



Appeal Decision

Inquiry Held on 11 December 2024

Site visits made on 11 and 12 December 2024

by Matthew Jones BA(Hons) MA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 30th January 2025

Appeal Ref: APP/Y1110/W/24/3350940

Land at St Bridget Nursery, Old Rydon Lane, Exeter EX2 7JY

- 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 outline planning permission.
 - The appeal is made by Waddeton Park Ltd against Exeter City Council.
 - The application Ref 23/1320/OUT, is dated 30 October 2023.
 - The development proposed is described as '*outline planning application for the demolition of existing buildings and structures and the phased development of up to 350 dwellings and associated infrastructure and open space*'.
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Decision

1. The appeal is allowed and outline planning permission is granted for the demolition of existing buildings and structures and the phased development of up to 350 dwellings and associated infrastructure and open space at Land at St Bridget Nursery, Old Rydon Lane, Exeter EX2 7JY in accordance with the terms of application Ref 23/1320/OUT, dated 30 August 2023, subject to the conditions in the attached schedule.

Procedural Matters

2. The planning application was made in outline with all matters aside from access reserved. I assessed the appeal on that basis.
3. Following the closing of the Inquiry a completed planning agreement was submitted by the Appellant (the S106). It intends to secure obligations related to Affordable Housing including First Homes, mitigation for any effects on the Exe Estuary Special Protection Area (the SPA) and the Pebblebed Heaths Special Protection Area and Special Area of Conservation (the SPA/SAC), a contribution to GP facilities and SEN provision, public open and play space, and towards costs to be incurred in association with a Traffic Regulation Order. It would also require for certain vehicle, pedestrian and cycle connections to be made. I return to the matter of these planning obligations later in my decision.
4. After the closing of the Inquiry a revised version of the National Planning Policy Framework (the Framework) was published. I sought the views of the main parties as to any implications of this change in national policy and took the responses into account in my decision.

Main Issues

5. The Council failed to determine the planning application within the requisite period. The Council has confirmed in its appeal evidence its position that planning permission should be granted. Nonetheless, objections to the

proposed development are raised within the submissions of interested parties and that of the Rule 6 Party, Mr Peter Howard-Williams. These submissions have led my identification of the following main issues:

- the principle of the proposed development having regard to the development plan and other material considerations, including the Newcourt Masterplan;
- the effect of the proposal on highway safety and the highway network; and
- the effect of the proposal on the living conditions of neighbouring residents.

Reasons

Background

6. The appeal site comprises the former St Bridget Nurseries garden centre, currently closed to the public but still in some limited use as a nursery, within the southeast area of Exeter. A field is to the northeast, with the A379 Rydon Lane to the west. Along the south boundary is the simple, single carriageway Old Rydon Lane. The proposed development seeks access from a modified Old Rydon Lane, via its junction with the A379 Rydon Lane.
7. There is an eastbound one-way section for vehicular traffic at the east end of Old Rydon Lane until it meets Newcourt Way. This means that the junction with Rydon Lane is the only way for vehicles to access the properties that front this section of Old Rydon Lane. This is also the case for the 'Heritage Homes' development southeast of the appeal site, the former garden centre itself, and the NHS facility at Newcourt House. To facilitate the site egress arrangement, it is intended to extend the one-way system westwards down Old Rydon Lane, past the entrance to the dwelling Newcourt Lodge and up to the southeast edge of the appeal site, by way of a Traffic Regulation Order (TRO).

Principle of development

8. The appeal site is allocated for residential and/or employment development as part of the 'Newcourt' allocation pursuant to Policies CP1 and CP19 of the Core Strategy (adopted 2012) (the CS). The Newcourt area, but not the appeal site, was already allocated for development in 2005 by saved Policy KP8 of the Local Plan First Review 1995-2011 (the Local Plan). The majority of Newcourt is now developed or being developed. Saved Policy T14 of the Local Plan required a spine road through the allocation connecting the A379 to Topsham Road. This is now complete as Newcourt Way. Given that the appeal site was not allocated by the Local Plan, it does not fall within the ambit of its Policies KP8 or T14.
9. Each allocation in the CS is accompanied by a plan identifying the allocation and sometimes showing certain infrastructure, including 'green infrastructure routes'. Old Rydon Lane is shown as one such route on the relevant Plan 1. However, there is no explanation as to what a green infrastructure route entails and if, for instance, these routes should preclude vehicular traffic. This appears unlikely, given the existing dwellings on Old Rydon Lane, and also given that Policy CP19's supporting text refers to the potential for it to be used by buses.
10. Policy CP19's wording for Newcourt only refers to the delivery of a 'green infrastructure framework' rather than specific 'routes' and states that Plan 1 identifies the allocation; no more, no less. The supporting text states that the green network is intended to offer convenient and safe walking and cycling

routes to link existing and proposed housing. The proposal seeks to provide segregated pedestrian and cycle routes along parts of Old Rydon Lane and remove through traffic, downgrading much of it to a 'quiet street'. As such, the development, and its access arrangement, would accord with Policy CP19.

