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## Appeal Decision

Inquiry opened on 20 January 2015

Site visits made on 23 and 29 January 2015

**by Gloria McFarlane LLB(Hons) BA(Hons) Solicitor (Non-practising)**

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

**Decision date: 09/06/2015**

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**Appeal Ref: APP/N1160/A/14/2219907**

**Radford Quarry, Plymstock, Plymouth, Devon PL9 7PS**

- 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 Wainhomes (South West) Holdings Ltd against the decision of Plymouth City Council.
- The application Ref 13/02114/FUL, dated 5 November 2013, was refused by notice dated 4 March 2014.
- The development proposed is the erection of 57 residential dwellings with associated infrastructure.
- The Inquiry sat for 8 days on 20-22 and 26-28 January and 30-31 March 2015.

**Summary of Decision: The appeal is dismissed.**

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### Procedural matter

1. The Appellant and the Council entered into a planning obligation pursuant to s.106 of the 1990 Act. The agreement is dated 31 March 2015 and I will consider its terms below.

### Main Issues

2. In this appeal I consider that the main issues are the effect of the proposal on (a) biodiversity (b) the character of the area (c) trees and (d) traffic, taking into account the lack of a five year housing land supply.

### The appeal site

3. The site is a 4.9 hectare area of land which includes the former Radford Quarry floor and sides and part of the Hooe Lake foreshore. The site is located to the east of Hooe Lake and south and east of residential development at Lower Saltram and Kingfisher Way. The Grade II Listed Radford Bridge and Castle and Radford Park and Lake lie to the south-east of the site. The site includes land which is a designated County Wildlife Site and is part of Plymouth's Biodiversity Network. The appeal site also contains groups of trees which are protected by a Tree Preservation Order.
4. A dedicated public right of way that forms part of the South West Coast Path runs along and crosses the appeal site close to the foreshore.
5. This brief outline description of the site will be addressed in detail below as appropriate.

## The proposal

6. The proposed development would comprise a mixture of two and three storey detached, semi-detached and terraced dwellings, including seventeen affordable homes (30% of the total provision of dwelling)<sup>1</sup>. Fifty-three dwellings would be on the quarry floor which would also include public open space, a children's play area and open space to incorporate ecological mitigation measures. There would be four detached dwellings on the eastern Hooe Lake foreshore. The development would be accessed from Lower Saltram; there would be six parking spaces adjacent to the northern site access point; sixteen visitor parking spaces alongside the access road; a total of fifty-four garages; and sixty-five allocated parking spaces.

## Housing Land Supply

7. The Statement of Common Ground was signed on 27 October 2014 and at that time the Parties agreed that, in accordance with paragraph 49 of the National Planning Policy Framework (the Framework), policies in the Plymouth Local Development Framework Core Strategy 2007 (the Core Strategy)<sup>2</sup> that relate to housing land supply are out of date and that the Council cannot currently demonstrate a five year housing land supply. In order to accord with the guidance in the Framework the Council needs to identify 10,504 deliverable dwellings for the period 2014 - 2019, which represents a 20% buffer on top of the requirement of 8,753. The current supply of housing is 5,536 which equates to 3.16 years' supply.
8. Since then the Council has published the draft Plymouth Plan setting out a five year housing requirement of 7,661 for the period 2015 - 2020<sup>3</sup>. The SHLAA identified 15,000 houses<sup>4</sup> and there are extant planning permissions for some 6,000 dwellings<sup>5</sup>. The figures may have changed but the fact that there is no five year housing land supply has not.
9. The result of the housing shortfall is that the presumption in favour of sustainable development as set out in paragraph 14 of the Framework applies and that, unless material considerations indicate other-wise, development proposals that accord with the development plan should be approved without delay; and where the development plan relevant policies<sup>6</sup> are out of date, permission should be granted unless any adverse impacts of doing so would significantly and demonstrably outweigh the benefits, when assessed against the policies in the Framework taken as a whole.
10. It is with the terms of paragraph 14 of the Framework in mind that I consider the main issues.

## First issue: Biodiversity

11. Radford Quarry was one of several working quarries in this part of Plymouth. It was quarried for stone from the mid-1800s and in the 1930s a number of structures were erected to facilitate the burning of lime on the site. In 1948

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<sup>1</sup> Originally 20 affordable homes (35% of the total provision of dwellings) but reduced before the commencement of the Inquiry

<sup>2</sup> The Development Plan for the purposes of this decision

<sup>3</sup> Document ID4

<sup>4</sup> Document D paragraph 5.14

<sup>5</sup> Mr Osborne's proof paragraph 6.16

<sup>6</sup> In this decision, policies CS15 and CS16 of the Core Strategy

- planning permission was granted for quarrying and associated buildings across a 3.3 hectare area. The quarrying ceased in 1964 and the burning of lime continued until 1974 when the plant was closed. From about 1986 to 2000 a number of applications for residential development were made but they were withdrawn, refused or dismissed on appeal<sup>7</sup>.
12. The 1988 appeal decision<sup>8</sup> was in respect of an area of land that included the current appeal site. The Inspector noted that the quarry was not accessible to the public without trespass and that a possible consequence of dismissal of the appeal was that it remained inaccessible and all the rare species of plants (of which four had been identified) died in the absence of management measures<sup>9</sup>. Nevertheless, whilst acknowledging these undesirable consequences he found that 'Residential development would substitute a largely man-made environment and would affect even the fauna outside the quarry in two respects. First the survival of some larger species is likely to depend upon the inclusion of the quarry within their habitat. Secondly the wealth of wildlife in the area is partly attributable to the availability of the quarry as a breeding ground and as a food supply'<sup>10</sup> and the appeal, for this and other reasons, was dismissed.
13. In 2000 an Ecological Appraisal commissioned by Wain Estates Limited concluded that 'Radford Quarry itself represents an exceptional wildlife asset ... Although artificial in origin, natural colonisation and spread has produced a highly diverse fauna and flora including nationally as well as locally scarce species. The local scarcity of the limestone substrate adds to the local value. The habitat range is diverse'<sup>11</sup>.
14. An appeal decision in 2003<sup>12</sup> was in respect of housing development outside the quarry which now comprises Lower Saltram and Kingfisher Way but the appeal site included the quarry. In allowing the appeal, the Inspector accepted the evidence of the Appellant's then ecologist that the nature conservation value of the area lay primarily in the quarry itself and she found that the nature conservation and management works secured by the terms of the unilateral undertaking made by the Appellant pursuant to s.106 would be intended to reverse recent damage and secure a sustainable future for the site as one of ecological value<sup>13</sup>.
15. A further appeal in 2005<sup>14</sup> was for the construction of 33 dwellings on a site which also included the quarry but with development outside it, adjacent to that approved in 2003. The Inspector noted in dismissing the appeal that the site as a whole contributed 'very significantly to the distinctive character and quality of this part of the city in terms of [among other things] nature conservation. Such a valuable resource within the built-up area serves an important purpose and is worthy of preservation'<sup>15</sup> and he referred to the s.106 unilateral undertaking in the 2003 decision noting that 'the quarry pit itself will not be developed and ... will be managed for nature conservation purposes'<sup>16</sup>.

