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## Appeal Decision

Hearing held on 23 June 2015

Site visit made on 23 June 2015

**by Lesley Coffey BA(Hons) BTP MRTPI**

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

**Decision date: 21 August 2015**

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**Appeal Ref: APP/P1133/A/14/2226140**

**Land at Sentries Farm, Exminster, Exeter, Devon EX6 8DY**

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a failure to give notice within the prescribed period of a decision on an application for planning permission.
  - The appeal is made by Elizabeth Archer-Arthur, Angela Baker-Mercadal, Carole Land and Bovis Homes Ltd against Teignbridge District Council.
  - The application Ref 13/02/02614/MAJ, is dated 30 August 2013.
  - The development proposed comprises 65 dwellings with associated means of access, highway infrastructure, parking, landscaping and open space, including the provision of a SANGS.
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### Decision

1. The appeal is allowed and planning permission is granted for a residential development comprising 65 dwellings with associated means of access, highway infrastructure, parking, landscaping and open space at Land at Sentries Farm, Exminster, Exeter, Devon EX6 8DY in accordance with the terms of the application, Ref 13/02/02614/MAJ, dated 30 August 2013, and the plans submitted with it, subject to the conditions in the attached schedule.

### Procedural/Preliminary Matters

2. Planning permission was originally granted for a similar scheme at appeal in June 2012.<sup>1</sup> This was subject to a legal challenge by Get Involved Exminster (GIE) in the High Court and the Court of Appeal. This challenge was dismissed by the Court of Appeal in March 2015. Leave to appeal to the Supreme Court was refused on 16 July 2015.
3. The pre-commencement conditions in relation to the extant permission have been discharged and the permission has been implemented in that the foundations to some of the dwellings have been excavated. Therefore the extant planning permission is a material consideration of considerable weight.
4. The current appeal is against the Council's failure to determine the application. At the time the appeal was submitted the Council stated that it would be premature to determine the application whilst an appeal decision in relation to a similar proposal on the same site was subject to a legal challenge. It also

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<sup>1</sup> Appeal Ref: APP/P1133/A/11/2158146

considered that additional work was required to ensure that the proposal would comply with the requirements of European Habitats legislation.

5. The application as originally submitted included an area of land which was intended to be used as a Suitable Alternative Natural Green Space (SANG) to mitigate the impact of the proposal on the Exe Estuary Special Protection Area (SPA) and the Dawlish Warren Special Area of Conservation (SAC). The application was amended so that the site boundary was the same as the extant scheme. Nonetheless, it is intended that this area of land would be used to provide an area of open space for use by residents of the proposed development until such time as the SANG is operational. I agree with the parties that this revision would not be prejudicial to any party and I have considered the appeal accordingly.
6. On 16 July 2015 the Council reviewed its CIL regulation 123 list and a report was considered by the Executive Committee which had the effect of updating the financial contributions sought by way of the Habitat Regulations Assessment (HRA) s106 sought in cases where the proposal would affect the Exe Estuary and Dawlish Warren from £943 per dwelling to £804.
7. The Council and the appellants submitted an addendum to the Statement of Common Ground. This confirmed that subject to the payment of the CIL and the HRA S106 contribution the recreational impacts of the proposal on the Exe Estuary SPA and Dawlish Warren SAC would be adequately mitigated.
8. The submitted Unilateral Obligation under Section 106 of the above Act covenants to provide 20 affordable dwellings, of which 13 will be for rent and 7 for shared ownership. The obligations also provide for a financial contribution towards improvements at Limes Surgery and a sum of £804 per dwelling in order to mitigate the impacts of the proposal on the Exe Estuary SPA.

