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## Appeal Decision

Hearing Held on 3 November 2021

Site Visit made on 2 and 3 November 2021

**by Rachael Pipkin BA (Hons) MPhil MRTPI**

**an Inspector appointed by the Secretary of State**

**Decision date: 21/01/2022**

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**Appeal Ref: APP/Y1110/W/20/3265253**

**Land at Pennsylvania Road, Exeter EX4 5BL**

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant outline planning permission.
  - The appeal is made by Land Allocation Ltd against the decision of Exeter City Council.
  - The application Ref 20/0596/OUT, dated 15 May 2020, was refused by notice dated 26 August 2020.
  - The development proposed is outline application including access, with all other matters reserved, for up to 26 (maximum) residential dwellings.
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### Decision

1. The appeal is dismissed.

### Applications for costs

2. An application for costs was made by Exeter City Council against Land Allocation Ltd.
3. An application for costs was made by Land Allocation Ltd against Exeter City Council. These applications are the subject of separate Decisions.

### Preliminary Matters

4. The original application was made in outline with only access to be determined at this stage. All other matters were reserved for future determination. I have had regard to the existing and proposed site plans and the indicative layout of the proposed development as shown in these drawings, but have regarded all elements of these drawings as indicative apart from the details of the access.
5. The Council's third reason for refusal set out that, in the absence of sufficient highway information, the Council was unable to confirm that the scheme would meet highway safety standards in terms of pedestrian access to and from the site onto the existing highway network. Since planning permission was refused, the appellant has sought to address this reason for refusal and submitted a revised highway scheme<sup>1</sup>.
6. The revised scheme proposed a signalised shuttle arrangement on Pennsylvania Road between Stoke Valley Road and Whitethorn Park. This proposed to restrict traffic movements between these roads to single lane,

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<sup>1</sup> Newell Edwards Technical Note dated 13 October 2021

provide traffic calming and facilitate the installation of a footpath on one side of Pennsylvania Road.

7. The Procedural Guide – Planning Appeals –England makes clear that if an applicant thinks that amending their application proposals will overcome the local authority's reasons for refusal they should normally make a fresh planning application. Furthermore, the appeal process should not be used to evolve a scheme and it is important that what is considered is essentially the same as that on which the local planning authority took their decision and on which the views of interested people were sought.
8. The Council has confirmed that the local highway authority, Devon County Council, was consulted on the revised highway scheme but that there was no wider consultation. The proposals would introduce significant changes which would directly affect properties with access onto this stretch of Pennsylvania Road. Notwithstanding that the revised highway scheme was discussed at the Hearing, it was evident from those interested parties present that they were unfamiliar with what was being proposed and had concerns about it.
9. I have had regard to the 'Wheatcroft' principles including whether amendments would materially alter the nature of the application and whether anyone who should have been consulted on the changed development would be deprived of that opportunity. I have come to the conclusion that they would. I have therefore proceeded to base my decision on the proposals before the Council when it made its decision.
10. The scheme originally proposed pedestrian access from the site onto the adjacent bridleway, a public right of way, with improvements to this route including street lighting to provide a link to Stoke Valley Road. Due to issues around land ownership which would prevent the required upgrade to this pedestrian link, the scheme was subsequently amended to provide an alternative pedestrian route in the form of a footpath along Pennsylvania Road connecting the site to Stoke Valley Road.
11. At the Hearing it emerged that amendments made to the original highway scheme during the planning application process, as set out on drawing numbered 60600165-60-4, had only been seen by the local highways authority and had not formed part of a wider consultation. However, it is evident that these drawings were before the Council at the time it made its decision. Furthermore, they were submitted with the appeal which was subject to consultation. I am therefore satisfied that interested parties have had the opportunity to comment on these. I have therefore taken them into account in my decision.
12. The Council published a revised Five Year Housing Land Supply Statement (HLSS) in September 2021 with a base date of 1 April 2021. This was submitted as evidence in advance of the hearing, the appellant had the opportunity to respond and did so.
13. Following the Hearing, the Council updated its five year housing land supply with a revised base date of 6 September 2021. This late evidence was submitted and the appellant was given the opportunity to respond. On the basis of the information submitted, I was satisfied that I did not need to re-open the hearing. I return to this matter later in my decision.

14. On 14 January 2022 the Government published the Housing Delivery Test (HDT) Results for 2021. I did not need to refer back to the parties on this matter as the HDT score for the authority would not materially alter the position as presented to the Hearing.
15. A copy of a completed signed planning obligation by way of a Unilateral Undertaking (UU) under Section 106 of the Town and Country Planning Act 1990 (as amended) dated 21 April 2021 was submitted during the course of the appeal. This sought to secure affordable housing, contributions to primary healthcare, education provision (early years, primary and secondary) and provision and management of public open space.
16. The Council advised that the completed UU sought provisions that were not required in relation to healthcare, early years and primary education and not in accordance with policy in respect of affordable housing provision. In response to this, an executed Deed of Revocation dated 19 November 2021 which revokes the UU dated 21 April 2021 has been submitted. This is signed by the Council as the local planning authority, Devon County Council as the education authority and the appellant.
17. A further UU was submitted after the hearing which secures the provision of affordable housing, secondary education provision and public open space. This is signed and dated 17 November 2021.

### **Main Issues**

18. The main issues are:

- the effect of the proposed development on the character and appearance of the area;
- the effect of the proposed development on biodiversity;
- whether or not the proposed development would provide safe access for pedestrians to and from the highway; and
- whether there are any material considerations which mean that the decision should be made otherwise than in accordance with the development plan.