11. The Newcourt Masterplan (2010) puts forward a more detailed strategy for the allocation. Despite predating the CS, it incorporates the St Bridget Nurseries site. The Masterplan identifies access to the appeal site from the northeast via Newcourt Way. Vehicular access from the northeast is the preferred route for the Rule 6 Party and interested parties. There was a previous intention by the Council for access to come this way too, and a road spur is already in situ. That the Masterplan promotes this access point is reinforced by its text which guides that Old Rydon Lane should be managed to avoid more traffic using it to access the Newcourt Area. The proposed access and egress are dependent on Old Rydon Lane and so the scheme is at odds with the Masterplan in this respect.
12. However, the Masterplan is not part of the development plan nor a supplementary planning document. It has been deviated from several times, not least with the construction of the IKEA store at the Newcourt Way and A379 junction instead of housing. The CS only refers to the Masterplan insofar as development should have 'general regard' to its 'guidance'. This makes its status relative to the development plan clear. As such, notwithstanding the aspirations of stakeholders previously involved with Newcourt, the Masterplan contains no requirement, policy based or otherwise, that development of the appeal site must take its access from the northeast and not as proposed. For these reasons, the Masterplan is a material consideration of limited weight.
13. I therefore conclude on this issue that the principle of the proposed development is acceptable, having regard to the development plan and other material considerations, including the Newcourt Masterplan. Whilst conflict with the Newcourt Masterplan, as a non-development plan document, would arise, the proposed development would accord with the requirements of Policies CP1, CP9 and CP19 of the CS.

The highway effects of the proposal

The network

14. To assess the net trip generation of the proposed development, and therefore its highway safety and network implications, an appropriate baseline must first be established. The former garden centre represents the extant land use, and I have no reason to disagree with the oral evidence that garden centres are a popular and burgeoning industry. The site retains its buildings and seems likely to have offered an attractive and popular retail and food /drink offer. I note that there has been interest in the site as a garden centre more recently. It is therefore reasonable to assume that a similar enterprise would be the likely use for the site if residential redevelopment were not to come forward.
15. As the garden centre is now closed, it has been put to me that flows from the site should be recorded as zero or close to zero when establishing a baseline. This runs counter to best practice. The government publication 'Guidance on Transport Assessment' (2007) states that baseline data in cases of vacant sites should include trips which might realistically be generated by any permitted uses. Whilst this document has been superseded by the less prescriptive Planning Practice Guidance, its content remains trusted by highway experts.

Taking zero as a baseline also effectively ignores historic flows and so creates an unreasonably high bar for any new land use or business to establish.

16. Focusing on the former garden centre's business arrangements does not bear fruit either. This is because the site is unfettered in planning terms with respect to its opening hours, and therefore future garden centre type businesses would not be beholden to the way it operated. Likewise, the relocated St Bridget Nurseries on Sidmouth Road to the east is within a more isolated location, on a smaller site. Its trip generation is not helpful in ascertaining a realistic baseline.
17. It is instead most suitable to utilise the industry standard Trip Rate Information Computer System (TRICS) database to establish net trip generation to and from the appeal site. Whilst the figure of 5,202m² taken as the former garden centre covers more than just the indoor retail element, the outdoor public areas, offices spaces and other such uses all comprise spaces that would form part of the trip generation. It is open for people to visit garden centres purely for their food and drink offer, so this element would logically have attracted movements in and of itself. Equally, growing areas would generate trips with deliveries and collections, so it is reasonable for them to also be included.
18. TRICS provides an accurate portrayal of weekend trips for similar sized garden centres, but not weekday trips. As such, an Exeter DIY retail store profile has been used as a proxy to reach figures for likely trip generation for the appeal site on weekdays. Given that the two uses have a similar ratio of weekend peak to quieter weekday trip rates, I find this approach to be reasonable.
19. Traffic data in the original Transport Assessment (the TA) has been compared to an updated assessment of recorded traffic flows observed after the Covid pandemic. This shows that flows on both the strategic and local network have remained consistent or have reduced since 2019¹, which indicates that the data in the TA remains reliable. The data is joined by forecast flows from recently delivered and committed developments in the area, including the Heritage Homes development, to forecast the situation by 2027. This is a thorough approach which considers all reasonable future scenarios, and I am satisfied that it provides a robust baseline from which to assess the scheme.
20. 2011 Census data and a distribution model for a similar residential development within Newcourt, to the east of IKEA (ref 21/0496/FUL), has been used to forecast the trip patterns and generation of the proposed development. This approach appears appropriate and is accepted by Devon County Council as the relevant highway authority. Indeed, it is based on a strategic model for the Newcourt allocation that was commissioned by Devon County Council. When calculated with the baseline, using industry standard software, the results, as presented in the TA, show that the junctions affected by the development are comfortably within their capacity to cope with the additional trips generated.
21. Looking more closely, access to Old Rydon Lane from Rydon Lane from the south necessitates a right turn from a dedicated lane through a gap in the oncoming southbound Rydon Lane traffic. The lane is generous in length, and the TA data shows that queues are highly unlikely to exceed its capacity and cause queuing to block the other lanes of the northbound carriageway. Concern was also raised at the Inquiry about the southbound turn from Rydon Lane

¹ Updated Transport Assessment (June 2024)

onto Old Rydon Lane. However, the TA data² again shows that, even during the PM peak, with residents returning home, the scheme would only have a modest impact upon the capacity of this junction arm against the baseline.