### **Main Issue**

9. I consider the main issue to be the effect of the proposal on the Exe Estuary SPA and the Dawlish Warren SAC.

### **Reasons**

10. No details of the previous scheme are before me, but the main parties agree that the two schemes are similar in layout, and that the main difference is the substitution of different house types. Local residents advise that the present proposal includes a greater proportion of 4 bedroom dwellings, however, the submitted application did not seek to vary the previous permission and I have therefore assessed the appeal proposal on the basis of the information submitted.
11. At the time of the previous appeal the site was located outside of the settlement boundary to Exminster. The inspector concluded that the site was situated within a sustainable location and subject to appropriate mitigation would be unlikely to have a significant effect on the Exe Estuary SPA or Dawlish Warren SAC. Accordingly in the light of the housing land supply situation he considered the balance weighed in favour of allowing the appeal.
12. Subsequent to the previous appeal the Council adopted the Local Plan in May 2014 and the Exminster Neighbourhood Plan was adopted in March 2015. The appeal site comes within the settlement boundary of both the Local Plan and

the Neighbourhood Plan. Local Plan policy S21A states that development within the settlement boundaries of specified settlements, which include Exminster, will be permitted where it complies with the policies of the Local Plan. The appeal site also contributes to the housing land supply for the District. Therefore the development of the appeal site for housing would accord with the provisions of the Local Plan and Neighbourhood Plan.

13. At the Hearing GIE explained that the reason the appeal site was included within the settlement boundary of the Exminster Neighbourhood Plan was due to the requirement to conform with the Local Plan. Had GIE's challenge within the Supreme Court been successful, the Parish Council intended to formally review the settlement boundary to exclude the site. However, as explained above, permission to appeal to the Supreme Court was denied and therefore there is no reason to suppose that the site will not remain an allocated housing site within the development plan.

### **SPA/SAC**

14. The appeal site is situated about 350 metres from the Exminster Marshes, which form part of the Exe Estuary Special Protection Area (SPA) and Ramsar site, and about 8 km from the Dawlish Warren Special Area of Conservation (SAC). Both sites are also designated as Sites of Special Scientific Interest (SSSIs). The Exminster Marshes are managed as a nature reserve by the RSPB.
15. The SPA and SAC are protected under European law. Member states have specific duties in terms of avoiding the deterioration of habitats and species for which such sites are designated or classified. Stringent tests have to be met before plans and projects can be permitted, with a precautionary approach embedded in the legislation.
16. Within such areas Articles 6(2) and (3) of the Habitats Directive requires Member States to take appropriate steps to avoid, the deterioration of natural habitats and the habitats of species, as well as disturbance of the species for which the areas have been designated. These obligations are transposed into UK law through the Habitats and Species Regulations 2010 (Habitats Regulations). Regulation 61(1) makes clear that if a plan or project is likely to have a significant effect on a protected site (either alone, or in combination with other plans or projects), and it is not directly connected with or necessary to the management of the site, the competent authority shall undertake an appropriate assessment of the implications for the site in view of its conservation objectives. If taking account of the mitigation proposed a scheme is not likely to have a significant effect on a European site then an appropriate assessment is not required.
17. The Council and the appellant agree that the appeal proposal would provide sufficient mitigation to offset the recreational impacts on the Exe Estuary. Accordingly they agree that it would not have any significant adverse effect on the SPA or SAC and an Appropriate Assessment under the Habitat Regulations is unnecessary.
18. Some interested parties, including GIE disagree. They suggest that the appeal proposal has not been subject to screening, and that although the site is allocated for housing purposes in both the Local Plan and Neighbourhood Plan it was not subject to screening in a similar manner to other housing sites within

the Local Plan. In addition, GIE is concerned that due to the proximity of the site to the Exe Estuary SPA it may be difficult to mitigate the impact of the proposal on the SPA. GIE was also concerned that the financial contributions sought under CIL and the unilateral obligation have varied considerably since the time of the previous appeal and for this reason it is not possible to have confidence that the intended mitigation will be delivered in a timely manner.

