bickington and Fremington. Whilst there are a number of public footpaths the principal public experience of this gap is from the B3233 road. From this road, the largely undeveloped, rural character can be appreciated including the undulating fields, small blocks of woodland, scattered dwellings and farmsteads and allotments. As such there is a clear separation of settlement between Bickington and Fremington.
25. In the context of past and planned development in Barnstaple the Council maintains that it is an established objective to maintain separation with Fremington and avoid harmful coalescence. In particular, paragraph 12.3 of LP in the context of preparing the growth strategy for Barnstaple refers to "the need to prevent the physical coalescence of its peripheral villages including Fremington." Paragraph 12.4 of the LP refers to guiding principles for the location of new development as part of the strategy for Barnstaple including the need to contain urban sprawl.
26. In my view these paragraphs are looking back to inform what has influenced the Barnstaple Action Plan section of the LP rather than setting out what will be applied going forward. Consequently, these objectives have not been translated into either a policy or the designation of 'important undeveloped gap' between Fremington and Bickington as part of the LP.
27. This omission is being addressed through the inclusion of Policy BAR22 in the emerging NDTLP. A first draft of BAR22 and its spatial expression on a draft policies map was presented in the publication draft NDTLP in June 2014 after the planning application was submitted but prior to its determination. This shows the appeal site within the green wedge between Barnstaple and Fremington. From the Council's submitted evidence¹³ I note that whilst there is some community support for a green gap at the appeal location I have very little evidence to explain how the specific boundaries of the green wedge have been delineated. Furthermore, the appellant has objected to Policy BAR22, which will require resolution through the plan-making process. Consequently, the weight that can be applied to BAR22 is limited.

¹³ Doc 11

28. In any event, Policy BAR22 as currently drafted does not present a moratorium on further development in the green wedge but seeks to resist development that could lead to or contribute towards the coalescence of Barnstaple and Fremington. To illustrate this point, reference was made to the housing allocation at BAR3 in the emerging NDTLP, off Tews Lane to the south of the B3233, which would extend the western edge of Bickington towards Fremington thus reducing the width of the 'green wedge' at this location.
29. When viewed from the B3233 and the footways along it, the appeal proposal would not result in a perception of the green gap shortening. This would be by virtue of its position beyond the ridge to the north and the presence of intervening trees and hedgerows. Additionally, in any limited views from the B3233 it would be largely seen against the houses at Mead Park. The appeal proposal would extend development west towards Fremington but even taking the worst case scenario of a reduction of approximately 120 metres, equivalent to some 15% of the gap at this point, it nonetheless remains that an extensive area of undeveloped land would separate Bickington and Fremington and physical coalescence would not occur.
30. I note the Council's concerns that policy BAR22 is intended to address a 'nibbling' effect, particularly in light of potential development pressures in this area identified through the Strategic Housing Land Availability Assessment and NDTLP processes. However, each proposal would need to be considered on its own merits in light of the key objectives of the emerging NDTLP Barnstaple Spatial Development Strategy at criteria (k) & (l) and policy BAR22 to resist coalescence and maintain the separate identities of settlements. In assessing the appeal proposal I am satisfied that it can be accommodated on the appeal site without visually and perceptibly eroding the gap between Barnstaple and Fremington.
31. I therefore conclude that there would not be a significantly harmful effect on the 'green wedge' between Bickington and Fremington. Whilst Policy BAR22 from the emerging NDTLP only has limited weight in my decision, I nonetheless find that the objectives of this policy would remain uncompromised by the appeal proposal.

Housing Land Supply

32. The submitted Statement of Common Ground identifies at paragraph 5.3 that it is an agreed matter that the Council cannot demonstrate a 5 year supply of deliverable housing land and consequently paragraph 49 of the NPPF is engaged. This was reaffirmed in an addendum paper¹⁴ submitted at the Inquiry. However, the parties disagree on the extent of the shortfall of housing land supply and the weight to be given to it in an overall balancing exercise.
33. Paragraph 47 of the NPPF requires local planning authorities to boost significantly the supply of housing including, ensuring that their Local Plan meets the full, objectively assessed need for market and affordable housing in the housing market area. In the absence of a recently tested Local Plan figure, the Council submits that there are six potential sources that could provide a basis to measure housing requirements for North Devon. Whilst the Devon Structure Plan and draft South West Regional Spatial Strategy figures have the benefit of having been tested they are now of some age and I am not

¹⁴ Doc 5

persuaded that they represent, on their own, a sound basis for establishing the full, objectively assessed need. I have similar reservations about relying on the 2011 CLG household projections and note that the Planning Practice Guidance (PPG) advises that these outputs should primarily provide a starting point in estimating overall housing need.