22. Reference has been made to the percentage increases against capacity for vehicles exiting Old Rydon Lane of only 3.3% / 3.5% and 11.2% / 1.6% during the AM and PM peaks for the west and east ends respectively. The reason for the low percentages is that the increased trips relating to these arms has been added to the increased trip rates across the junctions as a whole, including the busier arms. Contextualising increased flows in this way is, however, a correct approach. This is because there is interplay between each arm, and it is when a junction as a whole is over capacity that unsustainable queuing occurs. The appellant's evidence demonstrates that this would not happen as a consequence of the appeal development. No equivalent technical work has been put to me in contradiction to this expert evidence.
23. Rather, the ability for the junctions to cope with the development tallies with what I saw on my two visits. I consistently observed traffic on all three arms of the Rydon Lane / Old Rydon Lane junction moving freely. Although traffic comes down from the north in waves due to nearby traffic lights, many of the turns into Old Rydon Lane were near instantaneous or involved waiting for a short or very short period. I did not observe queuing on Old Rydon Lane at all.
24. I recognise that a degree of rat-run type traffic along Old Rydon Lane currently occurs in the morning peak, to avoid the congestion at Countess Wear roundabout and elsewhere. However, the main street of the development, with an appropriate design, traffic calming measures and a clear place function, is likely to act as a disincentive to this type of traffic flow.
25. Concerns have also been expressed regarding new flows westwards through the Heritage Homes development. This is because the extended one-way section on Old Rydon Lane would prevent current movements for staff within Newcourt House, and residents in Newcourt Lodge and around Newcourt Drive. The number of people affected by this would be limited, given that the existing one-way system restricts further westbound access. The streets through the Heritage Homes development are also narrow, with subtle turns and a clear place function, so Newcourt Way is likely to be an equally appealing route for outbound traffic.
26. Properties front Rydon Lane to the south of the junction with Old Rydon Lane. Due to the overriding movement function of Rydon Lane, some residents opt not to access these homes from the opposite side of the carriageway. Instead, they undertake a U-turn within the junction, a manoeuvre I observed. However, given the relatively limited number of houses along Rydon Lane, this is unlikely to be a frequent occurrence, and does not have a significant effect on the capacity of the junction.
27. Clearly, the scheme would generate additional trips which will invariably lead to more vehicles and a consequential increase in the potential for queues to form in the surrounding area. However, the weight of expert opinion, including that of Devon County Council, and the technical evidence before me, tallied with my own observations on site, firmly lead to the conclusion that the impact of the proposal on the highway network would be acceptable, and far from severe.

² Figure 7-6: 2027 Future Baseline + Proposed Development; PM Peak

Highway safety

28. The TA was accompanied by a Road Safety Audit. The audit raised concern about potentially restricted northward visibility during the uphill, righthand turn from Rydon Lane onto Old Rydon Lane, owing to the topography. However, subsequent survey work by the Appellant has identified visibility in excess of the minimum recommended in the Design Manual for Roads and Bridges.
29. No speed survey of the southbound traffic on Rydon Lane has been carried out. Instead, the Appellant's highway witness has driven the route at 40mph and found vehicles to be travelling around the speed limit. There is a 'slow down' sign which activates when approaching vehicles are driving at more than 40mph. Whilst I did observe this activating, the frequency of such endorses the conclusion that the 85th percentile speed is within the 40mph speed limit.
30. It is suggested that the merger of the A379 and A3015 close to the north has the risk of distracting drivers from the approach to the Old Rydon Lane junction. I observed this to have more of a focusing effect, as drivers appeared to become more alert and reduce speed mindful of the potential for merging to take place. Likewise, the 'slow down' sign also serves this purpose.
31. There have nonetheless been two recorded serious personal injury collisions (PICs) and one unrecorded incident at the Rydon Lane / Old Rydon Lane junction since 2016. Whilst there is a theme insofar as the recorded incidents relate to the uphill, right-hand turn, the two relate to a motorcyclist overtaking queuing vehicles and a car pulling into the oncoming path of a motorcycle, and so can be put down to rider or driver error, rather than an intrinsic safety issue. There is little information as to the more recent PIC involving a cyclist, but it is the only example of this type of incident in the evidence. Three serious PICs over a now nine-year period, given the number of vehicles using Rydon Lane, is not statistically significant. Whilst northeast and southwest bound vehicles would pass vehicles waiting to turn on to Old Rydon Lane at around 40mph, there are no recorded incidents associated with this relationship.
32. It is suggested that cars turning left from the southbound Rydon Lane onto Old Rydon Lane are pressured by vehicles behind. However, there are no recorded PICs associated with this junction arm. The 'give way' line is an opportunity for vehicles to look out for cyclists crossing Old Rydon Lane at this point. Equally, the acutely angled geometry of the cycle path serves to slow down approaching cyclists and disincentivises rash cycle movements onto the carriageway. The proposed raised table, with a contrasting surface material, would further emphasise the role of the carriageway here as a pedestrian and cyclist crossing point. Vehicles have priority over cyclists at the junction in any event.
33. The occupants of Treehaven are concerned about the proposed access opposite the entrance to this property. However, as through traffic would be removed from this section of Old Rydon Lane, and the number of vehicles that would use this route would be limited, the safety of this relationship would be acceptable.
34. Westbound cyclists would be removed from the extended one-way section of Old Rydon Lane and instead would be expected to take a detour through the Heritage Homes development. This detour is likely to result in a not inconvenient extended journey time for most trips by bicycle. There would not therefore be a significant number of cyclists seeking to flout the new one-way system. Within the extended one-way system, situations where vehicles pass

side by side would be removed, and a new dedicated virtual footpath would segregate pedestrians from other traffic. I understand that this route is used particularly by school children and people with visual impairments at a nearby facility. For these pedestrians this would be a marked improvement on the safety of the current situation.