19. It is apparent from the evidence submitted to the Hearing that the Council screened the proposal both at the time of the application and again as part of its preparation for this appeal. Nonetheless, it falls to me as the competent authority to determine whether the proposed development complies with the Habitat Regulations. This requires an assessment of the potential impact of the proposal on the conservation objectives of the protected sites.
20. The conservation objectives for the SPA and the SAC are to maintain the relevant habitats and geological features in favourable condition with particular reference to any dependent component or special interest features for which the land is designated. The SPA includes the estuary waters, foreshore, saltmarsh and the sand dunes and spit of Dawlish Warren. The estuary supports a range of intertidal habitats, including mudflats, sandflats, eelgrass *Zostera sp.* beds, mussel *Mytilus edulis* beds and saltmarsh. A number of roost sites at the top end of the estuary are freshwater grazing marsh. The importance of the SPA is due to the habitat it provides for the aggregation of non-breeding birds, particularly the overwintering populations of birds which include the Slavonian Grebe and Oyster Catcher. The habitats at Dawlish Warren SAC include shifting sand dunes along the shoreline and the fixed dunes with herbaceous vegetation.
21. The SPA and the SAC include areas within Exeter City Council and East Devon District Council. Together with Teignbridge District Council these local planning authorities contemplated significant future housing development within areas close to the SPA and the SAC. As a consequence they recognised the need for an overall strategic package of mitigation measures across the three local planning authority areas to avoid damage to the protected sites arising from the recreational impacts of the increased population. Following a number of studies and reports, including the Exe Disturbance Study and the Exe Interim Report these authorities jointly published the South-East Devon European Site Mitigation Strategy in June 2014. This set out a comprehensive mitigation strategy that includes various mitigation measures and a mechanism for their delivery.
22. These form the basis of the Joint Approach which was adopted by all three authorities in August 2014 and replaced the Joint Interim Approach in place at the time of the previous appeal. The Joint Approach aims to mitigate the recreational impacts associated with additional housing development within 10 km of the protected sites which it is considered will have an in-combination likely significant effect on the Exe Estuary SPA and Dawlish Warren SAC.
23. The Local Plan together with the Joint Interim Approach and the then emerging Joint Approach were subject to a Habitat Regulations Assessment (HRA). It was concluded that the potential effects arising from increased recreational pressure would be mitigated and managed through the Joint Interim Approach. The South East Devon European Site Mitigation Strategy would provide the mitigation necessary to enable the growth set out in the Local Plan to proceed

- and avoid any adverse recreational and tourism related impacts. The conclusions of the HRA were formally endorsed by Natural England.
24. The Council's screening identified potential disturbance to the bird populations during construction and from recreational uses associated with future residents. In addition, it identified the potential for pollution from discharges of surface water and localised increases flow rates on the delicate eco-system. It was considered that the appeal proposal would have an 'in combination' effect on the SPA and SAC and this would constitute a likely significant effect.
  25. The screening concluded that the surface water impacts could be adequately addressed by way of a condition. This view accords with the recent High Court and Court of Appeal judgements in relation to the previous proposal on this site. The screening found that the recreational impacts could be mitigated by way of the Joint Interim Approach payment which would enable the Council to deliver a suite of measures within the District. It also found that although it would not constitute a SANG, the provision of an additional area of open space adjacent to the site would assist with relieving the day to day pressure on the SPA arising from recreational use including dog walkers arising from residents of the proposed dwellings.
  26. The screening concluded that, subject to a number of specified conditions, when the mitigation measures were taken into account there would be no likely significant effect in combination with other plans and projects. The more recent assessment reached a similar conclusion, but found that the likely significant effect could be overcome by way of a number of conditions and a contribution towards mitigation in accordance with the Joint Approach. Natural England reached a similar conclusion.
  27. The adopted Mitigation Strategy outlines a range of measures to minimise the potential negative effects of recreation and to provide sufficient opportunities to ensure that access to the SPA and SAC and nature conservation are not in conflict. The measures include habitat creation and management, changes to patterns of access, and the promotion of visitor awareness through the provision of information and the use of wardens. The management of visitor flows by way of planting, screening and careful routing are evident at the Exminster Marshes, the part of the SPA closest to the appeal site.
  28. It is intended that three substantial green parklands dedicated to public use should be acquired as SANGs with a view to attracting recreational use associated with the substantial combined residential development away from the SPA and the SAC, so as to prevent harm being caused to those sites as a result of residential development. The proposed parkland SANG closest to the appeal site is the Ridge Top Park in the south west of Exeter and is allocated within the adopted Local Plan. The various mitigation measures will be funded by CIL contributions and where appropriate an additional HRA contribution.
  29. It was suggested that due to the distance of Ridge Top Park from the appeal site that future residents would be likely to prefer to use areas within the SPA. However, the SANGs are part of a package of measures the aim of which is to reduce the impact of recreational use arising from the additional housing proposed within the three local authority areas. Therefore whilst the SANG would undoubtedly attract some visitors from the appeal scheme and other residents within Exminster, it also has the potential to attract residents living much closer to it who currently travel to the Exe Estuary and would thereby