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<sup>7</sup> Information from Mr Harris' proof paragraphs 2.2-2.4 and the Statement of Common Ground

<sup>8</sup> Core Document AD4

<sup>9</sup> Paragraph 14 of the 1988 decision

<sup>10</sup> Paragraph 17 of the 1988 decision

<sup>11</sup> Core Document ED1 paragraph 6.1

<sup>12</sup> Core Document AD5

<sup>13</sup> Paragraph 19 of the 2003 decision

<sup>14</sup> Core Document AD6

<sup>15</sup> Paragraph 4 of the 2005 decision

<sup>16</sup> Paragraph 8 of the 2005 decision

16. I accept that different circumstances applied in the past including that in the 1988 decision the Inspector found that the Council was able to identify a five year supply of housing; in the 2003 decision the Inspector found that as the proposal accorded with local and national policy, it was not necessary to consider whether there was a need for the development in order to satisfy strategic housing requirements; in the 2005 decision that the issue was whether the site was previously developed land; and that in all of the three decisions different policy considerations and different issues applied from those in this appeal. However, a consistent theme throughout the previous appeal decisions was the need to preserve the nature conservation aspects of the quarry itself.
17. The site was designated as a County Wildlife Site (CWS) in 2006, with no opposition from the Appellant at that time and the Appellant does not now challenge that it is not worthy of its designation<sup>17</sup>, and it forms part of Plymouth's Biodiversity Network. The CWS designation followed a report from the Devon Biodiversity Records Centre which described the site as 'a good example of succession towards species-rich calcareous grassland, artificial habitats, disused quarries with good examples of succession from bare ground to wildlife rich grassland. Heathland or woodland communities. Associated interest of notable plant species'<sup>18</sup>.
18. In 2011 Buglife carried out a survey of the quarry to establish the distribution of the Horrid Ground Weaver, a species of small Linyphiid spider in order to assess its status as a UK endemic and to better plan for its conservation. The spider is thought to be nocturnal and troglodytic coming out to feed at night amongst the quarry slopes. It is the only representative of its genus and was first recorded and described in the UK in 1989. In March 1997 two males and a female were found at Radford Quarry; the species is only known from two sites worldwide, Radford Quarry and the other at Plymouth Trade Park. Extensive sampling did not yield a positive response but as there had been no management change or alterations to the quarry in recent years that would lead to the loss of species, Buglife could not discount the possibility that the species was still living at Radford Quarry<sup>19</sup>.
19. The application with which I am concerned was made in November 2013 and by that time Hutchinson Ecological Associates (HEA) had produced two habitat surveys<sup>20</sup>. A further report was produced by HEA in February 2014<sup>21</sup> and the Statement of Common Ground records that 'the Appellant has been conducting further species surveys over the summer period ... They are also reviewing the mitigation measures that were originally proposed within the application'.
20. The site was re-surveyed in July 2014 by the Devon Biodiversity Records Centre as part of the CWS monitoring programme. The current reason for the CWS designation was given as 'over 0.5 hectares species rich calcareous grassland, presence of five or more Devon notable plants' and being a disused quarry which was included in the 'artificial habitats' criterion<sup>22</sup>.

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<sup>17</sup> Mr Webb in cross-examination

<sup>18</sup> Core Document ED4

<sup>19</sup> Core Document ED10

<sup>20</sup> Core Document ED6 Phase I (August 2011) and Core Document ED7 Phase II (November 2013)

<sup>21</sup> Core Document ED8

<sup>22</sup> Core Document ED3

21. Evidence was given to the Inquiry by Mr Webb who was instructed by the Appellant 'to provide a review and fresh appraisal of the [ecological] situation' and in doing so he, among other things, undertook further studies into the ecology of the site, including instructing botanical and invertebrate experts. In reaching his conclusions and proposing an Ecological Mitigation Plan (EMP) he, among other things, evaluated and reviewed the past and recent ecological studies.
22. The main habitats of interest for botanical nature conservation are the unimproved calcareous grasslands (both damp and dry) and the inundation vegetation<sup>23</sup>. These habitats are confined mainly to the quarry floor. There are no protected plant species within the site but the survey in the summer of 2014 recorded a range of Notable species in the county of Devon, four of which were within the quarry void itself<sup>24</sup>, and the Devon Biodiversity Records Centre also recorded a further two<sup>25</sup>. Historic records show a nationally scarce species and Devon Notable species, the dwarf mouse-ear, as being present but none of the recent surveys has recorded it and the Devon Biodiversity Records Centre noted in 2014 that it may have been lost through naturally occurring encroachment. There are also a number of highly invasive non-native species.
23. The most recent survey identified a rock crevice close to the site entrance as a night roost for low numbers of lesser horseshoe bats and a total of eight species of bats were detected using the appeal site. Mr Webb opined that the overall level of bat activity was low<sup>26</sup>, however, although bat activity is likely to be lower during the period outside of the most recent survey, no complete survey over the whole year has been undertaken<sup>27</sup>.
24. Badger setts have been recorded at the site in a number of previous surveys and the most recent in 2014 identified three active setts on the appeal site (one main sett, an annex and an outlier). The setts are found mostly around the edges of the quarry and badgers are likely to forage over a wide area beyond the site<sup>28</sup>.
25. Mr Webb's view is that opportunities for amphibians are limited as there are no permanent water bodies but slow worms and common lizards have been recorded on the appeal site in the past and he considers it unlikely that this has changed<sup>29</sup>.
26. A range of common and widespread species of birds have been recorded at the appeal site but no specially protected species have been recorded<sup>30</sup>.
27. The possible presence of the Horrid Ground Weaver spider has been noted and the EMP proposed a survey in March/April 2015 to determine its distribution<sup>31</sup>. In addition, a total of 170 invertebrate species were identified in a three day survey in 2014; three of these were nationally scarce beetles<sup>32</sup> which have conservation status. Dr Alexander, however, noted that 'the important spring

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<sup>23</sup> Information in this paragraph is from paragraphs A2.21 – A2.39 of Appendix 2 to Mr Webb's proof

<sup>24</sup> Pyramidal orchid, lesser centaury, ivy broomrape and grey clubrush

<sup>25</sup> Downy oat grass and common broomrape

<sup>26</sup> Paragraphs A2.44 – A.48 of Appendix 2 to Mr Webb's proof

<sup>27</sup> During August to October paragraph A2.45 of Appendix 2 to Mr Webb's proof

<sup>28</sup> Paragraph A2.49 of Appendix 2 to Mr Webb's proof

<sup>29</sup> Paragraphs A2.52 – A2.53 of Appendix 2 to Mr Webb's proof

<sup>30</sup> Paragraph A2.54 of Appendix 2 to Mr Webb's proof

<sup>31</sup> Paragraph 5.1.7 of Appendix 3 to Mr Webb's proof

<sup>32</sup> Paragraphs A2.55 – A2.58 of Appendix 2 to Mr Webb's proof

and early summer sampling periods were not covered by the survey<sup>33</sup> and 'spring and early summer can be an important time of the year for detecting the presence of a very wide range of interesting invertebrates'<sup>34</sup> and he also commented on the Plymouth limestone quarries being the only features globally which are known to support the Horrid Ground Weaver<sup>35</sup>.

28. Ecological consultees at the application stage included Buglife, the RSPB and Natural England. At that time Buglife objected to the proposal because no invertebrate survey had been carried out<sup>36</sup> and in their representations to the Inquiry, both in writing and orally, they commented on the global significance of the Horrid Ground Weaver spider and noted that the recent survey missed out the crucial months for surveying invertebrates of April to June<sup>37</sup>. Natural England commented that they had not assessed the application and associated documents for impacts on protected species but noted that as those surveys had not been carried out but were merely recommended in the Phase 1 report, that the application could not be determined without those surveys having been carried out, and they recommended that surveys should be carried out in accordance with their Standing Advice<sup>38</sup>. The RSPB had serious concerns because of the lack of ecological assessment of the existing biodiversity interest and the lack of detail on, among other things, how retained and created habitats on site could be effectively safeguarded and managed and they took the view that the proposal would result in significant harm to important biodiversity for which there was inadequate mitigation and compensation proposals<sup>39</sup>.
29. Matters have moved on since then, some surveys have been carried out and Mr Webb has produced an EMP the aims of which are to maintain the integrity of the CWS and the features for which it was designated; ensure potential impacts upon protected species are mitigated for and the population of such species are maintained at favourable levels; maintain a habitat resource of notable and rare species; and maintain the function of the CWS as part of Plymouth's Biodiversity Network<sup>40</sup>. Mr Webb's EMP<sup>41</sup> sets out 17 Objectives and the actions proposed to achieve them.
30. The proposed ecological works by HEA provided with the application were in different terms from those proposed by Mr Webb; but the proposed development is the same as that for which HEA proposed their ecological mitigation plan without, as appears to be accepted by the Appellant given the instruction of Mr Webb, adequate and appropriate surveys being carried out. Some surveys have since been carried out, which still appear to be incomplete in some respects as acknowledged by Mr Webb, and Mr Webb has provided an EMP which relies to a great extent on further surveys being undertaken together with the identification and definition of key habitats. Although not affecting the terms of the EMP, during the course of the appeal Mr Webb changed his view about the need to provide any off-site mitigation<sup>42</sup>.