35. Regarding the Old Rydon Lane junction with Newcourt Drive, the plans demonstrate 43m visibility westwards, exceeding the standard set in the Manual for Streets for a 30mph speed limit on this type of street. The number of vehicles accessing Old Rydon Lane in this way is largely associated with the limited housing on the east side of the Heritage development, and Newcourt House. There is also an absence of recorded PICs here within the study period.
36. Further afield, a traffic camera is to be installed at the junction of Newcourt Way and the A379 to the northeast of the appeal site. This is due to vehicles jumping the lights, not any intrinsic safety issue with that junction. In respect of the safety of construction traffic, this is a matter that could be adequately addressed by a condition requiring a construction management plan.

Conclusion on this main issue

37. Accordingly, the proposal would have an acceptable effect on highway safety and the highway network. In these respects, the proposal would accord with the highway safety, highway network and sustainable transport objectives of Policy CP4 of the CS, Saved Policies T3, H1 and DG1 of the Local Plan, and the Framework.

Living conditions

38. I recognise that the access and highway works would result in a perceptible change to the living conditions of existing residents. For those living on the section of Old Rydon Lane from which through traffic would be removed, the scheme would result in long-term benefits in these respects. For others, the increased trip rates and queuing, as modelled, would be likely to result in an intensification of noise and deterioration of air quality only to a modest extent.
39. Residents likely to be most affected in these respects are the occupants of 'Rydon Lawns' and 'Tropez', closest to the Rydon Lane junction. Vehicles occasionally queue aside these homes, and the likelihood is that queuing would increase in frequency. These properties front on to the carriageway, but as proposed would be separated from vehicular traffic by cycle and pedestrian routes. On this basis, the modelled increased potential for queuing traffic would have an acceptable effect on the living conditions of their occupants. That the noise and air quality aspects of the scheme would be acceptable overall is supported respectively by the expert noise and air quality evidence.
40. Travel times would be extended for several residents, of which those at Newcourt Lodge and the housing on the east side of the Heritage Homes estate would be the greatest affected. However, most routes from these houses, i.e. those not via Countess Wear roundabout, would be barely affected. Journeys to Countess Wear via Newcourt Way during peak times would be longer in the order of minutes, sometimes eight minutes, accepting Mr Howard-Williams' submissions. Statistically 93% of car journeys are over 1 mile, 75% are over 2, and so most delays would be modest within the context of most trips. All told, the degree of inconvenience would not translate to a significant impingement

on residents' ability to conduct their day to day lives or to their living conditions. Access to emergency services would be retained to all existing properties.

41. Moreover, whilst construction on this scale can be disruptive to neighbouring residents, this is inherently time limited and the nature of the access from Old Rydon Lane means that a significant amount of new highway infrastructure can be constructed alongside the existing highway with access maintained to existing homes through the use of standard traffic management procedures.
42. Consequently, the proposal would have an acceptable effect on the living conditions of neighbouring residents. It would accord with the amenity and environmental aims of Policies C4 and CP11 of the Core Strategy, Policies DG4, H2 and EN3 of the Local Plan and the Framework.

Appropriate Assessments

43. The Conservation of Habitats and Species Regulations 2017 (the Habitats Regulations) require that permission may only be granted for a development where the competent authority has ascertained that it will not adversely affect the integrity of any European Designated Site affected.
44. The SPA qualifies due to its overwintering populations of regularly occurring migratory species and as a site supporting an internationally important assemblage of birds, particularly Avocet and Slavonian Grebe. The SPA/SAC qualifies owing to its diversity of heath communities, including heather, bell heather, western gorse and heathland grasses. The dry heaths support populations of southern damselfly. The site also supports breeding nightjar and breeding Dartford Warbler.
45. The appeal site is inside the zones of influence of the SPA and SPA/SAC. On this basis, it cannot be ruled out that the development, when considered alone or cumulatively with other schemes, may have significant effects on the features of interest of the SPA and the SPA/SAC due to increased recreational disturbance. The Appellant and the Council agree that to mitigate against such effects a financial contribution should be secured. The amount is reflected in the S106 for the Affordable Housing. A corresponding sum would be taken for the open market housing through the Community Infrastructure Levy (CIL).
46. The amount is determined by the Council by cross-referencing projected housing delivery with the estimated costs of the mitigatory projects set out in Table 26 of the South-East Devon European Sites Mitigation Strategy, and the annual indexation of that amount. The Council has a track record of delivering relevant mitigation as set out in the South East Devon Habitat Regulations Executive Committee 2024-25 Annual Business Plan and 5Yr Delivery Plan.
47. As such, the S106 and CIL together would provide a sufficiently robust mechanism to enable the delivery of proportionate and relevant mitigation pursuant to the Council's strategy for mitigating development which could affect the SPA and the SPA/SAC. It follows that the relevant obligation complies with CIL Regulation 122 in that it is necessary to make the development acceptable in planning terms, directly related to the development, and fairly and reasonably related in scale and kind.
48. I conclude my Appropriate Assessments that, with the provided mitigation, the proposal would not have an adverse effect on the integrity of the SPA and the

integrity of the SPA/SAC. In this respect, the proposal would accord with Policy CP16 of the CS, the provisions of the Habitats Regulations and the Framework.