### **Reasons**

#### ***Planning Policy Context***

19. The development plan includes the 'saved' policies from the Exeter Local Plan First Review 2005 (the LP) and the Exeter City Council Core Strategy 2012 (the CS). My attention has been drawn to Policies CP1, CP3 and CP16 of the CS and Policies H1, LS1 and LS4 of the LP as being the most important policies for the determination of the application.
20. Policies CP1 and CP3 relate to housing delivery. They set a minimum requirement for housing to be provided in the plan period to 2026 and how it will be addressed through the supply of sites from various sources. Due to the age of the plan, the Council is now relying on its local housing needs assessment to calculate its housing requirement rather than that set out within the plan. Consequently, whilst these policies are relevant, they are not

development management policies that play a significant role in determining planning applications. They are not therefore the most important policies.

21. Policy H1 sets out the Council's approach to the delivery of housing based on a sequential approach which promotes the use of previously developed land (PDL) first. This is therefore one of the most important policies. Whilst there are some differences in wording, the National Planning Policy Framework (the Framework) supports such an approach in seeking to make as much use as possible of PDL. The policy is therefore consistent with the Framework and not out-of-date.
22. Policy LS1 seeks to protect the landscape setting of the city by restricting development within that setting. This is one of the most important policies. However, as this policy constrains housing delivery in a manner inconsistent with the approach advocated in the Framework it is out of date. This is consistent with the view taken by the Inspector<sup>2</sup> in the appeal at Land to the west of Clyst Road, Topsham and, in view of this decision, not disputed by the Council.
23. Policy CP16 seeks to protect the character and local distinctiveness of certain areas around the city. Like LS1, it is therefore one of the most important policies. However, unlike Policy LS1 it does not place restrictions on the type of development that would be permitted. The protection of valued landscapes is supported by the Framework and the policy is therefore not inconsistent. It therefore carries full weight.
24. Policy LS4 seeks to protect sites of nature conservation interest. As the appeal site is designated as a site of local interest for nature conservation (SLINC), this policy is one of the most important policies. In terms of its approach, the policy applies a balanced approach to development, requiring the need for the development to outweigh nature conservation considerations, minimise any damage and provide appropriate mitigation or compensation. Whilst the wording of the policy is different from the Framework, the approach is aligned, and I do not find it to be inconsistent. It is therefore not out of date.
25. In addition to those referred to above, I consider that Policy DG1 of the LP and CP9 of the CS referred to in the Council's decision notice are also most important policies. Policy DG1 requires effective connectivity between existing and proposed development and putting people before traffic and improvements. Policy CP9, whilst focussed on strategic transport measures, also requires additional development to include improvements to facilities for pedestrians. These policies are broadly consistent with the Framework and are not therefore out of date.
26. Policy CP7 of the CS which relates to affordable housing is also one of the most important policies. This seeks 35 per cent affordable housing on sites capable of providing three or more additional dwellings, subject to viability. This policy does not accord with paragraph 64 of the Framework and therefore is out-of-date.
27. I have therefore determined that the most important policies to this application proposal are Policies CP7, CP9 and CP16 of the CS and Policies H1, LS1, LS4 and DG1 of the LP. I have found that two out of the seven most

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<sup>2</sup> APP/Y1110/W/18/3202635

important policies area out-of-date. However, a consideration of whether the 'basket' itself is out-of-date and therefore whether the appeal scheme complies with the development plan as a whole is a matter to which I will return in my final conclusions.

### *Character and appearance*

28. The appeal site is an area of pastureland of approximately 1.1 hectares. It is located on the eastern side of Pennsylvania Road and to the north of the built-up area along Stoke Valley Road, from which it is separated by a belt of mature trees. These trees contain the extent of development, forming a clearly defined boundary between the substantively built-up area and the open countryside beyond. Immediately to the south of the site, there is a pair of semi-detached properties on Whitethorn Park. Other dispersed development including some very limited residential development lies on the opposite side of a bridleway that runs along the eastern edge of the site.
29. The site is undulating with a distinctive north to south slope. It is largely enclosed on three sides by existing mature hedgerow with its southern boundary more open towards the development along Whitethorn Way. Despite its proximity to the urban area and the suburban housing development beyond the tree belt, the site is strongly rural to the extent that the city is not easily perceptible when one is within the site itself or just outside it.
30. The surrounding area is characterised by rolling hills and valleys, with the Duryard Valley Park directly opposite the site on the western side of Pennsylvania Road. The landscape falls within the 'Exeter Slopes and Hills Landscape character Area' as defined in the Devon Landscape Character Assessment (LCA). This describes this area as comprising farmed and wooded slopes which provide a rural backdrop to the city. The views and woodland in close proximity to the city form a strong sense of place, with a strong rural character and increased sense of tranquillity. These undeveloped slopes, which include the appeal site, form part of the distinctive landscape setting to the city.
31. The site also lies within the landscape sub-area known as the 'Exeter Slopes and Hills' as defined in the more recent East Devon and Blackdown Hills Landscape Character Assessment 2019. This area is described as feeling elevated above surrounding areas, offering views across Exeter City. It reinforces the findings of the earlier LCA with regards to the area's strong rural and tranquil character.
32. The Exeter Fringes Landscape Sensitivity and Capacity Study 2007 (the LSCS) identifies the site as forming part of the land with Zone 3. This is a large area to the north of the city, described as comprising prominent hill and valley sides with high intrinsic sensitivity which forms a strong positive rural backcloth to the city. The appeal is a relatively small parcel of land within this wider area. However, it is in an elevated position to the city and adjacent valleys and visually prominent. Its strongly rural character beyond the natural boundary to the city formed by the belt of trees, make a positive contribution to the landscape setting of the city, characteristic of the wider zone.
33. The LSCS goes on to state that the development in this location would result in harm to the character and distinctiveness of the rural area. Whilst this



document is now some years old, there is no evidence that the important characteristics and features of the surrounding area have significantly changed since this study was undertaken. The LSCS therefore remains relevant.