34. The emerging NDTLP is informed by the 2012 SHMA¹⁵ and identifies a requirement for 418 dwellings per annum for North Devon. I appreciate this figure remains to be tested as part of the Local Plan process and is subject to objections but in the absence of any robust alternative I nonetheless consider it to be a reasonable reflection of objectively assessed housing need on which to evaluate whether or not there is a five year land supply in North Devon.
35. Using the NDTLP housing requirement from 2014-2019 and applying the Sedgefield methodology to tackle the undersupply, together with a 5% additional buffer, the Council asserts that it has a 4.9 year housing supply. Based on the same requirement but applying a 20% buffer for persistent under delivery would result in a supply of 4.2 years.
36. The appellant has submitted a detailed assessment of extant large sites with planning permission at 1 April 2014. From the evidence before me a number of these sites are in alternative uses, have delivery issues related to viability or long-lead in periods due to site constraints and/or infrastructure. The appellant submits that a total of 239 units should be discounted from the housing land supply. I consider this to be a reasonable assessment and it was not challenged by the Council at the Inquiry. Consequently the housing land supply at best would be 4.4 years.
37. I have also carefully considered recent housing delivery in North Devon. From the 2011 base date of the emerging NDTLP to the monitoring outturn for 2014 an annual average of 231 homes were completed. In the preceding five year period from 2006-2011 there was only one year where the emerging 418 dwelling figure was exceeded and the annual average housing completions over this period was 360 units.
38. The PPG¹⁶ is clear that identifying a record of persistent under delivery is a matter of judgment for the decision maker and advises that there is "....no universally applicable test or definition of the term." In the context of the evidence before me in this appeal, I consider that the above housing delivery record is one which can be reasonably defined as persistent under delivery. Accordingly, I share the appellant's submission that the 20% buffer in paragraph 47 of the NPPF should apply and consequently the supply of housing land in North Devon should be regarded as being only 3.8 years, which is a significant shortfall.
39. The Council submits that in the last 5 years only some 20% of extant consents for residential development are built out each year, such that it is contended that whilst the appeal proposal increases the potential for delivery it would not necessarily translate into increased delivery. It may well be the case that North Devon is a geographically small housing market with resultant implications for supply and demand but the evidence before me points to a

¹⁵ Strategic Housing Market Assessment: Torridge & North Devon Update. December 2012 (Prepared by Housing Vision)

¹⁶ PPG Reference ID:3-035-20140306

significant unmet housing need, exacerbated by a notable undersupply due to recent low levels of completions¹⁷.

40. This situation applies to Barnstaple, the largest settlement in the District and the focus in the emerging NDTLP for a significant quantum of housing development. In addressing the backlog of unmet housing need, the Council agrees that the Sedgfield method is appropriate for North Devon. I also heard at the Inquiry, that housing requirements in North Devon in the forthcoming consultation in the NDTLP are being increased in light of the duty to cooperate and the need to accommodate some of the housing requirement from the adjoining Exmoor National Park Authority. In this context, it is necessary that the ability of a proposed housing site to contribute to the housing supply is assessed proactively and positively rather than applying an assumption that it would be subject to "developer fatigue".
41. The appeal proposal is a full application and I have not been advised that its delivery is dependent on any significant up-front infrastructure investment or site preparation. The appellant is a regional house builder with a considerable focus in Devon and a track record of delivery. The scheme is for 59 units and allowing for lead-in times I have little doubt that this quantum of housing could be readily delivered within a five year timeframe by a single house builder. I therefore attach significant weight to the benefit that additional housing would be delivered on the appeal site.
42. For the reasons given above, I conclude that very substantial weight must be given to the serious and significant shortfall in housing land supply. Accordingly, paragraph 49 of the NPPF is engaged and the presumption in favour of sustainable development applies. Furthermore, relevant policies for the supply of housing are no longer considered up-to-date, including LP Policy HSG2 which focuses housing development within settlement boundaries.