Other Matters

49. The Habitats Regulations are also relevant insofar as the proposal would involve the demolition of buildings within the site that are currently used by bat for roosting, in addition to the development of land which is currently used for travel and foraging. Bat species identified are horseshoe, common pipistrelle, Soprano pipistrelle, Noctule, Myotis, Lesser horseshoe and Long-eared. All bat are listed as protected species by the Habitats Regulations. I have therefore considered the three derogation tests and the licencing regime.
50. Firstly, there are clear imperative reasons of overriding public interest to warrant granting planning permission. The site is allocated for significant development with considerable associated public benefits. Secondly, given that the site is allocated, and the buildings housing bat are spread across the site, derelict and not obvious candidates for any form of conversion, their retention is not a clear option. Lastly, given the proposed mitigation, granting the licence would not cause long-term impacts on the bat species concerned.
51. As the competent authority, I have considered the three tests in the context of the mitigation measures required and have no reason to doubt that a license would be issued. Adequate mitigation for the loss of habitat for other species found on site, including Badger, can be addressed through a Construction Environment Management Plan, a Landscape and Ecological Management Plan, and a tree and root protection plan, all of which can be secured with conditions.
52. As for the living conditions of future residents, it is not in the interest of the developer for the main street through the appeal site to have an excessive travel function to the detriment of the safety of future residents or their living conditions. I am comfortable that this can be addressed at the reserved matters stage. There is no substantiated evidence that the scheme would significantly affect broadband speeds within the Newcourt area. Privacy considerations could be adequately addressed in the detailed design of the scheme at the reserved matters stage. The same can be said for the integration of trees of requisite public amenity value into the development.
53. The appeal site is allocated for 350 dwellings in the emerging Exeter Plan. This plan is at early stage of preparation, such that it attracts little weight. Nonetheless, this takes nothing away from the weight carried by the site's allocation for development in the current development plan.

Planning Obligations

54. The Council has submitted a CIL Regulation Compliance Statement, which provides the rationale for each obligation, the justification for any specified contribution and the purpose to which any contribution would be put.
55. The agreement would provide for a policy compliant level of 35% Affordable Housing across the site. This includes a proportion of First Homes, but footnote 31 of the Framework states that the government's requirement to deliver a minimum of 25% of Affordable Housing as First Homes no longer applies. The Council's relevant policy, Policy CP7 of the CS, does allow for the tweaking of the type of Affordable Housing to be delivered on the grounds of feasibility.

56. As such, and pursuant to paragraph 3.3 of the S106, I consider that the change in government policy means that the First Homes obligation is no longer feasible. It does not meet the relevant CIL tests and should not bind the parties as it does not constitute a reason for granting permission. This would not change the overall proportion of Affordable Housing delivered by the scheme.
57. To adhere to Saved Policy DG5 of the Local Plan, 10% Public Open Space would be secured within the development. Contributions are necessary towards the cost of works to increase capacity at the Glasshouse Medical Centre or the Wonford Green Medical Centre. The NHS is satisfied that a commuted sum, rather than direct provision, is sufficient, and I have no reason to disagree.
58. Pedestrian and cycle links at the north of the site are necessary to meet Saved Policy T3 of the Local Plan's objectives for development to be laid out and linked to existing or proposed developments and facilities in ways that will maximise the use of sustainable modes of transport. Whilst not necessary in terms of highway safety or the highway network, I agree that a vehicular connection to the northeast boundary should be safeguarded in the interest of urban design and to maximise connectivity and permeability at Newcourt.
59. The sum Exeter City Council seeks to support the monitoring of and reporting on the planning obligations is supported by CIL Regulation 122 (2A). As for Devon County Council, the TRO is necessary to mitigate the long-term impacts of the development on the highway network, and so the contribution towards the TRO within the S106 passes the tests. Likewise, the Travel Plan obligation is necessary to meet the objectives of sustainable transport. Devon County Council finds that around 2% of the school population require specialist provision. Given such, the need for 2.78 specialist school places may arise through the development. As this capacity is not currently available within local secondary schools, this is reflected by the need for the SEN contribution.
60. Finally, a request was made by what is now the Royal Devon University Healthcare NHS Foundation Trust to provide support for acute healthcare services. However, no policy basis has been put to me for this contribution nor has it been explained why the need for it arises as a direct result of the scheme. There is no other evidence before me to support an obligation along these lines, such that its exclusion from the S106 appears appropriate.
61. I am therefore satisfied that the obligations contained within the S106, aside from where they relate to First Homes, are necessary, directly related, and fairly and reasonably related in scale and kind to the development. As such, using the 'blue pencil clause' it contains, I am able to take the S106 into account in reaching my decision.