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<sup>33</sup> Core Document ED17 page 1 Summary

<sup>34</sup> Core Document ED17 paragraph 4.1

<sup>35</sup> Core Paragraph ED17 paragraph 4.1

<sup>36</sup> Letter dated 21 January 2014

<sup>37</sup> Letter dated 14 January 2015

<sup>38</sup> Letter dated 13 January 2014

<sup>39</sup> Letter dated 19 February 2014

<sup>40</sup> Paragraph 4.1 of Appendix 3 to Mr Webb's proof

<sup>41</sup> Appendix 3 to Mr Webb's proof and Drawings No1 and No2

<sup>42</sup> Mr Webb's addendum to his proof – Document ID12

31. During the course of the Inquiry a great deal of time was taken up with what was proposed in the EMP. I do not intend to look into each and every point that was made but there were some matters that I consider to be of particular note.
32. Objective 12 of the EMP is to retain and manage a habitat resource to ensure that this is a viable site for the Horrid Ground Weaver spider and one of the actions in the summary of actions proposed is to retain the majority of the quarry face and adjacent rock fall area and quarry spoil<sup>43</sup>. The Preliminary Geotechnical and Contamination Assessment Report<sup>44</sup> records in the executive summary that 'the preliminary slope stability assessment has shown that there is a risk of rock-falls and, to a lesser extent, rock slides and that stabilisation works will need to be undertaken, eg netting and bolting, installation of catch fences etc to ensure the safety of end users' and that 'rope access rock-slope inspection work should also be undertaken to provide information for a detailed slope stability analysis and for slope stabilisation measures to be designed'.
33. The rock face would in some cases be some 28m from the rear garden boundaries of the houses and in others immediately adjacent<sup>45</sup>. There therefore appears to me to be some conflict between health and safety issues arising from the stability of the rock face and the preservation of the habitat of the Horrid Ground Weaver given the proximity of dwellings to the probably unstable quarry slopes and the physical changes to the land that would take place.
34. The one located bat roost is in a rock crevice close to the entrance to the quarry where the access road would be. This area of land is described as 'existing habitats retained and brought into favourable management' in Mr Webb's EMP outline of proposed management – pre-construction phase drawing<sup>46</sup> and as an area of 'vegetated quarry slopes' with proposed native tree planting on Mr Berry's landscape proposals plan<sup>47</sup>. Objectives 7 and 8 of the EMP are, respectively, 'ensure that the future use of the lesser horseshoe night roost is not compromised' and 'retain a viable foraging resource for bats' and the actions proposed include 'defining the area around the night roost, designing lighting scheme to minimise illumination on roost area and influence landscaping scheme to improve foraging potential of planted area'.
35. There appears to be some incompatibility between the ecological and landscape proposals within the area of the roost and also within the EMP itself as the outline of proposed management – pre-construction phase drawing<sup>48</sup> shows a large area of scrub at the top of the rock face being cleared for habitat restoration re-creation which, although low level, may be a foraging area for bats<sup>49</sup>.
36. The EMP notes that 'if not carefully designed there is potential for lighting can impact upon bat behaviour and usage of the site' (sic)<sup>50</sup>. Although a condition relating to an external lighting scheme has been suggested and that would inform the amended EMP so as to take bats, their roost, foraging habitat and

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<sup>43</sup> Table 4-1 of Appendix 3 to Mr Webb's proof

<sup>44</sup> Provided as an application document

<sup>45</sup> For example Plots 4-6

<sup>46</sup> Drawing No 1 to Mr Webb's proof

<sup>47</sup> Appendix 5 to Mr Berry's proof

<sup>48</sup> Drawing No 1 to Mr Webb's proof

<sup>49</sup> Core Document ED15 - paragraph 4.1.3

<sup>50</sup> Paragraph 3.4 of Appendix 3 to Mr Webb's proof

flight corridors, into account<sup>51</sup>, Ms Deeney was of the view that the low levels of external light sufficient to protect the roost would be unlikely to be achieved given the proximity of the roost to the road<sup>52</sup>. In addition no conditions could be imposed on individual dwellings and the amount of light that could emanate from them could have an adverse impact on the roost in particular and the foraging and flight corridors of the bats in general.

37. The situation with regard to the calcareous grassland was complicated by the various methods of calculating the size of the different current locations and the proposed mitigation areas resulting in contradictory figures; the calculations and contradictions were such that I found the evidence by both Parties confused and confusing. An example of the contradictory nature of the figures is from the Devon Biodiversity Records Centre which identified 0.5 hectares of species rich calcareous grassland, the majority of which is on the quarry floor<sup>53</sup>, and the EMP which identified 7,907sq m of calcareous grassland<sup>54</sup>, equating to 67%<sup>55</sup>, which would be lost to the proposed development. These figures do not add up and provide little confidence and certainty about the proposed mitigation scheme. Taking that into account I continue as follows:-
38. The areas of calcareous grassland that would remain on the quarry floor would largely comprise a strip of land of varying widths between the rear boundary walls of the houses and the quarry face. Because of the land levels and the need for drainage the land on which the houses would be built would be raised and the resulting retaining walls would be some 3m high. Mr Webb's evidence was that any problems with such matters as water levels and drainage in that area would be managed by an 'engineering solution'. No details of such a solution have been proposed at this stage, save for the imposition of a planning condition. Mr Awcock gave evidence<sup>56</sup> that he had not had any discussions with HEA about drainage and that he had very general discussions during the period leading up to the preparation of evidence for the Inquiry; but he had not been asked to formulate any solutions. Mr Awcock's evidence was that on development of this scale 'earthworks are never looked at prior to permission' and that 'a drainage strategy would be developed'. In the circumstances of this appeal and the CWS designation of the appeal site I do not consider this to be an adequate response to a matter of considerable consequence to the ecological mitigation proposals.
39. The Appellant's case is that there would be a loss of 67% of the calcareous grassland on the quarry floor. In addition there is uncertainty in my mind about how much of the calcareous grassland which it is proposed would remain would, in fact, be retained given the uncertainty about drainage and the stability of the rock face. Two CWSs have been designated in Plymouth because of the presence of limestone grasslands; these are Radford Quarry and Mount Wise and thus the presence of limestone grassland is extremely limited, hence the ecological value and importance of the appeal site in this respect. The situation here cannot be compared with that in the Wiltshire appeal decision<sup>57</sup> where the calcareous grassland lost to the permitted residential

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<sup>51</sup> Objectives 7 and 8 of Appendix 3 to Mr Webb's proof

<sup>52</sup> Paragraph 7.4.11 of Ms Deeney's proof

<sup>53</sup> Core Document ED3 – plan on page 12

<sup>54</sup> Table 5-1 of Appendix 3 to Mr Webb's proof

<sup>55</sup> Tables 3.1 of Appendix 3 to Mr Webb's proof

<sup>56</sup> In cross-examination

<sup>57</sup> Appendix 17 to Mr Harris' proof – APP/Y3940/A/13/2206539



development equated to some 0.0047% of the County's resource of calcareous grassland. I note also that in the Wiltshire appeal the Ecological Management Plan was approved and that the imposed condition was to ensure that the management and maintenance of all habitats was carried out in accordance with its prescriptions<sup>58</sup>; there was no suggestion in that appeal that further surveys or amendments would be necessary to secure the nature conservation interests.

40. An area of scrub would be cleared at the top of the quarry to allow for the regeneration and re-creation of limestone grassland by a number of different methods such as turf translocation, transfer of plant propagules and seed bank and seed introduction<sup>59</sup>. The EMP concludes that there would be a 5.6% gain in calcareous grassland as a result but how much of this proposed work on the quarry edge could be achieved given the access and safety issues has not been addressed<sup>60</sup>. In addition, this is an area which the Devon Biodiversity Records Centre recommended leaving unmanaged and Ms Deeney notes that 'the mitigation measures rely on the clearance of one habitat to enable the translocation or re-establishment of another'<sup>61</sup> and I concur with her view that this could have impacts on habitats and species that have not been addressed by the EMP.
41. All of the objectives listed in the EMP have been ticked as applying to the pre-construction and construction phases of the proposed development. A Construction Environment Management Plan, to be informed by the amended EMP, has been suggested by way of a planning condition. Nevertheless, I am not satisfied that, given the many matters that remain uncertain and the probable scale of works such as the stabilising of the rock face and the need to raise the level of the quarry floor, sufficient protection of nature conservation interests on a day-to-day and practical level could be achieved during these phases.
42. S.40 of the Natural Environment and Rural Communities Act 2006 places a duty on every public authority in the exercise of its functions to the purpose of conserving biodiversity; the term 'conserving biodiversity' includes, in relation to a living organism or a type of habitat, restoring or enhancing a population or habitat. Lowland calcareous grassland is a defined habitat of principal importance<sup>62</sup> and lesser horseshoe bats and other species of bats are defined species of principal importance<sup>63</sup>. The global significance of the Horrid Ground Weaver is also a matter to take into account in this respect.
43. Policy CS19 of the Core Strategy seeks to ensure, among other things, that development retains, protects, and enhances features of biological or geological interest and provides for the appropriate management of these features; and that development seeks to produce a net gain in biodiversity by designing in wildlife. Paragraph 118 of the Framework advises that local planning authorities, when determining planning applications should aim to conserve and enhance biodiversity by applying specified principles which include refusing