- limit the overall recreational impact of new development within the District on the SPA.
30. GIE suggest that since the appeal site is situated less than 400metres from the SPA it would not be possible to mitigate adequately. The potential for disturbance and necessary mitigation has been assessed in relation to Exe Estuary SPA and has also been subject to a HRA. Whilst the Thames Basins Heaths SPA employs a 400 metre development exclusion zone, as found by the Judicial Review, it is materially different from the Exe Estuary in terms of habitat, in that it is a heath rather than an estuary and wetland. Consequently the Thames Basis Heath mitigation strategy seeks to protect ground nesting birds rather than over-wintering birds on the estuary. The risk of disturbance to birds on the estuary was also assessed as part of the Disturbance Study which informed the Mitigation Strategy. Therefore I am not persuaded that due to the proximity of the appeal site to the SPA that it would not be possible to provide adequate mitigation.
  31. I turn now to the concerns raise by GIE in respect of the CIL contribution and the implementation of the mitigation measures. GIE also suggested that despite the various contributions paid to the Council that there was little evidence that any mitigation measures had been put in place. Concern was expressed that the mitigation measures, including the SANGs would not be in place in time to mitigate the harm arising from the proposal.
  32. The adopted Mitigation Strategy not only sets out a range of mitigation measures but also recommends a mechanism for their delivery based on the costs of the various measures proposed. It explains that the changes in recreational use, and the consequential impacts on the European sites in the absence of mitigation, will be gradual. A slow change in numbers over time will occur, and it is therefore difficult to pinpoint specific mitigation needs in response to particular numbers of houses. The overall objective of the Mitigation Strategy is to ensure that any population increases within the catchment of the European sites does not give rise to an increase in the pressure and disturbance levels. It therefore aims to address the gradual increase in recreational pressure over time, and to review of both the emerging growth and the strategy on an on-going basis.
  33. At the Hearing the Council outlined a number of mitigation measures that had been put in place together with measures due to be implemented in the near future. These include a Habitat Delivery Officer, measures to dog-proof the Exminster Marshes by way of screening and planting and the use of by-laws as well as use zones for different activities. At Dawlish Warren measures to provide an improved roost for birds at high tide and a new hide are being progressed, as well as screening views from the golf course.
  34. At the time of the previous appeal the Council sought a financial contribution towards mitigation measures equivalent to £350 per dwelling. This figure was derived from the Joint Interim Approach. The Council subsequently adopted the South East Devon European Mitigation Strategy in June 2014 and the Joint Approach. These provided an increased level of detail in relation to mitigation costs and the manner in which individual elements would be funded. The Council became a CIL charging authority on 13 October 2014 and the CIL Regulation 123 list identifies the infrastructure projects, including SANGs and infrastructure required as part of the HRA that it will seek to fund using CIL.

Policy S5 of the Local Plan supports the use of CIL contributions towards mitigation of the effects on European sites. At the time of the application the Council sought an additional contribution of £943 per dwelling by way of S106 contributions to fund in respect of non-infrastructure mitigation measures. However, it recently reviewed its schedule 123 list and determined that a number of measures which it had sought to fund by way of s106 contribution should be considered as infrastructure for the purposes of CIL. On this basis the amount sought under the Joint Approach was reduced to £804 per dwelling.