Conditions

62. In addition to the standard conditions setting out the time limit for the commencement of development, identifying the reserved matters and time limits for subsequent reserved matters applications, a condition shall confirm the approved plans in the interest of certainty. To ensure that all parts of the development, including necessary infrastructure, are delivered in an appropriate order, a phasing plan shall be agreed with the Council prior to the submission of the first reserved matters application, with an updated phasing plan to be submitted with each reserved matters application thereafter.

63. In the interest of biodiversity and given the content of the aforementioned ecological evidence before me, a condition is necessary to secure mitigatory tree planting in relation to those which would be felled through the creation of the site accesses. To provide a suitable green frontage to the site's boundary with the A379, and to protect future residents from the noise from this highway, the condition would also secure details of a bund along the site's west boundary. A lighting strategy must be agreed in order to protect and adequately mitigate the effect of the development on bat.
64. To prevent flooding on and off site, a condition is essential to secure the detailed strategy for the management of surface water generated by the development during construction and after that. This must be a pre-commencement condition since it is essential that the proposed surface water drainage system is shown to be feasible before works begin. Similarly, to ensure that the TRO is secured and deliverable, a copy of it must be submitted and this must take place before development begins. The modelling indicates that the implementation of the TRO will reach a point of necessity, in the interest of the highway network, by the occupation of the 100th dwelling. No technical evidence has been submitted to challenge this trigger point.
65. Given the time likely to pass between phases, it is necessary for an Ecological Management and Enhancement Strategy to be agreed prior to the commencement of each development phase, and for mitigation and biodiversity enhancement recommended by the updated ecological work, to be undertaken.
66. To ensure the appropriate identification, recording and publication of any archaeological and historic remains discovered, a condition must provide for an agreed written scheme of investigation and recording prior to the beginning of development. In order to safeguard against potential contaminated land, site investigative work, together with any necessary remedial works, must be agreed before development begins. This is to be backed up by a condition securing additional work in the event unsuspected contamination is later found.
67. In the interest of public amenity and biodiversity, it is essential that an Arboricultural Method Statement and Tree Protection Plan is agreed with the Council prior to the commencement of development, and adhered to through the development. To protect nesting birds a condition will prevent inappropriate tree works and works to vegetation during the nesting season. In the interest of the living conditions of neighbouring residents, the highway network and highway safety, a Construction Method Statement must be agreed with the Council before construction work begins. A condition must also ensure that the Council has agreed a Waste Audit Statement in order to minimise the amount of waste produced and promote sustainable methods of waste management.
68. To protect the living conditions of future residents an updated Environmental Noise Assessment is required for each phase of the construction. In order to secure high quality design and adherence to local distinctiveness, a condition shall secure details of the finish materials for the housing. Biodiversity enhancement will be secured by a condition. In the same vein, external lighting shall have to be agreed with the Council prior to its installation on the site.
69. A condition will provide for the full construction of the access visibility splays as set out in the approved plans and ensure that they provide adequate ground clearance so as to maintain necessary visibility. This is to ensure safe site access. To meet policy requirements for the promotion of sustainable modes of

transport a condition will secure the delivery of cycle storage for each home. Likewise, a further condition is needed to secure adequate vehicle parking.

70. In the interest of the environment and urban design a condition shall secure details of and the provision of adequate refuse storage. To protect the safety and living conditions of future residents while the development is constructed, a phasing plan for the timings of the various highway works is required.
71. Whilst vehicle swept path analysis accompanying the appeal demonstrates that large vehicles can access the site, a condition is needed to ensure that the main street through the development is designed to accommodate buses. In the interest of sustainable transport, a condition will secure details of car clubs.
72. As I have found the proposed access arrangement to be acceptable, it would not pass the test of necessity for a condition to be imposed to prevent development until a road is built connecting it to the vacant spur at the 'IKEA roundabout'. As it would duplicate the Building Regulations, a condition is also not required to confirm the appropriate thermal performance of the dwellings.

Planning Balance

73. An alternative, viable proposal could come forward on the site which could instead have its principal access from the northeast. In theory this could result in a development with equivalent or enhanced benefits and perhaps a greater housing provision. Such a proposal could provide quicker and better access and would also likely be less disruptive for residents who rely on Old Rydon Lane.
74. That all said, the proposal which is before me in the here and the now would itself deliver significant socio-economic benefits and accords with the development plan when read as a whole. Given such, whilst a material consideration, the theoretical alternative scheme attracts limited weight. Given the limited weight I ascribe to the Newcourt Masterplan, it is also not a compelling consideration in favour of dismissing this appeal. The other considerations before me do not therefore indicate that I should make a decision other than in accordance with the development plan.

Conclusion

75. For the reasons outlined above, and taking into account all other matters raised, I conclude that the appeal should be allowed.