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<sup>58</sup> Appendix 17 to Mr Harris' proof – condition 14

<sup>59</sup> Paragraph 5.1.4 of Appendix 3 to Mr Webb's proof

<sup>60</sup> Table 5-1 of Appendix 3 to Mr Webb's proof

<sup>61</sup> Paragraph 9.5 of Ms Deeney's proof

<sup>62</sup> Annex C to Circular 06/2005 – Biodiversity and geological conservation – statutory obligations and their impact within the planning system

<sup>63</sup> Annex C to Circular 06/2005

- planning permission if significant harm resulting from a development cannot be avoided, adequately mitigated or as a last resort compensated for.
44. I have set out above my concerns about the accuracy of the figures relating to 'net gain' and I am not satisfied that this part of the policy CS19 has been complied with. Furthermore, given the acknowledgement that surveys were not complete at either the application stage or now, it appears that the HEA mitigation plan and Mr Webb's EMP in particular, were prepared to 'fit around' the already designed development rather than on the basis of fully completed surveys to inform the design and scope of the development. Whilst it may be appropriate in some circumstances to grant permission on this basis with conditions relating to further surveys, in this case the site is a designated CWS and forms part of Plymouth's biodiversity network and its ecological status has therefore been established and acknowledged; in addition the presence of a unique species has been recorded. In these circumstances I would have expected as a first step before any application was made greater precision about what species are present on the site and how they could be conserved and for these matters to have been taken into account in the proposed scheme.
45. The Appellant's response to the Council's concerns about the adequacy of the EMP was to refer to suggested and agreed conditions 3 and 4<sup>64</sup> which, among other things would require a methodology in relation to surveys to be agreed with the Council; the surveys would be carried out to an agreed process, time and methodology; the resulting EMP would take the outcome of the surveys into account; and it would be for the Council to approve or refuse the EMP. The Appellant's position is that, in those circumstances, 'there is simply no risk of ecological harm and that the site will be subject to long term mitigation and management'<sup>65</sup>.
46. The proposed conditions 3 and 4 rely on the Council approving such things as methodology and the resulting Ecological Mitigation and Management Delivery Plan (EMMDP). Taking into account the differences of opinion between the Council and the various ecological experts instructed by the Appellant that have arisen in this appeal it is not impossible that there may not be any such approval. The Appellant would then have an extant planning permission which could not be implemented unless there was a successful appeal in relation to the conditions. I do not consider this uncertainty to be a proper basis on which to grant planning permission.
47. Given the implicit acknowledgement that further surveys are required and that as a result of the surveys there may be amendments necessary to the EMP I am not satisfied that there is sufficient information available to enable me to comply with the duty in s.40 with regard to protected species. Policy CS19 and the Framework are not confined to protected species but refer to features of biological interest and biodiversity in general. I am satisfied that, as well as protected species, Radford Quarry provides a habitat and resource within the city limits that contributes to biodiversity in the immediate area and beyond. I therefore conclude that the proposal would not be in compliance with development plan policy and national guidance and that it would be harmful to biodiversity.

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<sup>64</sup> Document ID1

<sup>65</sup> Document D paragraph 7.15

### ***The s.106 agreement – Biodiversity***

48. The unilateral undertaking made by the Appellant in 2003 was intended to reverse damage and secure a sustainable future for the quarry as one of ecological value<sup>66</sup>. There is no mention in that document of any time limit on future management of the quarry; nor is there any suggestion that the Appellant's management of the quarry was dependent upon the setting up of the proposed joint bank account with the Council. Whilst it is unfortunate that the proposed financial measures could not be put in place and that the Council did not seek to follow up management issues that, in my opinion, does not detract from the fact that the Appellant did not engage in any of the significant management works that it undertook to do.
49. In passing I also note that the obligation permits public access over areas identified as part of the Nature Conservation Works<sup>67</sup> and that although public access was to be excluded from defined areas it was to be permitted on a limited basis<sup>68</sup>. The Nature Conservation Area was extended in the 2007 s.106 agreement and the relevant clauses in the 2003 obligation were incorporated into the later agreement<sup>69</sup>. Miss Huxley, a local resident, told the Inquiry that prior to buying her property on Lower Saltram in 2007 she received a letter from the Appellant stating 'In respect of the quarry, it was a planning requirement that the quarry was not opened up for public use as this would diminish any value it might have as a nature reserve. Wainhomes have endeavoured to keep the quarry area secure and will continue to do so, but we are aware of the vandalism that takes place'<sup>70</sup>. The letter does not appear to me to be an accurate reflection of the terms of the planning obligations.
50. In 2007 under the terms of a s.106 agreement<sup>71</sup> the Appellant covenanted, among other things, to perform and observe obligations pertaining to nature conservation works. The documents attached to the letter dated 10 December 2013<sup>72</sup> from the Appellant to the Council appear to be related to the site area of the residential development that was permitted in 2003 and not to management of the quarry except for two invoices for fencing relating to 'Radford Quarry' and 'Radford Quarry, Lower Saltram' in 2003 and 2005. It would therefore appear that no money at all, let alone the £15,000 that was referred to in the 2003 unilateral undertaking, has been spent on management of the quarry despite the terms of two s.106 obligations.
51. The planning obligation made in this appeal dated 31 March 2015<sup>73</sup> provides that, in essence, the Appellant will carry out the works and management arrangements set out in the EMP (as amended as a result of the review envisaged by Condition 3); the Appellant would be responsible for pre-construction, construction and five years post-construction costs<sup>74</sup> and for £50,000 for long term obligations. At the end of the five year period the Appellant would transfer the Ecological Mitigation Area to a Management

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<sup>66</sup> Document ID11

<sup>67</sup> Document ID11 Clause 4.4 of Schedule 1

<sup>68</sup> Document ID11 Part 1 clause 1 and Part 2 clause 4 of Schedule 3

<sup>69</sup> Document ID37 Schedule 5

<sup>70</sup> Document ID35 Appendix 2 – letter dated 4 October 2007

<sup>71</sup> Document ID37

<sup>72</sup> Document ID40

<sup>73</sup> Document ID7

<sup>74</sup> Parts 5.1, 5.2 and 5.3 of Appendix 3 to Mr Webb's proof

Company which would be responsible for the long term obligations for a period of 25 years.

52. Leaving aside the fact that there would be no certainty that any EMP would be agreed, as set out above, in view of evidence given to the Inquiry I have concerns about the terms of the s.106 obligation which include the following: The 2007 agreement contained obligations by the Appellant to transfer land comprising the foreshore area and the landscaped area (as defined in the agreement) to the Management Company but this never took place and there is therefore no guarantee that any transfer as envisaged by the 2015 obligation would take place. The homes that are the subject of this appeal would be reasonably expected to last for 40 years plus whereas the obligation to manage the Ecological Mitigation Area would not last for that long and no provision is made for what happens at the end of the 25 year period. There is no explanation of what the £50,000 would cover and whether it would be sufficient for 25 years. If the sum was not sufficient for 25 years it would have to be 'topped-up' by service charges imposed on the individual dwellings for which there is no guarantee of payment. There was a suggestion by Mr Harris that service charges would be utilised after the 25 year period but this could not be guaranteed. Although anecdotal, local residents advised that not all residents paid their service charges in respect of the developments in Lower Saltram and Kingfisher Way and dissatisfaction was levelled at the Management Company/Companies of those developments. I acknowledge the Council's powers to ensure compliance with a s.106 agreement but given the lack of action by the Appellant in the past with regard to the maintenance of the site, together with the lack of action by the Council in the past, I place little confidence in relying on the s.106 agreement to secure the management of the Ecological Mitigation Area in the future.
53. I also note with particular concern that Mr Webb was only instructed by the Appellant up to his attendance at the Inquiry and that he was the last in a number of ecological experts who have been involved with this site over the years. I cannot speculate about what may happen, but there has been a lack of consistency and continuity in the past which could continue into the future because Mr Webb had no contract to continue with the required surveys etc that would be necessary to inform and implement the ecological mitigation plan, and thus the s.106 obligation, should planning permission be granted.
54. So far as the future management of the appeal site is concerned, it was the Appellant's case that if there was no planning permission there was no obligation on the Appellant to do anything and that no weight could be placed on any long term management if planning permission was not granted. Taking into account the terms of the extant s.106 obligations, the designation of the appeal site as a CWS, the responsibility of any landowner to manage his land and the status of the Appellant who is a 'hugely successful house builder' and who 'seeks positive and constructive solutions to issues and problems'<sup>75</sup> I do not find this to be an attractive argument.
55. The Council has identified the sum of about £56,000 which could be used to fund the improvement of biodiversity at Radford Quarry by such things as scrub management, tree management, and regular visits to clear rubbish<sup>76</sup>. However, no details have been provided about how this improvement would or