Other Material Considerations

43. In addition to the substantial benefit of providing general market housing the appeal proposal would also provide 40% affordable housing, equivalent to 21 units. This exceeds the 30% figure proposed in the emerging NDTLP. The Council does not dispute the need for affordable housing but submits that it should not carry overriding weight. However, the outputs of the 2012 SHMA update, which presents the most recent assessment of affordable housing need in the District, show a significant projected requirement for affordable housing of some 3,000 units, which is compounded by the existing backlog in delivery. I also note from the North Devon Council Affordable Housing Delivery Plan 2012-2017 that there were 2,516 applicants on the Council's housing register in 2013, including 763 in Barnstaple. In addressing affordable housing need I note that recent delivery has fluctuated¹⁸ such that affordable housing output in Barnstaple has averaged at only 17 units per annum in the last 5 years.
44. I therefore share the findings of the SHMA at paragraph 7.9 which state that....
"Increasing the supply of affordable housing is the absolute priority and every means, however radical, should be explored to increase its supply. This is a particular imperative in North Devon where, by every indicator of need, the

¹⁷ Graph 1, page 9, Graham Townsend Proof of Evidence

¹⁸ Table 5, page 31, Stephen Harris Proof of Evidence

situation is acute and is worsening.” Accordingly, I attach significant weight to the benefit of the notable numbers of affordable units that would be delivered.

45. The appeal proposal would be located within walking distance of day-to-day facilities in Bickington and to bus stops which connect the appeal location with a 10 minute frequency of service to higher order facilities in Barnstaple and Bideford. Barnstaple is identified in the emerging NDTLP as Sub-Regional Centre which will be the focus for future growth in North Devon and will accommodate significant levels of development. In the context of the emerging spatial strategy and access to services the appeal site would be a sustainable location and I attach considerable weight to this benefit.

Other Matters

46. A number of properties on Mead Park face towards the appeal proposal and the proposed point of access. The appeal proposal would inevitably increase traffic along parts of Mead Park and alter the view from those properties which directly face the appeal site. A number of residents submit that the appeal proposal would adversely affect their living conditions in terms of noise and disturbance, loss of privacy and outlook. Whilst I accept that the appeal proposal would be noticeable when viewed from a number of properties, I do not find the relationship of the proposed development to be particularly oppressive. It would be separated by public bridleway No.22 and the retained established hedgerow on the eastern boundary to the appeal site. Given the degree of separation I am not persuaded that the majority of properties on Mead Park would experience a harmful loss of privacy or exposure to noise and disturbance, including from increased traffic flows on the initial approach on Mead Park.
47. The appeal site consists of predominantly grade 2 and 3a agricultural land and I observed that the higher part of the appeal site has been used for growing crops. However, the appellant submits that most of the land around Barnstaple is of similar grade and consequently future growth will inevitably result in the loss of best and most versatile agricultural land. I therefore attach only limited weight to the harm arising from the loss of agricultural land at the appeal site.
48. The appeal site is not the subject of, or in proximity to, any designated biodiversity sites and I note Natural England have not objected to the appeal proposal. The appellant has submitted an ecological assessment of the site which includes a number of mitigation measures for birds, bats and reptiles which could be secured by condition. Local residents however have referred to the North Devon Biosphere Reserve but the site is sufficiently removed from the reserve core and I have no firm evidence to find that the appeal proposal would have an adverse effect on the Biosphere Reserve.
49. Submissions have been received that the local highway network, particularly the B3233 Bickington Road towards Barnstaple town centre, cannot cope with the additional vehicle trips generated by the appeal proposal. Additionally, it has been suggested that congestion at peak periods on this road adversely affects the frequency and quality of the bus service, thus reducing the sustainability credentials of the site. I observed the AM peak period on a weekday and the notable queue lengths approaching the Cedars roundabout. However, whilst my site visit can only represent a snapshot, I observed that traffic flowed albeit at a very slow pace, including the buses, such that with local knowledge, I am satisfied that residents of the appeal site would plan

their bus journeys to account for these conditions. I also give weight to the fact that the local highway authority did not object to the appeal proposal.

50. I was also referred to the quality of footpaths and bus shelters in the vicinity of the appeal site. I accept that the direct footpath connection from the south-east corner of Mead Park to the B3233 is narrow with a poor alignment such that it would be unattractive and unusable to a notable number of residents. However, the alternative pedestrian route via the highway of Mead Park and along the B3233 would not represent a cumbersome detour and I find its overall width and quality to be adequate. As such it would provide a good pedestrian connection to local facilities. Similarly, I noted that the nearest bus stops in both directions are not in exposed locations and contain reasonable shelters. Accordingly, I am not persuaded that the quality of bus infrastructure reduces the sustainability of the site.
51. Residents at Clampitts have raised concern that their water supply crosses the appeal site. I have very few details but ordinarily public water supply across private land should be covered by an easement and any need to move the water supply or its damage during construction would be a matter for the appellant to resolve with the water company and residents. As such is not a matter before me. The appeal proposal includes a sustainable drainage solution (SUDS) including an attenuation basin in the north west corner of the site. Local residents have referred to a Wainhomes Scheme at Feniton in Devon and concerns about the implementation of similar drainage at that site. However, I have very little evidence of the issues at Feniton and how comparable it is to Bickington. In any event I am satisfied that what is proposed is an appropriate drainage strategy for the appeal site, with the legal agreement providing details of how it would be managed going forward.