Matthew Jones

INSPECTOR

APPEARANCES

For the Appellant:	
Charles Banner KC, Counsel	Instructed by David Seaton, PCL Planning
Neil Thorne BSc (Hons) MSc MCIHT MTPS	Transport Planning Director, Rappor
Stuart Houlet BA(Hons) MA MRTPI	Associate Partner, PCL Planning
David Richardson	Partner and Head of Planning, Ashfords LLP
For the Council:	
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For the Rule 6 Party	
Peter Howard-Williams	Resident
Les Mosco	Resident
Interested parties:	
Brian Hopkisson	Resident

INQUIRY DOCUMENTS:

ID1	Agreed plans document
ID2	Appellant opening statement
ID3	Council opening statement
ID4	Council closing submissions
ID5	South East Devon Habitat Regulations Executive Committee 024-25 Annual Business Plan and 5Yr Delivery Plan

DOCUMENTS SUBMITTED AFTER THE INQUIRY:

ID6	Peter Howard-Williams opening statement
ID7	Peter Howard-Williams closing statement
ID8	Google journey time screenshots
ID9	Appellant's comments on updated Framework
1D10	Council's comments on updated Framework
1D11	Completed S106 Planning Agreement

SCHEDULE OF CONDITIONS

- 1) Details of the layout, scale, appearance and landscaping (hereinafter called the Reserved Matters) shall be submitted to and approved in writing by the Local Planning Authority before any development begins and the development shall be carried out as approved.
- 2) Application for the approval of the Reserved Matters shall be made to the Local Planning Authority before the expiration of five years from the date of this permission and the development hereby permitted must be begun not later than two years from the final approval of the last of the reserved matters to be approved.
- 3) The development hereby permitted shall be carried out on the land outlined in red on drawing number 200909 L 01 01 ('Location Plan') and shall not be carried out otherwise than in accordance with the plans listed below, unless modified by the other conditions of this consent:
 - A379 / Old Rydon Lane Junction Layout And Primary Street Site Access (47450/5505/SK06 Rev A)
 - Old Rydon Lane - Eastern Site Access With Downgraded Old Rydon Lane And Change of Priority With Primary Street (47450/5505/SK02 Rev B)
- 4) Prior to submission of the first Reserved Matters application a phasing plan which includes the proposed phases of development, approximate locations of the open space provision and approximate locations of the play facilities shall be submitted to and approved in writing by the Local Planning Authority. Each Reserved Matters application shall include an updated Phasing Plan based on the approved document.
- 5) The application(s) for approval of landscaping details for the relevant phase shall include:
 - a landscaped earth bund to mitigate the impact of noise generated by traffic on the A379 west of the site in accordance with the recommendations of the submitted Environmental Noise Assessment (AASW, September 2020).
 - replacement tree planting on the site to compensate for the loss of trees for access.
- 6) The application(s) for approval of the Reserved Matters for any phase shall include a Lighting Design Strategy for that phase that is designed to minimise light spill onto hedgerows and/or retained trees. The Strategy shall be supported by an evidence-based assessment of light levels of the development that identifies levels of predicted illuminance and light spill in relation to hedgerows and retained trees and how this will be managed in perpetuity. The Lighting Design Strategy shall be implemented and maintained as approved.
- 7) Prior to or as part of the first Reserved Matters application, the following information shall be submitted to and approved in writing by the Local Planning Authority:
 - a) Soakaway test results in accordance with BRE 365 and groundwater monitoring results in line with DCC groundwater monitoring policy.

- b) A detailed drainage design based upon the approved Sustainable Drainage Strategy and Level 2 Flood Risk Assessment 515-FRA2 V2 (dated 31 January 2022) and the results of the information submitted in relation to (a) above.
- c) Detailed proposals for the management of surface water and silt run-off from the site during construction of the development hereby permitted.
- d) Proposals for the adoption and maintenance of the permanent surface water drainage system.
- e) A plan indicating how exceedance flows will be safely managed at the site.
- f) Evidence there is agreement in principle from South West Water for the new connection into its system.

No building hereby permitted shall be occupied until the works have been approved and implemented in accordance with the details under (a) - (f).

- 8) Prior to the commencement of the development hereby approved, an application for a Traffic Regulation Order (TRO) to make Old Rydon Lane one way eastbound from the eastern access junction of the development hereby approved to Newcourt Way and prevent through traffic on Old Rydon Lane by the property 'Tropez', shall be submitted to the relevant Highway Authority and a copy submitted to the Local Planning Authority.

There shall be no occupation of the development beyond the one hundredth dwelling until the works secured by the TRO have been completed.

- 9) Prior to or as part of the first reserved matters an Ecological Mitigation and Enhancement Strategy (EMES) shall be submitted to and approved in writing by the Local Planning Authority. The EMES shall be prepared in accordance with BS 42020:2013 ('Biodiversity – Code of practice for planning and development'), or any superseding British Standard, and shall be informed by the submitted Ecological Impact Assessment SWE 209 version 2, dated 8 February 2022. The development shall be carried out in accordance with the approved EMES.
- 10) No development or vegetation clearance works shall take place in any approved phase of the development until a Construction and Environmental Management Plan (CEMP) for that phase has been submitted to and approved in writing by the Local Planning Authority. The CEMPs shall be prepared in accordance with clause 10 of BS 42020:2013 ('Biodiversity - Code of practice for planning and development'), or any superseding British Standard, and include the following:
 - Risk assessment of potentially damaging construction activities.
 - Identification of 'biodiversity protection zones'.
 - Mitigation Method Statements, in accordance with the recommendations of the approved Ecology Reports under condition 9.
 - Practical measures (both physical measures and sensitive working practices) to avoid or reduce impacts during construction.