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<sup>75</sup> Document D paragraph 1.7.1 and 1.7.2 - The Closing speech of the Appellant

<sup>76</sup> Ms Deeney's proof paragraphs 4.19 - 4.20

could be undertaken and there had been no discussions between the Council and the Appellant before or during the appeal process. I therefore give little weight to this proposal.

### **Second issue: The character of the area**

56. The appeal site comprises two parts – the foreshore area and the quarry itself. The foreshore is within the coastal zone where Policy CS20 of the Core Strategy seeks to ensure that development and land use respond appropriately to the character of the particular type of coast in the interests of preserving and making best use of this limited resource.
57. Hooe Lake is a tidal inlet and there is residential development around and beyond it in most directions save for the appeal site which is at the eastern end of the inlet and it, together with Radford Park, Radford Lake and the wooded area to the east of Radford Lake, comprise a large area of undeveloped land. The recently, and currently being, constructed residential developments at the former Hooe Lake Quarry and the former Boston's Boatyard are at the western end of the inlet and although located within the area of the inlet, are in my opinion sufficiently distant from the appeal site and its immediate environs to have little impact on the character of the eastern end of the inlet.
58. I therefore consider that the character of Hooe Lake is made up of two parts: one at the western end of the inlet which comprises predominantly developed land whereas the second part at the eastern end, which includes the appeal site, is predominantly undeveloped, partially wooded land sloping towards the coast with some residential development at Lower Saltram and Kingfisher Way. Views of the appeal site in this context have been provided by Mr Pullen<sup>77</sup> which show the wooded and tranquil nature of the eastern part of the inlet.
59. A wooded area, including trees protected by a preservation order, would be removed for the four proposed foreshore houses; behind them would be the access road to the quarry development and the adjacent public parking spaces. The landscape proposals indicate some ornamental street trees and native trees would be planted and some trees would be retained around the parking area. Although I do not agree with Ms Curry that these four properties would result in the most damaging effect there could be, I consider that the impact of the four foreshore properties, because of the loss of the trees, the different land levels and the opening up of the site would be harmful to the character of this part of Hooe Lake.
60. The South West Coast Path crosses the foreshore area and that area comprises a hardened surface, part of which is used as a parking area, and encroaching grass verges. The foreshore area was the subject of s.106 obligations in 2003 and 2007 and Mr Harris confirmed that the intention of the latter obligation was that the ownership of this area would be transferred to a management company and that it would not be developed for any purpose whatsoever<sup>78</sup>. No transfer of land has taken place and there are now proposals to develop the foreshore. In addition, both s.106 obligations included covenants by the Appellant (or its successors in title) to maintain the foreshore<sup>79</sup>, surface the

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<sup>77</sup> Figures 19 - 23 to Mr Pullen's proof

<sup>78</sup> Document ID37 Schedule 4

<sup>79</sup> Document ID37 Schedule 4

footpath<sup>80</sup> and to repair and maintain the sea wall<sup>81</sup>. So far as I am aware none of these obligations have been complied with.

61. The proposals for the foreshore re-generation include a more formal vehicular access, six public parking spaces, a turning area, a visitor area with picnic tables and seats and a native shrub planting screen<sup>82</sup>. In addition the proposed attenuation pond would be located to the north-east of the turning area with a path between it and Plot 57 (one of the proposed foreshore houses) leading into the main part of the residential development. I cannot speculate what effect the appearance of the attenuation pond would be as no details have been provided about it and it is proposed that this could be dealt with by the imposition of a condition. However, given the terms of Policy CS20 in respect of development in the coastal zone I consider that this is a matter that is not appropriate for a condition and that details should have been available as part of the application.
62. Although the foreshore currently has a somewhat neglected appearance and some day-to-day maintenance would be welcome, I consider that its informality makes a significant contribution to the undeveloped character of this part of Hooe Lake which would be negatively affected by the formality of the proposed layout and designation of parking and other areas.
63. Taking into account land levels, retained and proposed tree planting and from what I saw on my site visits from a number of different vantage points, it is unlikely that the proposed development on the quarry floor would be unduly visible in views around the inlet. However, the fact that development cannot be seen is not a justification for a grant of planning permission and the change from an undeveloped site such as the quarry to a residential development with all the associated infrastructure, lighting and residential paraphernalia that it would entail would be so significantly different that I consider it would have a harmful effect on the character of the area.
64. In particular, the access and opening into the quarry are likely to be visible in that there would be a footpath from the foreshore area leading to the access road, the attenuation pond would be in this area as would some translocated calcareous grassland<sup>83</sup> and new native tree planting. This opening up and widening of the quarry entrance would introduce further built development that would be out of keeping with the character of the area.
65. The aim of Policy CS18 of the Core Strategy is to ensure that the key strategic green spaces, such as woodlands, parks, valleys and coastal areas, are protected and enhanced<sup>84</sup> and planning considerations relevant to all planning applications as set out in Policy CS34 of the Core Strategy include the proposal positively contributing to the landscape and being compatible with its surroundings in terms of such matters as visual impact, local context and views. In addition paragraphs 109 and 114 of the Framework advise that valued landscapes should be protected and enhanced and the character of the undeveloped coast should be maintained.

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<sup>80</sup> Document ID37 Schedule 7

<sup>81</sup> Document ID11 Schedule 2

<sup>82</sup> Landscape proposal plan at Appendix 5 to Mr Berry's proof

<sup>83</sup> According to the landscape proposals but not the EMP where this area is excluded from the CWS mitigation zone

<sup>84</sup> Core Document LD1 - The Core Strategy paragraph 11.36

66. For the reasons given above I conclude that the proposal would not comply with the development plan policies to which I have referred and with national planning policy. I also conclude that the proposal would have a harmful effect on the character of the area.

### **Third issue: Trees**

67. A Tree Preservation Order is made if 'it is expedient in the interests of amenity to make provision for the preservation of trees'<sup>85</sup>. In assessing the amenity value of trees criteria such as visibility, including the extent to which trees can be seen by the public; the individual, collective and wider impact, including the contribution to, and relationship with, the landscape; and other factors such as importance to nature conservation have to be taken into account<sup>86</sup>.
68. In this case, Tree Preservation Order No.382 (TPO) relating to Radford Quarry was made on 11 October 2011. One area of protected trees, referred to as G4, comprised at that time two ash trees and two sycamore trees. The G4 area is on the foreshore on rising ground forming an embankment and since the TPO was made the trees have grown as have other trees within the embankment. The whole of this embankment would be removed as a result of the proposal as it forms the location for the four foreshore houses. I therefore have to consider whether the relevant trees remain worthy of protection.
69. Mr Berry considered that three of the trees were of low quality and value and the other was of moderate quality and value<sup>87</sup> which is a contrary view from that of the Appellant's previous arboricultural expert who opined that collectively the group was of moderate quality on account of their combined amenity value<sup>88</sup> and from Ms Turner who considered they could be categorised as moderate quality due to their contribution to the landscape of the foreshore<sup>89</sup>.
70. The question of trees has been addressed in the issues above relating to both biodiversity and the character of the area. In my opinion, the trees that comprise G4 are extremely prominent in views along Lower Saltram where they form a distinctive buffer from developed to undeveloped land. They are also prominent in views from various points around Hooe Lake and beyond, as I saw on my visit, and I consider that their removal would have a significant adverse visual impact on the immediate and wider area. Furthermore, they have significant value in nature conservation terms which enhances their importance and value. I therefore consider that the G4 group of trees are worthy of protection and preservation.
71. In addition to the loss of protected trees Mr Berry indicated tree loss on his Plan 3 which covered a considerable area on the south-east part of the site. This Plan does not take into account the area of calcareous grassland proposed by Mr Webb in the EMP on the southern top of the quarry adjacent to Radford Park where 90% of what is described as scrub but which also contains a number of trees would be removed<sup>90</sup>.