35. Therefore although the level of contribution sought has varied since the time of the last appeal these changes have been based on more detailed information and an awareness of the Council's responsibilities in relation to European Wildlife Sites within the District. I therefore consider that there is no reason to doubt that the identified mitigation measures will not be delivered in a timely manner.
36. The appellant recognises that the Ridge Top Park SANG may not be provided for some time. It is therefore proposed that in addition to the mitigation sought by the Council in accordance with the adopted Mitigation Strategy that the area of land adjacent to the appeal site will be used to provide additional recreational space for residents until such time as Ridge Top Park becomes available for public use. This would provide additional mitigation and further reduce pressure on the Exe Estuary SPA.
37. Therefore taking account of the conservation objectives of the SPA and the SAC, together with the measures within Mitigation Strategy, the proposed development would not be likely to give rise to any significant effects on the SPA or the SAC, either on its own or in combination with other development. Accordingly an Appropriate Assessment is not necessary.
38. I therefore conclude that the proposal would not harm the Exe Estuary SPA and the Dawlish Warren SAC and would comply with policy EN10 of the Local Plan this provides that development within proximity of European Wildlife Sites such as the SPA and the SAC will be subject to assessment under the Habitats Regulations 2010 and will not be permitted unless any adverse effects can be fully mitigated and/or compensated.

### **Other Matters**

39. The Parish Council consider that since this was an appeal against non-determination other matters such as the effect of the proposal on the character of the local area had not been subject to adequate scrutiny. However it is apparent from the submitted information that the Council consulted both local residents and other interested parties at the time of the application and subsequently in relation to this appeal. The Council accord the extant permission considerable weight and state that there would be no material impact arising from the new house types by comparison with the extant permission.
40. Notwithstanding this, some residents are concerned that due to the greater height of the proposed dwellings by comparison with the permitted scheme they would impact on the privacy and outlook of the occupants of the dwellings at River View Terrace. The proposed dwellings along the western boundary of the site would be situated a similar distance from River View Terrace to the

previous scheme. Although some of the dwellings within this group include a third floor of accommodation partially with in the roof, these taller dwellings would be located towards the southern boundary and would not be positioned opposite the existing dwellings at River View Terrace. I am therefore satisfied that the proposal would not have an unacceptable impact on the living conditions of the occupants of these dwellings in terms of privacy or loss of sunlight.

41. Concern was also expressed that the transport assessment had not been updated since the time of the previous appeal and that the additional traffic arising from the proposal could be hazardous to vehicular and pedestrian safety as well as give rise to traffic congestion within the village. It was also suggested that local infrastructure, including schools and the Doctor's surgery would be unable to accommodate the additional demand arising from residents of the proposed dwellings. The number of dwellings is unchanged from the time of the previous appeal when it was concluded that the site occupied a sustainable location and within a short walking distance of the bus stops which provide a regular service to Exeter. Therefore residents of the proposed dwellings would not be reliant on the use of a car to access employment or day-to-day facilities. The Highway Authority did not object to the proposal and there is no compelling evidence before me to indicate that the proposal would be harmful to pedestrian or vehicular safety.
42. The purpose of the CIL is to ensure that new development contributes to the provision of essential local facilities. It is funded by levying a charge on the owners or developers of land when development takes place. The CIL raised by Teignbridge will be spent within communities on improving and providing new infrastructure services, including roads, education, recreation, and public transport. In addition the unilateral undertaking covenants to make a financial contribution towards improvements to Limes Surgery. I am therefore satisfied that the proposal would make satisfactory provision for the necessary infrastructure in accordance with Local Plan policy S5 and would not over-burden local infrastructure.
43. The (CIL) Regulation 122 provides that it is unlawful for an Obligation to be taken into account in a planning decision on a development that is capable of being charged CIL if the Obligation does not meet all of the following tests: 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. The contribution towards the Limes Surgery would be used to mitigate the impact of the additional population on medical services. The provision of affordable housing would accord with Local Plan policy WE2 which identified a high level of need for affordable housing within the District. For the reasons explained above the Habitats contribution is necessary to mitigate the impact of the proposal on the SPA and SAC. I therefore conclude that the submitted Obligations would comply with the statutory tests and I have taken them into account in reaching my decision.
44. The Ecological Assessment submitted with the application found evidence of six species of bat (common pipistrelle, soprano pipistrelle, nathusius pipistrelle, noctule, lesser horseshoe and myotis species) using the site for foraging and commuting and hazel dormouse activity within one of the hedgerows. The assessment adopted a precautionary approach to reptiles and assumed that widespread reptiles, such as slow-worms, would be present in field margins. In