34. The proposal would provide up to 26 dwellings which based on the indicative drawings are shown to be a combination of terraces and semi-detached properties laid out as a cul-de-sac positioned towards the southern side of the site.
35. The existing very limited development beyond the tree line is not prominent in distant views towards the appeal site and city edges, especially from Stoke Hill to the east. The introduction of up to 26 houses on the appeal site would fundamentally alter its rural character. It would appear as an anomalous form of development projecting beyond the clearly defined limits of the city and its natural boundary formed by the belt of trees. This would have an urbanising effect in a strongly rural context that would encroach into the open countryside and the sensitive and valued landscape setting of the city.
36. It has been argued that the visual effect of the scheme would be localised. I appreciate that the indicative layout locates the proposed houses on the southern slope of the site where it is argued that the sloping topography would provide some natural screening. Having viewed the site from the surrounding area, I cannot agree that the proposal would not be visible in longer distance view from the surrounding countryside. The topography of the site would not be able to fully screen the proposed development and its suburban character which would be visible. This would give rise to a substantial degree of harm to the character of the area and the sensitive landscape setting to the north of the city.
37. From within the city itself, there would be limited views of the proposed houses on the city skyline due to the treed boundary formed by the bridleway vegetation and the sloping topography of the site. Such views would likely be limited to rooftops beyond the tree line, and less visible during summer months when the trees would be in leaf. Nevertheless, it would erode the open and undeveloped character to the north of the city.
38. The site has a long frontage to Pennsylvania Road which is formed of a Devon hedge bank and a mature hedgerow. These are characteristic features of the area, forming the boundaries to fields and open land within the landscape and enclosing rural roads and lanes. They contribute to the rural character to the north of the city.
39. In order to provide an appropriate visibility splay at the access to the site, a 40 metre section of the hedge bank and hedgerow would be removed or relocated from the Pennsylvania Road frontage and a new road junction would be created. This would erode the rural character along this road, interrupting the continuous line of hedgerow which encloses the lane. Significant harm to the character and appearance of the area would arise from this.
40. The scheme, as a small housing estate set around a cul-de-sac would have a suburban character. This would not integrate with surrounding development and its largely rural character. In addition, the additional activity on the site in combination with light emitted from the development would further add to its intrusive nature in this rural location. Consequently, I find the scheme would

detract from the tranquillity of the area and the green setting of the city, extending the urban form into the open countryside in a manner that would be harmful.

41. The boundary vegetation and the natural undulations of the site would provide some screening in those immediate views of the site from both the bridleway and Pennsylvania Road. However, the removal of a significant section of hedge bank and hedgerow along the Pennsylvania Road frontage and the formation of a new vehicular access would provide views into the site and the urbanisation of the site would be apparent. I also do not consider the site topography would be sufficient to screen the development from views along the bridleway. This would be more apparent during winter months when leaf cover from boundary vegetation would be reduced.
42. The appeal site forms part of a SLINC which links with Duryard Valley Park, which is a Site of Nature Conservation Interest (SNCI). Whilst these designations are recognised within the appellant's Landscape and Visual Appraisal and the effect of the scheme on the Duryard Valley Park is considered, the report does not specifically assess the effect of the scheme on these designations and the character of the appeal site as a SLINC.
43. The introduction of a small housing estate within a SLINC and connected to a SNCI, would change the undeveloped and natural character of this area in terms of its being of interest for nature conservation. It is proposed that part of the site is left open and enhanced with planting for biodiversity which I discuss in more detail below. However, this would not overcome the harm that would arise from developing more than half the site with roads, housing and domestic gardens which would erode its natural character.
44. The importance of the countryside surrounding the city was recognised as requiring protection by an Inspector in dismissing an appeal<sup>3</sup> for a much smaller development of a pair of semi-detached houses on land off Whitethorn Park. The policy context at the time was considerably more restrictive in terms of protection of the countryside. Nevertheless, I concur with the Inspector's findings that the trees along the bridleway form a logical limit to the urban area and that development beyond it would be harmful, representing a prominent encroachment into the adjoining open countryside, clearly visible from the surrounding area as well as approaches along Pennsylvania Road.
45. I conclude that the proposed development would significantly harm the character and appearance of the area. It would therefore conflict with Policy LS1 of the LP in so far as it requires proposals to maintain local distinctiveness and character and Policy CP16 of the CS which similarly seeks to protect the character and local distinctiveness of the hills to the north of the city.

### *Biodiversity*

46. The appeal site is enclosed by hedgerows. These have been surveyed and assessed in accordance with the Hedgerow Regulations 1997. The assessment<sup>4</sup> concluded that the hedgerows to the eastern and western boundaries of the site were species-rich, supporting a mix of native species and a number of trees. Due to their extent, connectivity and age, they are

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<sup>3</sup> APP/Y1110/A/92/214396/P4

<sup>4</sup> Hazel Dormouse Nut Search Survey and Hedgerow Survey Report, March 2020 – Delta-Simons

considered ecologically important. The hedgerows to the northern and southern boundaries were classified as 'not important' due to their age and being species-poor. The important hedgerows are located on a hedge bank.