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<sup>85</sup> S.198 of the 1990 Act

<sup>86</sup> National Planning Policy and Guidance: Tree Preservation Orders and Trees in Conservation Areas – paragraph 008

<sup>87</sup> Plan 3 to Mr Berry's proof

<sup>88</sup> Quoted in paragraph 4.2 of Ms Turner's proof

<sup>89</sup> Paragraph 4.3 of Ms Turner's proof

<sup>90</sup> Paragraph 5.1.4 (page 22) of Appendix 3 to Mr Webb's proof

72. I accept that trees would be planted as indicated on the proposed landscape plan, but many of these would be ornamental street trees and garden trees that would be urban in character and reflect the residential character of the development rather than the native tree and shrub woodland that currently exists and which makes a significant contribution to nature conservation and to the character and amenity of the area.
73. One of the objectives of Policy CS18 of the Core Strategy is to safeguard important trees and I conclude that the proposal would not be in compliance with this policy and that it would result in harm to trees in general and to the trees in G4 in particular.

#### **Fourth issue: Traffic**

74. The access to the proposed development would be via Lower Saltram which, apart from traffic calming measures, has a carriageway width of 5.5m with footways. Although the earlier Lower Saltram and Kingfisher Way developments provided off-street parking at an overall average parking ratio of 1.5 spaces per dwelling it is common ground that on-street parking occurs along the length of Lower Saltram. It is also common ground that 74% of traffic trips and journeys generated by the proposed development would be likely to be made by car and the estimated trip generation suggests an additional 35 car movements in the morning peak between 08.00 and 09.00 and 33 additional car movements in the afternoon peak between 17.00 and 18.00<sup>91</sup>.
75. With regard to on-street parking, Mr Lester provided a parking survey of Lower Saltram and Kingfisher Way carried out on four days, Saturday 20 September 2014 to Tuesday 23 September 2014, at hourly intervals between the hours of 06.00 and 18.00. The assumed parking capacity on Lower Saltram was only fully met on two occasions, at 06.00 on Sunday (north of Kingfisher Way) and at 06.00 on Monday (south of Kingfisher Way) and at times, mostly mid-afternoon, parking was significantly lower with capacity dropping as low as 11% on some occasions. The survey also showed that there was parking, on occasions, both partly and fully on the footway. Capacity for parking on-street therefore appears to be problematical only at some times.
76. On my visits to the appeal site<sup>92</sup> I noted that Lower Saltram and Kingfisher Way were relatively heavily parked; that there was some irresponsible parking in that vehicles were parked so that they obstructed dropped kerbs, some cars were parked partially on the footway and a van was double parked for a period of time; on one occasion a delivery of building materials to a property on Kingfisher Way blocked the road completely for some considerable period of time; but on each occasion I visited there was generally little traffic movement.
77. It is generally recognised that people like to park as close as possible to their homes, especially in bad weather or when they have shopping to carry. I therefore do not find it surprising that there is on-street parking along Lower Saltram and Kingfisher Way and I think it is unlikely that those people who live on Lower Saltram and who currently park on-street would park in the proposed 22 new public parking spaces<sup>93</sup> alongside the proposed extension of Lower

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<sup>91</sup> Core Document AD9 – Statement of Common Ground paragraphs 7.9, 7.12 and 7.13

<sup>92</sup> Inquiry site visits on 23 and 29 January and unaccompanied pre-Inquiry site visit on 19 January

<sup>93</sup> It is proposed that these parking spaces would be retained as public parking spaces by way of a planning condition



- Saltram<sup>94</sup>. I consider it would be even more unlikely in the case of the residents of Kingfisher Way. I am of the opinion that these spaces would be too far away for them to have any effect on parking by residents along Lower Saltram and Kingfisher Way. On-street parking may be alleviated if visitors park in those spaces but for similar reasons as for residents, visitors would be more likely to try and park as close as possible to where they are visiting.
78. There is no information about who parks on-street and whether they are residents, visitors to the houses or visitors to the area for recreational purposes, for example to walk along the South West Coast Path or visit Radford Park. It may be the case that the latter would utilise the proposed parking spaces and there could be some consequent reduction in on-street parking.
79. The proposed foreshore regeneration would provide six public parking spaces and these would be accessed via Kingfisher Way<sup>95</sup>. Kingfisher Way is adopted highway for part of its length, the remainder beyond Radford Cottages and into the appeal site is owned by the Appellant<sup>96</sup>. The adopted part of the road is partially shared surface; it is narrow and has restricted sight lines in places and, whilst there is no evidence of accidents, I share the concerns of local residents about any increase in traffic using this road as a through road to the foreshore.
80. Local residents made representations about such matters as having to walk in the road at Lower Saltram before 09.00 because of parked cars; difficulty crossing the road by the mini-roundabout at the junction of Lower Saltram and Plymstock Road in the morning rush hour and at school closing time; and Plymstock Road and Oreston Road being narrow and congested. There have been no recorded accidents but the reported inconvenience to pedestrians and traffic congestion in the area is likely to be exacerbated by the estimated 70% increase in traffic using Lower Saltram generated by the proposed development<sup>97</sup>. In this regard I note that the agreed increase in traffic movements do not take into account possible increase in traffic through Kingfisher Way to the foreshore.
81. Policies CS28 and CS34 of the Core Strategy seek to ensure, among other things, that development supports safe and convenient pedestrian, cycling and road traffic movements and provides for safe and satisfactory access. The proposal would generate a significant increase in traffic along narrow roads which were not built as through roads to other developments and in this respect I consider that there would be some negative effect on highway safety. However, I do not consider that it would be so significant or severe that it would justify a sole reason for refusal of the proposed scheme.

### **Other Matters**

82. Radford Castle is a Grade II listed building and s.66 of the Town and Country Planning (Listed Building and Conservation Areas) Act 1990 provides 'that in considering whether to grant planning permission for development which affects a listed building, or its setting, the local planning authority or, as the case may be, the Secretary of State shall have special regard to the desirability of preserving the building or its setting or any features of special architectural

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<sup>94</sup> Shown on the Landscape Proposals Plan at Appendix 5 to Mr Berry's proof

<sup>95</sup> Shown on the Landscape Proposals Plan at Appendix 5 to Mr Berry's proof

<sup>96</sup> Document ID41

<sup>97</sup> Paragraph 5.6 of Mr Lester's proof

of historic interest which it possesses'. It has been established<sup>98</sup> that a finding of harm to the setting of a listed building is a consideration to which the decision-maker must give 'considerable importance and weight' in the planning balance.

83. The Castle is approached in one direction from Lower Saltram and Kingfisher Way. Once past the existing housing, the route is undeveloped with the quarry on one side and the foreshore and Hooe Lake on the other and Radford Park beyond, resulting in the Castle being in a natural setting. On approaching it from the other direction, along the South West Coast Path, the residential development is sufficiently distant so as not to impact on the undeveloped setting of the Castle. This natural environment contributes to the significance of the Castle's setting. The proposal would affect the setting of the Castle in that there would be a more formal foreshore area and trees would be removed; the approach from Lower Saltram and Kingfisher Way would be past the four foreshore houses and the entrance to the development inside the quarry; these developments would also be apparent in views from the South West Coast Path. The built development would reduce the naturalness of the Castle's setting and its relative isolation from development and would result in harm to its setting and significance. I have found that the proposal as a whole would have a harmful effect on the character of the area, and I consider that the immediate setting of the Castle would also be adversely affected by the built development that would result from the proposal.
84. The s.106 obligation provides for the sum of £75,000 to be paid to the Council 'as a contribution to the costs the Council incurs in repairs and improvements' to it. It is not surprising that the Devon Historic Buildings Trust would like to see the Castle repaired and restored<sup>99</sup> but there are no details of such matters as how the sum would be spent and on what and its payment is 'a contribution' to costs to be incurred by the Council and, so far as I am aware, the Council has no plans at present to incur expenditure in connection with the Castle.
85. Even if I did not have the concerns about the proposed payment to restore the Castle provided for in the s.106 agreement as I have set out above, I do not consider that the proposed payment would be compliant with Regulation 122 of the Community Infrastructure Regulations 2010 in that it would not be necessary to make the development acceptable in planning terms; it would not be directly related to the development; and it would not be fairly and reasonably related in scale and kind to the development.
86. A local resident was concerned about the likely impact of the residential development, including traffic and any other emissions, on air quality within the quarry given its sheltered and confined nature. This had not been addressed in any of the reports and Mr Awcock, although not an expert in such matters, could only provide general information in his oral evidence about traffic flow to air quality studies; these studies looked at flows of thousands of vehicles a day and on this basis he considered that any impact from the traffic flows generated by the development would be insignificant. The other quarries that have been developed around Hooe Lake have different orientations and they are not so enclosed as Radford Quarry; in the absence of any evidence I

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<sup>98</sup> Barnwell Manor Wind Energy Ltd v East Northamptonshire DC, English Heritage, National Trust and SSCLG [2014] EWHC Civ 137 paragraphs 22 and 29

<sup>99</sup> Document ID39

am not able to take this matter further, but it may be a matter that merited investigation.