- addition, two active badger sets were recorded on the site. The site was also found to provide suitable nesting and foraging habitat for a variety of birds, including declining species of conservation concern such as song thrush and spotted flycatcher. All birds, their nests, eggs and young are legally protected.
45. Bats, dormice and some reptiles are European Protected Species under Article 12 (1) of the European Commission's Habitats Directive. This prohibits the deliberate killing, catching or disturbing of species and damage to or destruction of their breeding sites or resting places. In the event of a breach of Article 12, the applicant would need to apply to Natural England for a derogation licence based on the exceptions set out in Article 16. The proposal is likely to affect bats and dormice through disturbance and may also affect the dormice through the damage or destruction of a breeding site or resting place. Natural England is satisfied that the proposed mitigation broadly accords with the requirements of the Bat Mitigation Guidelines and Dormouse Conservation Handbook and should therefore maintain the population in the survey report. In view of the comments from Natural England and the mitigation and compensatory measures proposed there is no reason to suppose that Natural England will not grant a derogation licence.
46. The badger setts are located over 50 metres from the proposed development area and therefore are unlikely to be subject to disturbance. The scheme proposes the creation of new areas of habitat including the provision of about 300 metres of new native hedgerow, public open space and the creation of new/enhanced habitats. Consequently whilst there may be some short term loss of foraging and nesting habitat for birds during the construction phase, post-construction the proposal is likely to be beneficial to various bird species through the creation of additional habitats.
47. The appeal site comes within Teignbridge Council Cirl Bunting Enhancement zone. However, the ecological assessment found no evidence of nesting or foraging Cirl Buntings on the site. Similar results were recorded at the time of the previous surveys in 2010 and 2011.

### **Conditions**

48. I have considered the suggested conditions in the light of discussions at the Hearing, the advice at paragraphs 203 and 206 of the NPPF and the PPG. I have modified the conditions to take account of the various reports and details previously submitted and in order to reflect the advice above.
49. I agree that details of existing and proposed levels should be submitted to ensure a satisfactory relationship with the surrounding area. In the interests of the character and appearance of the development and the surrounding area conditions requiring the submission of materials and further details architectural features are necessary. A Construction Method Statement is required in order to limit the impact of the proposed construction works on the surrounding area and to safeguard the living conditions of surrounding residents. However, since there are no buildings on the site to be demolished the reference to demolition is not required.
50. Details of the layout, maintenance and management of the public open space, including the play area, are necessary in order to ensure the provision of suitable recreational facilities for future residents. A mitigation scheme in respect of bats and dormice in accordance with the recommendations of

Natural England is necessary in the interests of biodiversity. For the same reason a management plan in relation to the ecological features on the site is required.

51. The submitted landscape plans and schedule provide details of the proposed soft landscaping including plant species and sizes and preparatory works. The submitted layout plan shows details of the intended surface materials. I therefore consider that there is insufficient justification to require the submission of a landscaping scheme. Nevertheless, the proposal should be implemented and maintained in accordance with the submitted details. Although some details of boundary treatment are shown on the layout plan, these are not particularly clear and therefore details of boundary treatment should be submitted in the interests of visual amenity. In order to provide additional mitigation in relation to the SPA and the SAC prior to the SANG at Ridge Top Park being available, the adjacent land should be used to provide additional recreational space for future residents.
52. A travel plan in accordance with the recommendations of the previous Transport Assessment is necessary in the interests of sustainability. The parking provision shown on the plans should be provided and details of the roads and footpaths it is proposed to adopt should be submitted to ensure that they are of an adoptable standard. Surface water drainage for the site would need to be submitted for approval so that the proposed dwellings would not be at risk of flooding or increase the risk of flooding elsewhere. At the Hearing it was explained that some work in relation to an archaeological investigation has commenced, in the absence of further detail I consider that a scheme should be submitted in order to safeguard any archaeological remains on the site. For the avoidance of doubt and in the interests of proper planning the proposal should be carried out in accordance with the approved plans.