47. Hedgerows can provide habitat for dormice which are a protected species. The appellant undertook a survey<sup>5</sup> which confirmed their presence in hedgerows both on and adjacent to the site. The report recommended that the hedgerows bounding the site should be retained, protected and enhanced for dormice and other wildlife. Where the proposal would require the hedgerow to be removed to provide the access, it recommended that, in order to minimise any loss of the hedgerow, a hedgerow translocation should be undertaken to retain the diversity and value of this mature species-rich hedgerow.
48. A substantial section of the hedgerow along the Pennsylvania Road frontage would need to be relocated. Based on the submitted drawings and the width required to form the access, this would appear to be around half of the length of this hedgerow. The plans indicate that existing trees along this frontage would be retained where possible.
49. From what I heard, the translocation of a hedgerow involves either dragging or lifting the hedgerow and the bank in which it is growing to its new position, thereby minimising disturbance to it. Very limited details have been provided as to how this translocation of the hedgerow would be undertaken in the circumstances of the appeal site.
50. I observed on site that the carriageway on Pennsylvania Road is considerably lower than the appeal site on its western boundary. In these circumstances, it is not evident how this work could be undertaken without a substantial amount of excavation. In view of the likely extent of this work and the very limited details provided, I do not have sufficient information to enable me to conclude that these works could be undertaken without significant harm to both the hedgerow and any species living within it. As these works would be fundamental to providing access to the scheme and given my concerns about the scale and impact from the works, it would not be reasonable to rely on a condition to secure these details.
51. Moreover, even if the hedgerow could be retained, the proposed works would create a substantial gap within it. This would disconnect this mature hedgerow from the wider network of hedgerows within the area. Such connectivity is important in enabling animals, such as dormice, to travel between hedgerows and other habitats like woodland. The formation of the gap would therefore adversely affect the biodiversity of the area.
52. The scheme proposes biodiversity enhancements. This includes the replacement, enhancement and creation of new hedgerows, a Sustainable Urban Drainage System incorporating areas of open water and wet grassland and for new grassland around the site to be managed meadow to provide foraging and commuting habitat for a range of local fauna. It also proposes new tree planting along the southern section of the site plus a small section of woodland and hazel scrub to be incorporated into the northern and western extents of the site.

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<sup>5</sup> Hazel Dormouse Nest Tube Survey Report, August 2020 – Delta-Simons



53. The appellant has submitted a biodiversity net gain report which demonstrates that the proposed development would result in an overall net gain in biodiversity. Based on the illustrative masterplan for the site, the appellant has assessed the biodiversity net gain to increase by more than 10 per cent for 'habitat units' and by approximately 90 per cent for 'hedgerow units'.
54. From what I heard, much of the new native hedges would be providing boundary hedging to the proposed housing. It would not therefore be possible to secure any long-term biodiversity gains from these as there would be nothing to stop future occupants from either cutting these or replacing them with an alternative form of planting or enclosure. In addition, these hedges would be fragmented, relatively narrow and short in length. The lack of connectivity and the limited scale of these would limit their effectiveness in establishing habitat for wildlife.
55. The biodiversity net gains are based on a hedgerow reaching a 'moderate' condition which would be around a ten year period and therefore significantly less than the 20-30 years that a hedgerow requires to reach maturity. In this regard, I do not find the replacement hedgerow would compensate for the loss.
56. The appellant's Preliminary Ecological Appraisal<sup>6</sup> (PEA) assessed the site for identified habitat or potential species. In addition to dormice and hedgerow surveys, it indicated the need for a great crested newt survey as well as identifying other requirements for species protection. In the absence of firm evidence as to which of these species are present, it is not possible to establish a baseline of existing biodiversity on the site. Therefore, whilst the proposals may increase certain types of habitats, this could be to the detriment of these, as yet, un-surveyed species.
57. The Council did not refuse planning permission due to the absence of the additional surveys. This point was raised by the appellant at the Hearing. However, the Council's position was that since it found the scheme to be unacceptable for other reasons it would have been unreasonable to have required this extra work from the appellant when it was clear to the Council that it was going to refuse the application. Moreover, the appellant would have been aware of the need for additional survey work from their own PEA and could have undertaken this in order to confirm a robust baseline. In view of the Council's intention to refuse the scheme, I do not find its approach unreasonable.
58. In the absence of a firm baseline, I can only give limited weight to the biodiversity net gain report as there is insufficient evidence of what existing biodiversity on the site would be affected. Furthermore, the relocation of the hedge bank as proposed and the formation of a wide gap within what is a well-connected and established hedgerow would undermine connectivity. Besides, it seems to me that with the introduction of domestic development with associated lighting, hard surfacing and pets, especially cats, the net gains arising from the proposals are likely to be limited.

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<sup>6</sup> Delta-Simons - Preliminary Ecological Appraisal – Land off Pennsylvania Road, Exeter (January 2020)

59. In this location, where the appeal site forms part of a SLINC, I find that this would reduce the biodiversity of the site and the site's nature conservation value which would be harmful.
60. Overall, I find that the proposal would cause significant harm to biodiversity. It would therefore conflict with Policy LS4 of the LP which only permits development that would harm a SLINC if the need for the development is sufficient to outweigh nature conservation considerations and the extent of any damaging impact is kept to a minimum and appropriate mitigation and compensatory measures are implemented. It would also conflict with Policy CP16 of the CS which set out that the biodiversity value of sites of local conservation importance will be protected and unavoidable impacts mitigated and compensated for.