87. Considerable time was spent at the Inquiry in looking at the various other residential developments that have been granted planning permission around Hooe Lake. However, there are significant differences between the permitted developments at Hooe Lake Quarry and Boston's Boatyard that distinguish them from that proposed at Radford Quarry. These differences include such matters as the fact that neither of those sites were designated as CWS; both were accompanied by comprehensive rock face stability assessments and proposals; Boston's Boatyard was redevelopment of a brownfield site; the Hooe Lake Quarry site had been identified for housing in the 2009 SHLAA<sup>100</sup>; and proposed ecological mitigation arose from extensive surveys and reports. Although each development had extensive planning conditions imposed on the grant of planning permission, the conditions on both of the approved schemes did not require additional nature conservation surveys<sup>101</sup> and Mr Harris confirmed in cross-examination that neither development was subject to the same type of condition that was proposed in this appeal. The fact that other quarries in Plymouth have been developed for residential purposes does not justify the grant of planning permission for Radford Quarry taking into account its particular circumstances. It is established that each appeal has to be determined on its own merits which is the approach I have taken in this appeal.
88. The Appellant submitted that the Officer's report to committee did not inform members sufficiently about such matters as ecology and trees and that the cases made by the Council arose after the appeal was made. The recommended reasons for refusal set out on the report were in similar terms to those on the decision notice and I do not support the Appellant's contention in this respect. Even if I had come to a different conclusion I consider that such submissions would have been more appropriately made in an application for costs, and the Appellant made no such application.

### Conditions

89. The Framework advises that consideration should be given to whether an otherwise unacceptable development could be made acceptable through the use of conditions and that conditions should only be imposed where they are necessary, relevant to planning and to the development to be permitted, enforceable, precise and reasonable in all other respects<sup>102</sup>.
90. I have considered proposed conditions 3 and 4 above in respect of the EMMDP and found that they would not satisfactorily address the ecological matters pertaining to the appeal site. Many of the other proposed conditions rely on the EMMDP, such as condition 2 which reads 'the development hereby permitted shall not be carried out except in accordance with the details shown on the attached plans [and lists the plans] save as altered by the requirements needed to discharge the other conditions imposed'. This lacks the precision required by the Framework in that there would be no certainty about the design, layout and all other matters relating to the proposal; in effect I consider it would be akin to granting an outline planning permission whereas the application in this appeal is a full one.

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<sup>100</sup> Appendix 15 to Mr Harris' proof

<sup>101</sup> Appendices 5 and 6 to Mr Pullen's proof

<sup>102</sup> Paragraphs 203 and 206 of the Framework

91. The requirement that the EMMDP informs many of the other conditions, such as those relating to trees, street details earthworks and lighting render them imprecise.
92. Given the imprecision of the suggested conditions and the uncertainty that would arise from them, I do not consider that their imposition would render the unacceptability of the proposal acceptable.

### **The planning balance**

93. In the light of the presumption in paragraph 14 of the Framework in favour of sustainable development, as defined in paragraph 7 of the Framework with reference to its social, economic and environmental roles, the planning considerations for and against the proposed development have to be balanced against each other.
94. The Council does not have a five year housing land supply but it is committed to the provision of housing to meet the acknowledged need. Proposals to identify land in the Plymouth City Plan are, however, at a very early stage in the process and I give them little weight. In this respect the proposed development within the city limits of 57 houses, including 17 affordable homes which would be secured by the s.106 obligation, would be a significant benefit.
95. I have found that there would be an adverse impact on the landscape and character of the area and that the proposed development would be in conflict with Policies CS18 and CS34 of the Core Strategy which are essentially in accordance with paragraphs 109 and 114 of the Framework. Furthermore there would be a loss of important trees which would be in conflict with Policy CS18 of the Core Strategy. I have found there would be limited harm arising from the increase in traffic resulting from the proposed development.
96. The setting of the listed Radford Castle would be adversely affected and this provides considerable weight against the proposed development.
97. I have found that the proposed development would be harmful to biodiversity and that it would be in conflict with Policy CS19 of the Core Strategy. There has been insufficient focussed and clear survey work and the proposed ecological mitigation would be reliant on further surveys and amendment following those surveys as a result of a condition. I am also not satisfied that the terms of the s.106 agreement would be sufficient to ensure the long term biodiversity interests of the appeal site in general and the CWS in particular.
98. The Appellant submits that the 'compelling need to find a long term, viable and constructive solution to the site'<sup>103</sup> is a benefit of the proposal. However, the site is a CWS and whilst I accept that neither Party has been as cognisant of its responsibilities as a responsible authority and a responsible land owner should have been in the past these responsibilities are now matters that could be properly addressed. For the reasons I have given above, I do not consider that the proposed residential development would provide a long term, viable and constructive future for the site and that this is not a matter which is a benefit of the proposal.
99. S.38(6) of the 1990 Act provides that the appeal has to be determined in accordance with the development plan unless material considerations indicate

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<sup>103</sup> Document D – the closing speech of the Appellant paragraph 11.7.3

otherwise. I have found that the proposal does not comply with Policies CS18, CS19 and CS34 of the Core Strategy and that there would be adverse impacts on biodiversity, landscape and character as assessed against Policies 109, 114 and 118 of the Framework. These adverse impacts when taken into account with the adverse effect on trees and the considerable weight attached to the adverse effect on the setting of Radford Castle demonstrably outweigh the benefits of the proposed residential development.

100. Having regard to paragraphs 6 and 7 of the Framework considered in the round I find that the proposal would not be sustainable development; the proposal would not comply with the above-mentioned development plan policies and for the reasons I have given there are no outweighing material considerations which indicate otherwise.

### **Conclusions**

101. For the reasons given above, and taking all other matters into account, I conclude that the appeal should be dismissed.

### **Decision**

102. The appeal is dismissed.

*Gloria McFarlane*

Inspector

Richborough Estates

## APPEARANCES

### FOR THE LOCAL PLANNING AUTHORITY

Miss M Cook                      Counsel

She called

Mr S Osborne                      Planning Officer – Major Developments Team  
BSc(Hons) MSc

Mr G Lester                        Transport Planning Officer

Ms K A Deeney                    Leader of Natural Infrastructure Team  
BSc(Hons) MSc

Ms K Curry                        Natural / Green Infrastructure Officer  
BSc(Hons) PGDip

Ms J Turner                        Tree Officer  
BSc(Hons) MA MRTPI

### FOR THE APPELLANT

Mr S White                        Queen's Counsel

He called

Mr S Harris                        Chartered Town Planner  
BSc(Hons) MRTPI

Mrs C Brockhurst                Landscape and Visual Planning Consultant  
BSc(Hons) DipLA FLI

Mr J Berry                        Arboricultural Consultant  
BA(Hons) DipLA AIEMA CMLI MArborA

Mr M Webb                        Ecological Consultant  
BSc(Hons) MPhil MCIEEM CEnv MSB CBiol

Mr I Awcock                      Highways and Transportation Consultant  
CEng MICE MIHT MCIWEM

Mr C Pullan                        Urban Design Consultant  
BA(Hons) DipUD

### INTERESTED PERSONS

Mr G Millward                    Local resident

Mr M George                      Local resident

Mr B Steele	Local resident
Miss E Huxley	Local resident
Dr H Wood	Local resident
Ms J Appleby	Local resident
Ms N Knott	Local resident
Mr Whitehouse	Buglife