Local Infrastructure

52. The principal mechanism to secure the provision of local infrastructure would be a tri-partite S106 Agreement¹⁹ which has been signed and executed by the landowners, the Council and Devon County Council (DCC) in its capacity as both Local Education Authority and Local Highway Authority. In accordance with Regulation 122 of the CIL Regulations 2010 planning obligations should only be sought where they 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.
53. The Agreement would make provision for community open space, including a locally equipped area for play, on the appeal site and provisions for its management and maintenance. It would also make provision for long term maintenance and management of the proposed SUDS within this area of open space. I am satisfied the proposed on-site public open space provision and its on-going management, together with that of the SUDS, 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.
54. In addition the Agreement would involve contributions towards off-site multiple use games area provision and the provision and maintenance of off-site sports pitches and facilities in the vicinity of the appeal site. The sums involved in the

¹⁹ Doc 15

financial contribution are based on an established formula²⁰ and would appear to be reasonable. However, having had regard to CIL Regulation 123(3), I am mindful that after 6 April 2015 no more pooled contributions for a specific infrastructure type in respect of up to five separate planning obligations that relate to planning permissions granted for development since 6 April 2010 should be collected²¹. I have very little evidence on the number of contributions that have been pooled for multiple use games areas and sport pitches and facilities in what would be the CIL charging area. As such I cannot be certain that the five obligation threshold has not been breached. Therefore, I am unable to give any weight to the financial contributions as they relate to off-site sports provision.

55. The Second Schedule of the Agreement would also make provision for affordable housing. This too is 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. These provisions of the Agreement therefore comply with the CIL Regulations and so I have taken them into account in making my decision.
56. The Agreement also seeks a contribution per dwelling towards highway capacity improvements, notably the B3233/A3125 junction at the nearby Cedars roundabout and /or the A361/A377 Bishops Tawton roundabout. As set out above Cedars roundabout negatively affects traffic flows along the B3233 Bickington Road. I note the submission from DCC that as a strategic junction it would be unreasonable for any one development to improve it and as such a pooling approach is sound. However, I have very little information as to the timeframe for any improvement at the Cedars roundabout, and whether contributions from the appeal site will add to or are likely to be supplemented by contributions sourced from other developments and other transport funding sources. The same applies to the Bishops Tawton roundabout together with evidence to explain how development at the appeal site relates to this more distant road junction. Accordingly, I am not persuaded that this element of the highway contribution is necessary to make the development acceptable in planning terms. As such I have not taken it into account.
57. The Highway contribution also includes £50,000 to provide a puffin crossing on the B3233 together with a commuted sum for £14,000, which I have assumed is for maintenance. The B3233 is a relatively busy road and there are presently no dedicated pedestrian crossings. Provision of a puffin crossing would enhance connectivity to the westbound bus stop and the wider residential area of Bickington. In this context the financial contribution is necessary to make the development acceptable in planning terms and so I have taken it into account in making my decision.
58. The Agreement also provides for a number of other transport related contributions. I accept that the provision of a travel pack and a sustainable travel voucher for each dwelling would be necessary given the potential for residents of the site to use the local bus service. I also accept that a maintenance contribution for trees planted on land to be adopted as highway would also be necessary. Accordingly, I have taken these into account in making my decision. In contrast I have very little evidence as to justification for a traffic regulation order in Mead Park. Additionally, given the proximity of

²⁰ Doc 13

²¹ Planning Practice Guidance Ref ID: 25-099-20140612

existing bus laybys and shelters on the B3233 I have no details, and no one was able to advise me at the Inquiry, as to the location or justification for and additional bus shelter and layby in the vicinity of the appeal site. I have therefore not taken these elements into account in making my decision.

59. The Agreement also provides for £208,620 for the provision and/or improvement of primary education facilities. I was assured at the Inquiry that such a contribution was necessary and I was referred to case law²² on the evidential threshold for planning obligations. However, I do not consider the threshold to be as low as anecdotal evidence and I therefore requested, by exception, for additional justification to be submitted, following the close of the inquiry, given the substantial sum involved. No additional justification was forthcoming, and whilst I accept that the appeal proposal would generate residents of a primary school age, it nonetheless remains that I have no compelling evidence that the existing local primary education infrastructure could not accommodate the demand arising from the 59 dwellings. Accordingly, I am not persuaded that the financial contribution is necessary to make the development acceptable in planning terms. As such I have not taken it into account.
60. I therefore conclude that the effects of the proposal on the provision of affordable housing, on-site open space, SUDS, pedestrian crossings and sustainable travel would be acceptable by virtue of the provisions within the submitted planning obligations.