#### *Highway safety*

61. The main access for vehicles and pedestrians to the proposed development would be through a newly formed access onto Pennsylvania Road approximately 60 metres north of Whitethorn Park and 14 metres south of the entrance to Duryard Valley Park on the opposite side of the road. This stretch of Pennsylvania Road is on a hill, has no footpath and runs between a vegetated embankment on its western edge and the garden wall to Hilltop along much of its eastern edge. The road is subject to a 30 mph speed limit and I observed at both site visits that it was a well-used route.
62. The scheme proposes a footpath which would connect the site entrance with the existing footpaths on Stoke Valley Road which would provide a link to bus stops along this road. The submitted drawings indicate that the footpath would measure 1.8 metres across the site frontage and would narrow to 1.2 metres where it links to Whitethorn Park and beyond to Stoke Valley Road. This section of footpath would be some 60 metres in length. In order to accommodate the proposed footpath, the carriageway would be narrowed, reducing to 4.9 metres at its narrowest point.
63. The Council has requested a minimum provision of a 1.8 metre footpath and a carriageway width of 5.5 metres. It is not disputed that these dimensions cannot be achieved together due to the constraints of the existing road.
64. The proposed footpath would not be sufficiently wide to enable an ambulant person to pass along it side by side with a wheelchair user. In certain circumstances it may be appropriate for the ambulant person to walk behind the wheelchair user over a short stretch of footpath. However, in the scenario proposed as part of the appeal, it seems that should someone come from the opposing direction, they would need to step into the carriageway in order to get past.
65. Furthermore, with family housing proposed and improved pedestrian access to the adjacent picnic area, it seems very likely that there would be instances when pedestrians would be travelling along with a child's buggy and possibly a child walking beside them. This would also likely require someone travelling in the opposite direction to have to make way by stepping into the carriageway. These factors lead me to the conclusion that the narrowness of the proposed footpath would increase the risk of conflict between pedestrians and vehicular traffic along this stretch of Pennsylvania Road and would be harmful to pedestrian safety.

66. Based on Manual for Streets (MfS), it would not be possible for two HGVs to pass each other where the carriageway reduces to less than 5.5 metres. The appellant has argued that whilst there may be insufficient width for this, given the surrounding land uses, the likelihood of two opposing HGV movements occurring is generally low. I am inclined to agree with this assessment. I also note that the minimum width would enable a car and HGV to pass each other, based on the MfS assessment. In these circumstances, the reduced carriageway width would be acceptable for the vehicles anticipated to use it.
67. Nevertheless, with an insufficiently wide footpath which would mean pedestrians having to step into the carriageway in order to pass each other, the reduced carriageway width would, in my view, add to the risk to pedestrians.
68. I have been referred to the Devon County Council Highways in Residential and Commercial Estates – Design Guide and the requirements set out therein for a footpath width of 2 metres. This guidance recognises that in certain instances the width of a footpath may be reduced where pedestrian flows are low. It states that a reduction to 1.35 metres may be appropriate subject to visibility and safety requirements.
69. The appellant has assessed that on the basis of trips generated by the appeal site alone there would be five two-way trips in both the morning and afternoon peak hours. For this reason, it has been argued that the occurrence of people passing each other along this stretch would be low.
70. The proposal would additionally introduce a footpath and a dropped kerb crossing point providing improved access to the Duryard Valley Park in comparison to the existing circumstances. Notwithstanding the inadequate width of the footpath, I consider it likely that other users would be encouraged to walk along this stretch of the road particularly as it would provide access to this area of greenspace and the picnic spot located there. This leads me to conclude that pedestrian trips would likely be higher than those suggested by the appellant.
71. In terms of the reduced width, the appellant has argued that 1.35 metres does not align with any of the prescriptive requirements of any particular disabled users who would require either a width of 1.5 metres to enable a wheelchair user and ambulant person to pass along the footpath or 1.2 metres which would allow two ambulant people to walk side by side. I have been provided with no evidence that explains the width of 1.35 metres and why this would be acceptable but not 1.2 metres. However, as I do not consider that pedestrian flows would be that low, I find no justification for a reduced footpath width, whether 1.2 or 1.35 metres.
72. The indicative layout indicates an alternative pedestrian route from the appeal site onto the bridleway to the east. No details of the formation of this access have been provided. It has been confirmed that the existing bridleway would need to be upgraded to an appropriate standard for pedestrian use, notably through the installation of lighting. Due to issues of ownership, this would not be possible. The appellant has suggested that this would nevertheless provide an additional opportunity to provide access to and from the site. Whilst I do not disagree, it would not provide suitable or safe access to the site due to the absence of lighting. It therefore would not justify the provision of a substandard footpath along Pennsylvania Road.

73. My attention has been drawn to other sections of substandard footpath along Pennsylvania Road. Whilst I note these, they do not provide any justification for providing a substandard footpath to serve the appeal proposal.
74. I conclude that the proposed development would not provide safe access to and from the site for pedestrians. It would therefore increase the risk of conflict between pedestrians and other road users which would be harmful to highway safety. It would therefore conflict with Policy DG1 of the LP and CP9 of the CS. These policies together require development to connect effectively with existing routes and spaces and put people before traffic and include improvements to facilities for pedestrians.