### **Conclusion**

53. I found above that the proposal would be unlikely to have a significant effect on the Exe Estuary SPA or the Dawlish Warren SAC. The proposed use of the adjoining land as a recreational area for future residents until such time as the Ridge Top Park SANG is provided would provide additional mitigation beyond that sought by the Joint Approach and would be a benefit of the proposal.
54. The appeal site is allocated for housing in the Local Plan and Neighbourhood Plan, therefore the proposal would accord with the adopted development plan policies. The National Planning Policy Framework states that development which accords with the development plan should be approved without delay. In addition the extant consent is a material consideration of considerable weight. Even if I were to dismiss the appeal it is very likely that the appeal site would be developed for the same number of dwellings as currently proposed. The provision of 65 new dwellings, 30% of which would be affordable housing would be a significant benefit of the proposal.
55. Therefore taking account of all material considerations for the reasons given above I conclude that the appeal should be allowed.

*Lesley Coffey*

INSPECTOR

## APPEARANCES

### FOR THE APPELLANT:

Rhodri Price-Lewis QC  
Nicole Stacey  
Dr Matthew Cowley Ecologist

### FOR THE LOCAL PLANNING AUTHORITY:

Ian Perry Principal Planning Officer  
Simon Thornley Business Manager  
Mary Rush Biodiversity Officer

### INTERESTED PERSONS:

Dianne Smyth Get Involved Exminster  
Helen Hibbins Exminster Parish Council  
Shaun Brown

### DOCUMENTS

- 1 Letter dated 21 May 2015 notifying interested parties of the arrangements for the Hearing
  - 2 Unilateral Undertaking submitted by the appellant
  - 3 Additional Statement of Common Ground
  - 4 E mail dated 19 June regarding revisions to Regulation 123 list submitted by the Council
  - 5 Additional submissions on behalf of appellants
  - 6 Appellant's response to Get Involved Exminster Submissions
  - 7 Submission from Exminster Parish Council
  - 8 Council's screening of the appeal proposal under the Habitats regulation
  - 9 South East Devon European Site Mitigation Strategy Mitigation dated June 2014
- Additional Condition in relation to adjoining land submitted jointly

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**Schedule of Conditions**

- 1) The development hereby permitted shall begin not later than three years from the date of this decision.
- 2) Development shall not commence until details of the existing and proposed ground levels detailing any changes to levels and finished ground slab levels have been submitted to and approved in writing by the local planning authority. The development shall be implemented in accordance with the approved details.
- 3) 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.
- 4) No development shall take place until details of all external architectural features including eaves, verges, doors, garage doors, windows, rainwater goods, metre boxes, and rooflights have been submitted to and approved in writing by the local planning authority. The development shall be implemented in accordance with the approved details.
- 5) No development shall take place until a Construction Method Statement has been submitted to, and approved in writing by, the local planning authority. The approved Statement shall be adhered to throughout the construction period. The Statement shall provide for:
  - i) the parking of vehicles of site operatives and visitors
  - ii) temporary access from the A379
  - iii) hours of work
- 6) Prior to the occupation of the first dwelling details of the design, layout, equipment and future maintenance of all public open space (to include at least 400sqm of children's play area, 149sqm of teenage play area and 1080sqm of other usable open space), together with a programme for implementation, shall be submitted to and approved in writing by the local planning authority. The scheme shall be implemented and thereafter managed and maintained in accordance with the approved details and programme of implementation.
- 7) Prior to the commencement of any works that may affect bats or dormice and/or their habitat a detailed mitigation and monitoring strategy, which shall include a suitable lighting scheme shall be submitted to and approved in writing by the local planning authority. All works should then proceed in accordance with the approved strategy.
- 8) No dwelling shall be occupied until a management plan for the on-going enhancement and maintenance of the ecological features within the site (public open space, hedges, trees, amenity planting) has been submitted to and approved in writing by the local planning authority. The development shall be implemented in accordance with the approved details.