Conclusions and Planning Balance

61. The Council cannot demonstrate a 5 year supply of deliverable housing land. In such circumstances its housing supply policies should be considered out of date, including LP Policy HSG2. The Council has referred me to recent case law²³ which reaffirms that neither paragraph 49 or 14 of the NPPF prescribes weight to be given to policies in a plan which is out of date. Accordingly, the weight will vary according to the circumstances including the extent to which policies actually fall short of providing for the required 5 year supply and the prospect of development soon coming forward to make up the shortfall.
62. Having considered the evidence before me, I have found that, notwithstanding its lack of scrutiny through a Local Plan examination, the housing requirement in the emerging NDTLP, informed by the latest 2012 SHMA, provides a cogent basis for considering a housing land supply that reflects objectively assessed need in North Devon. In this context, and accepting the appellant's submissions to discount delivery on some larger constrained sites and to adopt a 20% buffer for persistent under delivery, I find that the District only has a 3.8 year housing land supply. The consequence of this is twofold. Firstly, it significantly reduces the weight to be given to the out-of-date housing supply policies in any balancing exercise and secondly it means paragraph 49 of the NPPF is engaged and the presumption in favour of sustainable development applies.
63. Paragraph 7 of the NPPF identifies three strands to sustainable development, economic, social and environmental. These dimensions should be sought

²² Derwent Holdings Ltd v. Trafford Borough Council, Tesco Stores Ltd & Lancashire CCC [2011] EWCA Civ 832

²³ Crane v. SSCLG & Harborough District Council [2015] EWHC 425 (Admin)

jointly and simultaneously through the planning system however that does not mean a scheme must contribute to all three roles equally.

64. The appeal proposal would perform an economic role, albeit short term, in that it would provide employment during the construction phase. In the longer term residents are also likely to contribute to local services, thus spending money in the local economy.
65. In terms of the social role, given the serious and significant shortfall in deliverable housing land I have found the contribution of both the market housing and affordable housing to be a very substantial benefit weighing in favour of the proposal. Other social benefits include the provision of on-site community open space and a locally equipped area for play. The proposal would also make a contribution to a puffin crossing over the busy B3233 road and would enhance wider highway safety.
66. I accept that in environmental terms the scheme is more finely balanced. It would extend the built-up area of Barnstaple at its western periphery where, by virtue of being on the estuary side of a ridge, it would have an adverse effect on the landscape of the Taw Estuary, particularly when viewed from the nearby Tarka Trail and South West Coastal Path. It would also substantially alter the rural character of the site and how it is experienced from adjacent public bridleways. The overall harm to the landscape would be moderate, taking into account that the appeal site does not form part of a valued landscape for the purposes of paragraph 109 of the NPPF and would be mitigated over time by landscaping. I also accept that there would be some limited harm from the loss of best and most versatile agricultural land.
67. However, looking at the environment in the round, I give moderate weight to the benefit that the green wedge between Bickington and Fremington would not be visually or perceptibly eroded and that the objective of avoiding physical coalescence would remain uncompromised. The appeal proposal would offer other environmental advantages including its sustainable location which would reduce the overall need to travel and the potential to safeguard and enhance biodiversity on the site, particularly on the sizeable area of community open space. These are environmental aspects which all weigh in its favour such that when assessed against the landscape harm, the overall environmental effect could be reasonably considered to be neutral.
68. I also accept that the proposal by virtue of being in the countryside would conflict with LP policy HSG2, however, the weight to be attributed to this policy is greatly reduced by the shortfall in terms of providing a 5 year supply of deliverable sites. Nor am I persuaded, given the latest timetable for the emerging NDTLP that there is an imminent prospect of development coming forward to make up the shortfall.
69. I therefore conclude that the moderately adverse impact on the estuary landscape and the conflict with LP policies would not significantly and demonstrably outweigh the benefits that have been identified. In these circumstances I conclude that the appeal scheme would represent a sustainable form of residential development for which there is a presumption in favour of at paragraphs 14 and 49 of the NPPF.

70. I have had regard to all other matters raised, both in the oral and written representations, but have found nothing to change my conclusion that this appeal should be allowed.