### **Other Considerations**

#### *Housing Land Supply (HLS)*

75. At the time the Council made its decision, it could only demonstrate a 2.1 years supply of housing. Since then, the Council published a September 2021 HLSS which set out that the Council had a supply of 5.5 years for the period commencing 1 April 2021.
76. The appellant disputes this position on the basis that the Council has included seven sites which either do not meet the Framework definition of a deliverable site or because full planning permission has been granted since 1 April 2021. On the basis of these sites being excluded, the appellant considers the Council can demonstrate between 4.41 and 4.67 years supply. These are premised on the application of a 'cut-off' date of 1 April 2021 for the calculation of the five year supply.
77. In order to be considered deliverable, the Framework sets out that sites for housing should be available now, offer a suitable location for development now, and be achievable with a realistic prospect that housing will be delivered on the site within five years.
78. Paragraph 74 of the Framework explains that a five year supply of deliverable housing sites can be demonstrated where it has been established in a recently adopted plan or in a subsequent annual position statement. The Council has no recently adopted plan and is therefore reliant upon producing an annual position statement. The Council's September 2021 HLSS with a base date of 1 April 2021 provided such a position statement.
79. The Council subsequently sought to revise that annual position statement by producing an updated version, published in November 2021, with a revised base date of 6 September 2021. This was submitted after the Hearing. It indicated that the Council could identify a 6.1 year supply of housing. In providing this updated position, the Council was seeking to address the criticism of its September 2021 HLSS in that the base date should be the same as the cut-off date for the assessment of delivery.
80. In support of its position, the Council referred me to a decision by the Secretary of State in relation to an appeal<sup>7</sup> at Woburn Sands, Buckinghamshire. The Secretary of State concurred with the view of the Inspector that it is acceptable, in relation to an assessment of housing land supply, that evidence can post-date the base date provided that it is used to

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<sup>7</sup> APP/Y0435/W/17/3169314

support sites identified as deliverable as of the base date. This approach is reasonable and I have no reason to disagree.

81. However, the Woburn Sands Inspector did not agree that the base date should be altered to take into account such evidence as this would require an adjustment of the five year supply period which is not advocated in national policy or guidance. It was the Inspector's view that such an approach would go against efforts to create greater certainty in the planning process, thereby avoiding the need to argue HLS at every appeal. I agree with this conclusion. In coming to this view, I note that the Framework refers to an annual position statement which, to my mind, indicates it is produced once a year.
82. For this reason, I do not agree that the November 2021 HLSS should be used for the calculation of the Council's five year HLS. However, I agree that evidence beyond the base date can be taken into account on the basis that it supports sites identified as deliverable at the base date.
83. I turn now to consider the deliverability of each of the contested sites from the September 2021 HLSS.

Land to the north and south of the Met Office, Hill Barton (Phase 5) (Site 346a)

84. This site is expected to deliver 235 dwellings. As of the base date, no planning application had been submitted and pre-application discussions were ongoing. When the Council sought to update its evidence of delivery in August, the developer indicated it intended to submit a full application within 3-4 months. However, with no planning application submitted let alone approved several months beyond the base date, I do not consider that there is sufficient evidence that completions will begin on site within five years. I consider these 235 dwellings should be excluded from the trajectory.

Hill Barton Farm, Hill Barton Road (Site 347e)

85. At base date, there was a resolution to grant outline planning permission subject to the completion of a legal agreement. Outline permission was granted a couple of months after base date in June 2021 for 200 dwellings of which 132 are expected to be delivered within the HLSS five year period. This is phase 4 of a five phase scheme. A reserved matters application was submitted in the same month permission was granted. The evidence provided post-hearing indicates that the reserved matters has been approved. This is indicative of the scheme being progressed quickly through the application process. The Council has indicated that previous phases have been successfully delivered and I have no evidence to the contrary. On this basis, it is reasonable to include the 132 dwellings within the calculation.
86. The Council's November HLSS indicates that this site would deliver 146 dwellings within the five year period. However, this is predicated on a base date of 6 September 2021. I have found no justification for revising the base date nor recalculating the supply. I have therefore not applied the revised figure.

Land east of Cumberland Way (Phase 4) (Site 356d)

87. Outline planning permission was granted for 80 dwellings on this site in April 2021, shortly after base date. A reserved matters application was due in



Summer 2021 but I have nothing before me to indicate this has been submitted. I therefore have no evidence of how much progress has been made towards approving reserved matters, as advocated in the Planning Practice Guidance. Furthermore, the evidence indicates that the site was to be sold on and that this sale has since stalled. For these reasons, I do not consider that there is clear evidence that completions will begin on site within five years. I therefore consider 80 dwellings should be excluded.

The Old Coal Yard, Exmouth Junction, Mount Pleasant Road (Site 408)

88. This site has outline permission for 400 dwellings and 65 senior living care units, identified in the HLSS as delivering 465 dwellings over a 10 year period. Of this, 150 dwellings have been identified for delivery within the first five years. At base date, no permission had been granted and no reserved matters application had been made. In the absence of these, there is no clear evidence that housing completions will begin on site within five years. I therefore consider 150 dwellings should be excluded.

Exmouth Junction gateway site, Prince Charles Road (Site 423s)

89. A full planning application was made for 51 dwellings. The Council's HLSS set out that it had been recommended for approval but was awaiting the completion of a legal agreement. I have nothing before me to show this has now been resolved. This degree of uncertainty could in my view put back the potential start date of a development by some time. For these reasons, I do not consider it appropriate to include this development within the calculation of overall supply. These 51 dwellings should be removed from the calculation.

Clifton Hill Sports Centre, Clifton Hill (Site 419s)

90. At base date, there was a resolution to approve a scheme for 42 dwellings subject to completion of a section 106 legal agreement. Planning permission has subsequently been granted on 13 October 2021. Whilst this is beyond base date, it relates to a site the Council included as deliverable at base date. I therefore consider these dwellings should be retained as part of the five year supply.