#### THE DISCUSSION ON THE S.106

Mr K Oliver	Associate of Ashfords, for the Appellant
Miss J Rundle	Senior Lawyer, for the Council
Mr N Mawson BSc(Hons) Dip Housing	Housing Delivery Officer, for the Council
Mr S Pickstone	Planning Officer, for the Council

#### DOCUMENTS SUBMITTED AT THE INQUIRY

- ID1 - The Council's recommended conditions, submitted by the Council
- ID2 - Background to the Council's current planning obligations approach, submitted by the Council
- ID3 - Justification statement, submitted by the Council
- ID4 - Monitoring Report – relevant housing extracts (2013/2014), submitted by the Council
- ID5 - Appeal decision APP/H1840/A/14/2217607, submitted by the Council
- ID6 - *Andrew Bagshaw & Shirley Carroll v Wyre BC v Mrs E Nickson Regenda Group* [2014] EWHC 208 (Admin) submitted by the Council
- ID7 - Planning Obligation dated 31 March 2015, submitted by the Appellant
- ID8 - Missing extract from EP1 (schedule) to Mr Harris' proof, submitted by the Appellant
- ID9 - Missing extract from EP4 (SHLAA site ref 43\_012) to Mr Harris' proof, submitted by the Appellant
- ID10 - Radford Quarry Management Plan March 2004, submitted by the Appellant
- ID11 - Planning obligation dated 7 February 2003, submitted by the Appellant
- ID12 - Addendum to Mr Webb's proof, submitted by the Appellant
- ID13 - Green Infrastructure Team consultation, submitted by the Council
- ID14 - Emails dated 2010, submitted by the Council
- ID15 - Emails dated 2013, submitted by the Council
- ID16 - Planning Obligations and affordable housing SPD 2<sup>nd</sup> Review, submitted by the Council

- ID17 - Extract from a planning obligation made by Taylor Wimpey UK Limited, submitted by the Council
- ID18 - 25 years planned maintenance costs, submitted by the Council
- ID19A - Planning Committee Minutes – 27 February 2014, submitted by the Council
- ID19B - Planning Committee Minutes – 27 March 2014, submitted by the Council
- ID20 - Radford Quarry presentation to Committee, submitted by the Council
- ID21 - Slides shown to the Planning Committee, submitted by the Council
- ID22 - EIA Report, Hooe Lake, submitted by the Council
- ID23 - Ecological mitigation and enhancement strategy, Boston’s Boatyard, submitted by the Council
- ID24 - Extract from Plymouth’s green space strategy 2006-2023, submitted by the Council
- ID25 - Extract from the PPG, submitted by the Council
- ID26 - Map showing planning application boundaries and greenscape assessment boundaries, submitted by the Council
- ID27 - Photograph showing distances from the Old Wharf to mean high water, submitted by the Council
- ID28 - Outline of proposed scrub clearance, DWG No.1, submitted by the Appellant
- ID29 - Slab levels, Drawing No. WAIN/RAD/SLBLVL, submitted by the Appellant
- ID30 - Extract from Greenscape Assessment (LD9), submitted by the Appellant
- ID31 - Plan of vegetation and impact area, submitted by the Appellant
- ID32 - Dr Wood’s presentation
- ID33 - Mr Green’s presentation
- ID34 - Mr Steele’s presentation
- ID35 - Miss Huxley’s presentation
- ID36 - Boston’s Boatyard and Hooe Lake Quarry Rock Faces, submitted by the Council
- ID37 - Planning obligation dated 27 June 2007, submitted by the Council
- ID38 - Email dated 30 January 2015 from the Appellant to Devon Historic Buildings Trust, submitted by the Appellant
- ID39 - Letter dated 24 March 2015 from Devon Historic Buildings Trust to the Appellant, submitted by the Appellant
- ID40 - Letter from the Appellant to the Council dated 10 December 2013, submitted by the Appellant
- ID41 - Plan showing adopted highway and the Appellant’s land, submitted by the Appellant
- ID42 - Plan showing adopted highways, submitted by the Appellant
- ID43 - Note on intermediate affordable housing products, submitted by Mr Oliver
- ID44 - Amendment to suggested noise condition, submitted by the Council

#### **DOCUMENTS SUBMITTED BY THE ADVOCATES AT THE INQUIRY**

- Document A - The opening speech for the Appellant
- Document B - Opening submissions on behalf of the Council
- Document C - Closing submissions on behalf of the Council
- Document D - The closing speech of the Appellant



## **CORE DOCUMENTS**

### **Appeal Documents**

- AD1 - Committee Report 27 February 2014
- AD2 - Decision Notice
- AD3 - Tree Preservation Order
- AD4 - 1988 Appeal Decision
- AD5 - 2003 Appeal Decision
- AD6 - 2005 Appeal Decision
- AD7 - Appellant's Statement of Case
- AD8 - Council's Statement of Case
- AD9 - Statement of Common Ground
- AD10 - Planning Application Form
- AD11 - Application Site Plan

### **National Documents**

- ND1 - National Planning Policy Framework
- ND2 - Planning Practice Guidance
- ND3 - Landscape Character Assessment Guidance for England and Scotland

### **Local Documents**

- LD1 - Plymouth Core Strategy
- LD2 - Design SPD (2009)
- LD3 - Development Guidelines First Review (2013)
- LD4 - Planning Obligations and Affordable Housing 2<sup>nd</sup> Review 2012
- LD5 - Housing Position Statement
- LD6 - 2013 Strategic Housing Market and Need Assessment
- LD7 - Peter Brett Review of SHLAA April 2014
- LD8 - Hooe Lake Planning Study 1993
- LD9 - Greenscape Assessment September 2000
- LD10 - Plymouth City Council, 2005 Turnchapel, Hooe and Oreston Strategic Neighbourhood Assessment

### **Ecology Documents**

- ED1 - Bioscan (2000) Radford Quarry Ecological Appraisal
- ED2 - Devon Biodiversity Records Centre (2009) The Devon Local Sites Manual Policies and Procedures for the Identification and Designation of Wildlife Sites. Version 1.2 – May 2009
- ED3 - Devon Biodiversity Records Centre (2014) County Wildlife Site Monitoring Form, Radford Quarry
- ED4 - Devon Biodiversity Records Centre (2006) Radford Quarry CWS Site Information Card
- ED5 - Greena Ecological Consultancy (2004) Report of Bat Survey of Radford Quarry. Survey carried out 10 May 2004
- ED6 - Hutchinson Ecological Associates (August 2011) Radford Quarry Extended Phase I Habitat Survey
- ED7 - Hutchinson Ecological Associates (November 2013) Lakeside; Land at Radford Quarry Phase II Vegetation Classification, Wintering Birds, Badger, Chiropteran, Reptilian, Dormice and Butterfly Surveys.

- ED8 - Ecological Assessment and Mitigation, inclusive of Breeding Birds  
Hutchinson Ecological Associates (February 2014) Radford Quarry  
Wintering Bird, Otter and Chiropteran Update
- ED9 - Rodwell, J S (1992) British Plant Communities Volume 3 – Grasslands  
and Montane Communities. Cambridge University Press
- ED10 - Buglife (2011) Distribution, ecology and conservation of the Horrid  
Ground-Weaver *Nothophantes horridus*
- ED11 - BS 5837:Trees in Relation to Design, Demolition and Construction –  
Recommendations
- ED12 - Tree Preservation Orders – A Guide to the Law and Good Practice
- ED13 - July 2014 – Radford Quarry Phase 1 Habitat, NVC and Botanical  
Survey Report (TACP)
- ED14 - October 2014 – Radford Quarry – Badger Survey (SLR Consulting Ltd)
- ED15 - November 2014 – Radford Quarry – Bat Survey Report (SLR  
Consulting Ltd)
- ED16 - November 2014 – Radford Quarry – Otter Survey (SLR Consulting  
Ltd)
- ED17 - December 2014 – Radford Quarry – Evaluation of Invertebrate  
Interest (Dr Keith Alexander)
- ED18 - December 2014 –SLR draft Mitigation Strategy
- ED19 - Dr Keith Alexander, on behalf of SLR (October 2014) Radford Quarry  
Evaluation of Invertebrate Interest (Interim Report)

Richborough Estates