Conditions

71. A number of conditions were tabled at the Inquiry²⁴, which the local planning authority considers would be necessary if the appeal were to be allowed. I have considered these in the light of the PPG. For clarity and to ensure compliance with the PPG, I have amended some of the suggested wordings.
72. In addition to the standard time limit condition, the imposition of a condition requiring that the development is carried out in accordance with the approved plans is considered necessary for the avoidance of doubt and in the interests of proper planning. For similar reasons, and to ensure the necessary completion of the affordable housing, a condition requiring the submission of, and adherence to, a Phasing Scheme for the constituent parts of the development is also necessary. I have also imposed conditions requiring the approval of external materials and the timely provision of means of enclosure and bin storage areas for each dwelling which I consider necessary in the interests of the visual amenities of the area.
73. Conditions relating to the submission and implementation of hard and soft landscaping details are also necessary in the interests of the character and appearance of the area. I consider that the details for the open space, locally equipped area for play and street furniture throughout the scheme can reasonably be discharged through these conditions and do not need to be conditioned separately. Given the presence and importance of adjoining hedgebanks, which contain a number of notable tree specimens, a condition to protect these features during construction and for a reasonable period following the completion of the development is necessary to assimilate the development into the landscape and to safeguard the character and appearance of the area.
74. A condition requiring an ecological mitigation and management plan is necessary in the interests of protecting and enhancing the biodiversity value of the site. Conditions requiring the submission of further details for the highways and their implementation are necessary in the interests of highway safety. I have however simplified the suggested conditions such that it now requires a programme for the making up of the roads and footways to be agreed between the parties. To reduce the risk of flooding and to ensure the site can be adequately drained I have also imposed a simplified condition requiring the design of a detailed surface water drainage system to be approved before development starts and that the agreed solution is completed prior to the first occupation on the site.
75. Conditions requiring a construction management plan to be agreed with the Council before development starts and to limit the hours of construction and deliveries at the site are also necessary to minimise the impact on the living conditions of neighbouring residents during the construction period. Finally, a condition requiring the dwellings are constructed to Sustainable Homes Code

²⁴ Doc 9

Level 3 is also necessary to ensure the dwellings are energy efficient and appropriately constructed. The Council also suggested a condition requiring a scheme for the assessment and mitigation of noise. The appeal site is not a noisy location and I have little evidence as to why it would be required. I therefore do not consider such a condition would be necessary.

David Spencer

INSPECTOR.

APPEARANCES

FOR THE LOCAL PLANNING AUTHORITY:

Peter Wadsley, Of Counsel

Instructed by the Solicitor
to North Devon District Council.

He Called

Peter Leaver BA(Hons), DipLD, CMLI

Director, David Wilson Partnership Ltd

Graham Townsend MA DipTp, LRTPI

Development Enabling Officer, North
Devon District Council

Peter Rowan DipTP, MRTPI

Director, Rowan Edwards Town
Planning & Architecture

FOR THE APPELLANT:

Sasha White, Of Queen's Counsel

Instructed by Mr Stephen Harris of
Emery Planning

He Called

Clare Brockhurst BSc(Hons) CMLI

Partner, Tyler Grange LLP

Stephen Harris,
BA(Hons), MRTPI, MRICS

Director, Emery Planning

INTERESTED PARTIES

Cllr Rodney Cann
Maureen Bennett
John Gulliver
Cathy Chick
David Ayley

Ward Councillor
Local Resident
Local Resident
Local Resident
Local Resident

DOCUMENTS Submitted during the Inquiry

- 1 St. Austell Appeal Decision APP/D0840/A/14/2222789
- 2 Wincanton Appeal Decision APP/R3325/A/12/2170082
- 3 Addendum to Appendix 3 'Photographs' of Peter Leaver Proof of Evidence
- 4 Committee Report, Masterplan and section drawings for Planning Application Ref 56351 on emerging Local Plan allocation BAR7.
- 5 Addendum to Statement of Common Ground on Housing Land Supply dated 3 March 2015
- 6 High Court Judgment of Crane v. SSCLG & Harborough District Council [CO/2468/2014]
- 7 Statement of objection from Maureen Bennett
- 8 Statement of objection from Councillor Rodney Cann
- 9 Suggested conditions from the Local Planning Authority
- 10 Committee Report and site plan for Planning Application Ref 57663, Land adjacent to the B3233, West Yelland.
- 11 Evidential base for emerging Local Plan policy BAR22
- 12 Design Guide on Refuse Storage for new Residential Properties, North Devon District Council 2008
- 13 Provision of Public Open Space, Sport and Recreation Code of Practice, North Devon District Council 2004

DOCUMENTS submitted after the Inquiry

- 14 Email from North Devon Council re justification for highway and education contributions, dated 16 March 2015.
- 15 Signed and Executed S106 Agreement
- 16 Updated plans list and amended drawings for plots 8-13, 14-16, 21-25, 29-31 and 41-44.