Whipton Barton House, Vaughan Road (Site 407s)

91. A full planning application for 56 dwellings had a resolution to approve subject to a completed section 106 at base date. Planning permission was granted in September 2021. For the same reason I consider dwellings from the redevelopment of the Clifton Hill Sports Centre should be included, I consider these 56 dwellings should also be.
92. The Council has referred me to a site, The Harlequin Centre, Paul Street, which had planning permission for 125 dwellings plus a hotel which were considered deliverable within the five year period. This was included within the September HLSS. At that time, the developer of that scheme had submitted a revised application seeking the development of 330 dwellings which was pending consideration. The Council has advised that the revised scheme is now recommended for approval. However, I have no firm evidence that permission has been granted. The adjusted number of dwellings should not therefore be included within the calculation.

93. The appellant has argued that the Covid-19 pandemic is likely to have implications for the housebuilding industry. Whilst it is accepted that the effects of the pandemic are not fully known, I have been provided with no substantive evidence of any notable slowing down of the housebuilding industry nor of the housing market. I therefore give this very limited weight in terms of its effect on HLS.

Overall findings on HLS

94. The Council's housing requirement is for 3,292 dwellings over the five year period. In excluding the sites as set out above, the Council's deliverable supply of housing would be 3,072 representing a shortfall of 220 dwellings.
95. The Council cannot demonstrate a five year supply of deliverable housing sites. The shortfall is modest. Where a five year housing land supply cannot be demonstrated, paragraph 11 of the Framework sets out that decisions should apply a presumption in favour of sustainable development. I return to this in my planning balance.

*Benefits of the scheme*

96. The scheme would deliver up to 26 dwellings and would make a contribution to the supply of housing for the city. In the context of the Council's modest shortfall in its supply of deliverable housing sites, the addition of 26 dwellings carries moderate weight.
97. According to the Council's Strategic Housing Market Assessment 2014/15, the predicted level of affordable housing that would be delivered through policy compliant development would be 215 units per annum which would be significantly less than the identified affordable housing need of 325 dwellings. The proposal would provide a policy compliant 35 per cent affordable housing, equivalent to 8 affordable units that would be provided on site. This would help to create balanced communities and would help to meet an identified need for affordable housing. However, the provision of 8 affordable units is a modest contribution to the overall supply of affordable housing. It therefore carries moderate weight in the scheme's favour.
98. I have been referred to an appeal<sup>8</sup> at Ringswell Avenue, Exeter where the Inspector attributed considerable weight to the benefits of the scheme which included the provision of 17 affordable units. However, this was part of a larger scheme and delivered more than double the amount of affordable housing units compared to the scheme before me. It is not therefore directly comparable.
99. During construction and subsequent occupation of the development, there would be a number of economic benefits in relation to employment, supply of goods, use of services and spending money within the local economy. Those associated with construction would be time limited, however, longer term benefits would result from future occupants. Additional financial benefits would be accrued from the New Homes Bonus and the Council tax receipts. These benefits together carry moderate weight.
100. The appellant contends that the proposed development would be in an accessible location which would reduce the need to travel by private car.

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<sup>8</sup> APP/Y1110/W/18/3212951

Within Exeter, future occupants would have access to a good level of services including schools, a university, public transport and the shops and facilities within the city centre which are located some 1.5 kilometres from the site.

101. I have already found the proposal would not provide safe pedestrian access from the site. Furthermore, public transport from the site is limited to a single route bus service which runs half hourly during the week and hourly on the weekend. The appeal site is located on a hill and therefore to access services and facilities on foot would involve walking down and up a relatively steep incline. This would not be practical if carrying shopping or pushing a buggy for any distance. I do not therefore consider the location to be accessible. I therefore give this aspect of the scheme very limited weight.
102. The revised highway scheme proposed to provide an informal pedestrian crossing in the form of a dropped kerb to the publicly accessible picnic area within the Duryard Valley Park. There is currently no footpath link to this area and the proposal would therefore represent an improvement on the existing situation. However, given that the proposed footpath to this location would be substandard, I give this benefit limited weight.
103. The appellant has indicated that the scheme would provide an area of open space which would be publicly accessible. However, the submitted Landscape Masterplan attached to the Biodiversity Net Gain Report identifies that most of the undeveloped space within the site will be used for woodland, hazel or wildflower planting. It is not clear where the public open space would be or how this could be accommodated in the context of the proposed biodiversity gains. In addition, this area would be set away from the existing residential development and likely would only be used by future occupants of the proposed development. Whilst I acknowledge the health and wellbeing benefits of open space, I give the provision of open space very limited weight.
104. It is suggested that the scheme would contribute to carbon savings, however, I have limited information in respect of this. This therefore carries very limited weight in favour of the scheme.
105. The proposed dwellings would be built to comply with required standards of energy consumption and sustainability as set out in guidance and required by Building Regulations. This does not offer anything over and above requirements, and therefore in terms of the benefits it delivers I attribute this very limited weight.
106. The scheme would make a contribution to secondary school provision. However, this would be to meet the needs arising from the proposed development. This would therefore be a neutral factor in the balance.

### **Other Matters**

107. The appeal site is located within 10 kilometres of both the Exe Estuary Special Protection Area (SPA) and the East Devon Pebblebed Heaths SPA and Special Area of Conservation. These are statutorily protected habitats sites under the Conservation of Habitats and Species Regulations 2017 (as amended).
108. The Council has determined that additional residential development would, in combination with other plans and projects have a significant effect on these protected sites through additional recreational pressures. The Council has undertaken an appropriate assessment which concluded that the impacts of

the proposed development could be mitigated through a financial contribution towards the implement of measures set out within the South East Devon Site Mitigation Strategy. The Council confirmed that this contribution could be top-sliced from Community Infrastructure Levy payments.