- 9) All hard and soft landscape works shall be carried out in accordance with the approved details. The works shall be carried out prior to the occupation of any part of the development or in accordance with the programme agreed with the local planning authority. 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.
- 10) A plan indicating the positions, design, materials and type of boundary treatment to be erected shall be submitted to and approved in writing by the local planning authority. The boundary treatment shall be completed prior to the occupation of the first dwelling or in accordance with a timetable agreed in writing with the local planning authority. Development shall be carried out in accordance with the approved details.
- 11) In the event that the SW Exeter Ridge Top SANGS has not been provided and is not available for use before the first dwelling in the Development is ready for occupation then the adjacent land shown cross hatched on Drawing Number 0092-2-101 shall be laid out in accordance with details which shall first be submitted to and approved by the local planning authority. Prior to first occupation of the development this area shall be made available to occupiers of the Development as an area for dog-walking and informal recreation and shall continue to be made available for such uses until such time as at least 30% of the area of land comprising the SW Exeter Ridge Top SANGS (being the area shown as 'SWE3' on the Local Plan Proposals Map) is available for use.
- 12) Prior to the occupation of the dwellings the measures within the *Travel Plan for Proposed Residential Development At Sentry's Farm Exminster* dated January 2011, prepared by Jubb Consulting Engineers Ltd shall be implemented and reviewed in accordance with its recommendations.
- 13) The car parking spaces and garaging shown on the submitted plans shall be provided prior to the occupation of the dwelling to which it relates and shall thereafter be permanently retained for parking.
- 14) No development shall take place until details of the estate road and footpaths to be adopted (to include street lighting, kerbs, drainage, vertical and horizontal alignment, phasing for works and construction details) have been submitted to and approved in writing by the local planning authority. Development shall be carried out in accordance with the approved details.
- 15) No development shall take place until details of the implementation, maintenance and management of the sustainable drainage scheme have been submitted to and approved by the local planning authority. The scheme shall be implemented and thereafter managed and maintained in accordance with the approved details. Those details shall include:
  - i) a timetable for its implementation, and
  - ii) a management and maintenance plan for the lifetime of the development which shall include the arrangements for adoption by any public body or statutory undertaker, or any other arrangements

to secure the operation of the sustainable drainage scheme throughout its lifetime.

- 16) No development shall take place until the applicants, or their agents or successors in title has secured the implementation of a programme of archaeological work in accordance with a written scheme of investigation which has been submitted to and approved in writing by the local planning authority. The development shall be implemented in accordance with the approved scheme.
- 17) The development hereby permitted shall be carried out in accordance with the following approved plans: C9385/H001 revA, C9385/H003 RevC, C9385/H004 RevA (all submitted with planning application ref:11/00404/MAJ) and plans numbered: 0092-2-202, 0092-2-204, 0092-2-2-215, 0092-2-2-216, 0092-2-2-217, 0092-2-218, 0092-2-219, 0092-3001, 0092-3002, 0092-3003, 2-105 RevA, 2-101 Rev.B, Single Garage Plan and Elevations, Double Garage Plan and Elevations, House Type A Elevations , House Type A Floor Plans, House Type B Elevations, House Type B Floor Plans, House Type Bv1 Elevations, House Type Bv1 Floor Plans, House Type C Elevations, House Type C Floor Plans, House Type D Elevations, House Type D Floor Plans, House Type E Elevations, House Type E Floor Plans, House Type F Elevations, House Type F Floor Plans, House Type G Elevations, House Type G Floor Plans, House Type H Elevations, House Type H Floor Plans, House Type J Elevations, House Type J Floor Plans, House Type K Elevations, House Type K Floor Plans, House Type L Elevations, House Type L Floor Plans, House Type Lv1 Elevations, House Type Lv1 Floor Plans, House Type M Elevations, House Type M Floor Plans, House Type N Elevations, House Type N Floor Plans, House Type P Elevations, House Type P Floor Plans, House Type Q Elevations, House Type Q Floor Plans, House Type R Elevations, House Type R Floor Plans, House Type S Elevations, House Type S Floor Plans.

Richborough Estates