Schedule of Conditions

- 1) The development hereby permitted shall begin not later than three years from the date of this decision.
- 2) The development hereby permitted shall be carried out in accordance with the following approved plans:
 - The Following Plans are all prefixed W 242 13:
Site Plan Proposed 20 N; Materials Schedule 06; Site location plan 01A; Existing plan – topographical survey 02A; Site section 22A; Site section 23A; Plot 1 - floor plans 30D; Plot 1 – elevations 31D; Plot 2 - floor plans 32B; Plot 2 – elevations 33B; Plots 3-6 - floor plans 34B; Plots 3 -6 – elevations 35B; Plots 3-6 – elevations 36B; Plot 7 - floor plans 37B; Plot 7 – elevations 38B; Plots 8-13 - floor plans 39D; Plots 8-13 – elevations 40D; Plots 14-16 floor plans 41D; Plots 14-16 elevations 42D; Plots 17-20 floor plans 43B; Plots 17-20 elevations 44B; Plots 21-25 floor plans 45E; Plots 21-25 elevations 46E; Plot 26 - floor plans 47B; Plot 26 – elevations 48B; Plot 27 - floor plans 49B; Plot 27 – elevations 50B; Plot 28 - floor plans 51B; Plot 28 – elevations 52B; Plots 29-31 floor plans 53D; Plots 29-31 elevations 54D; Plots 32-35 floor plans 55B; Plots 32-35 elevations 56B; Plot 36 - floor plans 57B; Plot 36 – elevations 58B; Plot 37 - floor plans/elevations 59B; Plot 38 - floor plans/elevations 60B; Plot 39 - floor plans/elevations 61B; Plot 40 - floor plans/elevations 62B; Plots 41-44 ground floor plans 63D; Plots 41-44 1st floor plans 64D; Plots 41-44 elevations 65D; Plots 41-44 elevations 66D; Plots 45-46 floor plans 67B; Plots 45-46 elevations 68B; Plots 47-48 floor plans 69B; Plots 47-48 elevations 70B; Plots 47-48 elevations 71B; Plot 49 - floor plans/elevations 72B; Plot 50 - floor plans/elevations 73B; Plot 51 – floor plans/elevations 74B; Plot 52 - floor plans/elevations 75B; Plot 53 - floor plans/elevations 76B; Plot 54 - floor plans/elevations 77B; Plot 55 - floor plans/elevations 78B; Plot 56 - floor plans/elevations 79B; Plot 57 - floor plans/elevations 80B; Plot 58 - floor plans 81B; Plot 58 – elevations 82B; Plot 59 - floor plans/elevations 83B; Single garage, option 1 100; Single garage, option 2 101; Double garage, option 102; Twin garage, option 1 - 103A; Twin garage, option 2 - 104A; Twin garage, option 3 - 105A; Twin garage, option 4 - 106A;
 - 0050/PHL/200/A - Preliminary Long Sections;
 - 0050/PHL/100/C – Preliminary Highway Layout;
 - 0050/PDL/100/C – Preliminary Drainage Layout;
 - 0050/ATR/100/B - Refuse Vehicle Tracking;
 - 0050/PHL/001/A – Proposed Footway;
 - 18073-10A - Landscape Masterplan; and
 - 18073-03a - Tree Protection Plan.
- 3) No development shall take place until a Phasing Scheme has been submitted and approved in writing by the Local Planning Authority. The Phasing Scheme shall detail the timetable for the overall development, including the implementation and completion of the public open space and the delivery of the internal estate road. No work other than the provision of roads and infrastructure shall be undertaken on any

subsequent phase of development unless the affordable dwellings with the previous phase have been completed. Development shall be carried out in accordance with the approved Phasing Scheme.