109. Notwithstanding the Council's findings in respect of this, as the competent authority, I am required to carry out an appropriate assessment of the effect of the proposed development. However, as I have found that the scheme is unacceptable for other reasons, I do not need to pursue this matter further.

### **Planning Balance**

110. The appeal site is located outside the settlement boundary and is in the open countryside. There would be significant harm to the character and appearance of the area, biodiversity and pedestrian safety. These are all matters which carry very substantial weight and importance in the planning balance.
111. I have identified the most important policies for determining this application. Of these the proposed development would conflict with policies CP9 and CP16 of the CS and policies H1, LS1, LS4 and DG1 of the LP. The proposal would comply with policy CP7 in regards to affordable housing and inevitably would comply with other relevant policies within the development plan. Nevertheless, in my judgement the appeal scheme would conflict with the development plan when taken as a whole.
112. Paragraph 11 d) of the Framework sets out that for decision taking where there are no relevant development plan policies, or the policies which are most important for determining the application are out-of-date, permission should be granted unless: i. the application of policies in the Framework that protect areas or assets of particular importance provides a clear reason for refusing the development proposed; or ii. 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.
113. Footnote 8 sets out that in relation to an application involving the provision of housing, where a local authority cannot demonstrate a five year supply of deliverable housing sites, then the policies which are most important for determining the application are out-of-date.
114. I have found that two of the most important policies are out of date but the majority are not. Which leads me to conclude that the basket of most important policies is not out-of-date in this case. However, I have concluded that the Council cannot demonstrate a five year supply of deliverable housing sites to meet its local housing need. The presumption in favour of sustainable development would therefore apply in this case and the 'tilted balance' would be engaged.
115. The proposal would deliver a range of modest economic, social and environmental benefits. Due to the modest scale of the benefits in the context of the limited shortfall in housing supply, these benefits attract limited to moderate weight. Taken in combination, I therefore attribute moderate weight to the package of benefits in the planning balance.
116. As I have identified above, the proposal would give rise to significant harm in respect of three main issues to which I attribute substantial weight. In my view, the adverse impacts of granting permission would significantly and

demonstrably outweigh the benefits when assessed against the policies of the Framework taken as a whole. Therefore, the proposal would not constitute sustainable development with regard to paragraph 11 d ii) of the Framework.

### **Conclusion**

117. The proposed development would be contrary to the development plan and there are no material considerations that outweigh this conflict. Consequently, with reference to Section 38(6) of the Planning and Compulsory Purchase Act 2004, the appeal should be dismissed.

*Rachael Pipkin*

INSPECTOR

Richborough Estates



## **APPEARANCES**

### **FOR THE APPELLANT:**

|                   |                                                      |
|-------------------|------------------------------------------------------|
| Joe O'Sullivan    | Head of Planning, AAH Planning Consultants           |
| Leanne Richardson | Senior Planning Consultant, AAH Planning Consultants |
| Oliver Brown      | Landscape Architect, AAH Planning Consultants        |
| Stuart Wilson     | Transport Planning, Newell Edwards                   |

### **FOR THE LOCAL PLANNING AUTHORITY:**

|                 |                                                                      |
|-----------------|----------------------------------------------------------------------|
| Matthew Diamond | Principal Project Manager (Development)                              |
| Katherine Smith | Principal Project Manager (Local Plans)                              |
| Anne Priscott   | Consultant Landscape Architect                                       |
| Alex Thomas     | Senior Highways Development Management Officer, Devon County Council |
| Simon Curran    | Solicitor, Exeter City Council Legal Services                        |

### **INTERESTED PARTIES**

|               |                |
|---------------|----------------|
| Ken Scowcroft | Local resident |
| Mark Stobbs   | Local resident |
| Francis Hall  | Local resident |
| Mr Caspar     | Local resident |
| G Hall        | Local resident |

## HEARING DOCUMENTS

- HD1 Council Statement in response to the Inspector's question regarding habitats mitigation (November 2021)
- HD2 Costs application on behalf of the Council

## POST-HEARING DOCUMENTS

- PHD1 Email from Council dated 4 November 2021 requesting late evidence relating to the Council's five year housing land supply be considered
- PHD2 Copy of Hazel Dormouse Nut Search Survey and Hedgerow Survey Report, March 2020
- PHD3 Copy of Hazel Dormouse Nest Tube Survey Report, August 2020
- PHD4 Email from Appellant dated 8 November 2021 responding to Council's proposed submission of late evidence
- PHD5 Email from Council dated 9 November 2021
- PHD6 Council's Five Year Housing Land Supply Statement (November 2021)
- PHD6 Secretary of State Decision, APP/Y0435/W/17/3169314, Land to the East of Newport Road and to the east and west of Cranfield Road, Woburn Sands, Buckinghamshire
- PHD7 Consent Order in relation to appeal APP/G2815/W/19/3232099
- PHD8 Delivery evidence for site 416
- PHD9 Email from Appellant dated 10 November 2021, setting out objections to the late evidence and confirming a written rebuttal to the Council's late evidence will be submitted
- PHD10 Appellant's Costs rebuttal and Appendix A
- PHD11 Unilateral Undertaking under section 106 of the Town and Country Planning Act 1990 (as amended) dated 17 November 2021
- PHD12 Deed of Revocation dated 19 November 2021
- PHD13 Council's comments on Appellant's costs rebuttal
- PHD14 Appellant's Rebuttal on revised 5 year housing land supply
- PHD15 Appellant's costs application
- PHD16 Council's costs rebuttal, email dated 10 January 2022
- PHD17 Email from appellant dated 14 January 2022 confirming no further comment to costs rebuttal