- 4) No development shall take place until samples of the materials to be used in the construction of the external surfaces of the building hereby permitted have been submitted to and approved in writing by the local planning authority. Development shall be carried out in accordance with the approved details.
- 5) No development shall take place until full details of both hard and soft landscape works have been submitted to and approved in writing by the local planning authority and these works shall be carried out as approved. These details shall include proposed means of enclosure; car parking layouts; other vehicle and pedestrian access and circulation areas; footpaths, location and design of the locally equipped area for play including surface treatment, fencing and landscaping; hard surfacing materials; minor artefacts and structures (eg. furniture, play equipment, refuse or other storage units, signs, lighting etc). Soft landscape works shall include planting plans; written specifications (including cultivation and other operations associated with plant and grass establishment); schedules of plants, noting species, plant sizes and proposed numbers/densities where appropriate; as well as any works to enhance wildlife habitats where appropriate. If applicable, these details will also extend to cover areas of open space to be adopted by the Council. Such areas shall be agreed in writing prior to development commencing. In addition an implementation timetable shall be submitted to and approved in writing before development commences. All hard and soft landscape works shall be carried out in accordance with the approved details. The hard landscape works shall be carried out prior to the occupation of any part of the development or in accordance with the phasing programme agreed with the local planning authority.
- 6) All planting, seeding or turfing comprised in the approved details of soft landscaping shall be carried out in the first planting and seeding seasons following the occupation of the buildings or the completion of the development, whichever is the sooner; and any trees or plants which within a period of 5 years from the completion of the development die, are removed or become seriously damaged or diseased shall be replaced in the next planting season with others of similar size and species, unless the local planning authority gives written approval to any variation.
- 7) In this condition "retained tree, hedge and shrub" means an existing tree, hedge or shrub, which is to be retained in accordance with the approved plans and particulars; and paragraphs (i) and (ii) below shall have effect until the expiration of 5 years from the date of the completion of development.
 - i) No retained tree, hedge or shrub shall be cut down, uprooted or destroyed, nor shall any retained tree be topped or lopped other than in accordance with the approved plans and particulars, without the written approval of the local planning authority. Any topping or lopping approved shall be carried out in accordance with British Standard 3998:2010 Tree Work - Recommendations.

- ii) If any retained tree, hedge or shrub is removed, uprooted or destroyed or dies, another tree shall be planted at the same place and that tree shall be of such size and species, and shall be planted at such time, as may be specified in writing by the local planning authority.
 - iii) The erection of protective barriers and any other measures identified as necessary for the protection of any retained tree, hedge or shrub shall be undertaken in accordance with the approved plans and particulars before any equipment, machinery or materials are brought on to the site for the purposes of the development, and shall be maintained until all equipment, machinery and surplus materials have been removed from the site. Nothing shall be stored or placed in any area fenced in accordance with this condition and the ground levels within those areas shall not be altered, nor shall any excavation be made, without the written approval of the local planning authority.
- 8) No development shall commence until an ecological mitigation and management plan has been submitted to and approved in writing by the Local Planning Authority. It shall make provision for any required surveys prior to each phase of construction and shall make provision for bat and bird boxes and for the management of the public open space to enhance the biodiversity interest. The development shall be carried out in accordance with the approved details.
- 9) No dwelling shall be occupied until the means of enclosure and bin storage area for that dwelling have been provided in accordance with the approved details.
- 10) No development shall commence until plans and particulars showing the detailed proposals for all the following aspects have been submitted to and approved in writing by the Local Planning Authority:
- (i) the width, alignment, gradient and type of construction proposed for the roads, footways and access(es) including all relevant horizontal cross sections and longitudinal sections showing the existing and proposed levels, together with details of street lighting, surface materials, the method of disposing of surface water, and details of a programme for the making up of roads and footways;
 - (ii) the means of access within the site, including the layout, construction and sight lines; and
 - (iii) the alignment, height and materials of all walls and fences and other means of enclosure where they abut or are adjacent to road, footpath or access.
- Development shall be carried out in accordance with approved details.
- 11) Within twelve months of the first occupation of the first dwelling in any agreed phase of the development, all roads, footways, footpaths, drainage, statutory undertakers' mains and apparatus, junctions, access to driveways, verges, retaining walls and visibility splay works shall be completed in accordance with the approved details.
- 12) No development shall take place until drainage plans and information for the disposal of surface water and foul sewage have been submitted to

and approved in writing by the Local Planning Authority. The scheme shall be implemented in accordance with the approved details before the first dwelling is occupied and thereafter retained and managed in accordance with the approved details.

- 13) No development shall take place, until a Construction Management Plan has been submitted to, and approved in writing by, the local planning authority. The approved Plan shall be adhered to throughout the construction period. The Plan shall provide for:
- i) the parking of vehicles of site operatives and visitors
 - iv) routes and timings for the loading and unloading of plant and materials
 - v) storage of plant and materials used in constructing the development
 - vi) the importation and removal of spoil and soil on site
 - vii) wheel washing facilities
 - viii) the location and covering of stockpiles
 - ix) details of any site construction office, compound and ancillary buildings
 - x) a point of contact and details of how complaints would be addressed
 - xi) measures to control the emission of dust and dirt during construction
- 14) No demolition, construction works, collections or deliveries shall take place at the site outside of 0800hours to 1800hours Mondays to Fridays and 0900hours to 1300hours on Saturdays or at any time on Sundays or Bank Holidays.
- 15) The dwellings shall achieve Level 3 of the Code for Sustainable Homes. No dwelling shall be occupied until a final Code Certificate has been issued for it certifying that Code Level 3 has been achieved.

Schedule Ends.