- The location and timing of sensitive works to avoid harm to biodiversity features.
- The use of protective fences, exclusion barriers and warning signs.
- The times during construction when specialist ecologists need to be present on site to monitor works to ensure compliance with the CEMP, and the actions that will be undertaken.
- Responsible persons and lines of communication.
- The role and responsibilities on site of an ecological clerk of works or similarly competent person.

The approved CEMPs shall be adhered to and implemented throughout the construction period of the development strictly in accordance with the approved details.

- 11) Prior to the commencement of each phase of the development a written scheme of archaeological work for that phase shall be submitted to and approved in writing by the Local Planning Authority. This scheme shall include on-site work, and off-site work such as the analysis, publication, and archiving of results, together with a timetable for completion of each element. All works shall be carried out and completed in accordance with the approved scheme.
- 12) Prior to the commencement of each phase of development a full investigation of the site parcel subject to that phase shall take place to determine the extent of, and risk posed by, any contamination of the land and the results, together with any remedial works necessary, shall have been agreed in writing by the Local Planning Authority. The building(s) shall not be occupied until the approved remedial works have been implemented and a remediation statement submitted to the Local Planning Authority detailing what contamination has been found and how it has been dealt with together with confirmation that no unacceptable risks remain.
- 13) If contamination not previously identified is found to be present at the site then no further development (unless otherwise agreed in writing with the Local Planning Authority) shall be carried out until the developer has submitted, and obtained written approval from the Local Planning Authority for an amended investigation and risk assessment and, where necessary, a remediation strategy and verification plan detailing how this unsuspected contamination shall be dealt with.

Following completion of measures identified in the approved remediation strategy and verification plan and prior to occupation of any part of the approved development, a verification report demonstrating completion of the works set out in the approved remediation strategy and the effectiveness of the remediation shall be submitted to and approved, in writing, by the Local Planning Authority.

- 14) Prior to the commencement of each phase of development (including ground works) or vegetation clearance works in relation to that phase, an Arboricultural Method Statement and Tree Protection Plan for that phase shall be submitted to and approved in writing by the Local Planning Authority. This information shall be prepared in accordance with BS 5837:2012 ('Trees in

relation to design, demolition and construction'), or any superseding British Standard, and include details of tree/hedgerow protection fencing, which must be erected prior to the commencement of the development and retained until the completion of the development. No vehicles, plant or materials shall be driven or placed within the areas enclosed by the fences. The approved Arboricultural Method Statement and Tree Protection Plan shall be adhered to throughout the construction of the development.

15) No tree works or felling, cutting or removal of hedgerows or other vegetation clearance works shall be carried out on the site during the bird nesting season from March to September, inclusive. If this period cannot be avoided, these works shall not be carried out unless they are overseen by a suitably qualified ecologist and the reasons why have previously been submitted to and approved in writing by the Local Planning Authority, including the date of the intended works and the name and contact details of the ecologist. If nesting birds are found or suspected during the works, the works shall cease until the ecologist is satisfied that the nest sites have become inactive.

16) Prior to the commencement of development in any approved phase a Construction Method Statement for that phase shall be submitted to and approved in writing by the Local Planning Authority. The Statements shall provide for:

- Timetable of Works
- Construction vehicle numbers, size, type and routing.
- Access arrangements to the site, including details of any new access being created.
- Traffic management requirements.
- Construction and storage compounds (including areas designated for car parking, loading/unloading and turning areas).
- The erection and maintenance of securing hoarding, if appropriate.
- Siting and details of wheel washing facilities.
- Cleaning of site entrances, site tracks and the adjacent public highway.
- Provision of sufficient on-site parking and methods to promote car sharing to limit staff vehicles parking off-site.
- Post construction restoration/reinstatement of the working areas and temporary access to the public highway.
- Measures to control the emission of dust and dirt during construction.
- No burning on site during construction or site preparation works.
- Measures to minimise noise nuisance to neighbours from plant and machinery.
- Photographic evidence of the condition of adjacent public highway prior to commencement of any work;

- Hours of construction working hours and deliveries limited to 08:00 to 18:00 Monday to Friday, 08:00 to 13:00 on Saturdays and at no time on Sundays or Bank Holidays.

The approved Statements shall be strictly adhered to throughout the construction period of the phase of the development to which they relate.

- 17) Prior to the commencement of development in any approved phase, a Waste Audit Statement for that phase shall be submitted to and approved in writing by the Local Planning Authority. The development shall be carried out in accordance with the approved statements.
- 18) Prior to commencement of each phase of the development the applicant shall submit for approval in writing by the Local Planning Authority an Acoustic Design Statement demonstrating good acoustic design. Any mitigation measures shall be installed in full prior to first occupation of the relevant dwelling(s) and maintained at all times thereafter.
- 19) Prior to the construction of any dwelling hereby permitted (except the foundations), samples and/or product specification sheets of the external facing materials and roof materials of the dwelling(s) shall be submitted to and approved in writing by the Local Planning Authority. The dwelling(s) shall be constructed in accordance with the approved materials.
- 20) Prior to the construction of any dwelling hereby permitted (except the foundations), details of the provision for nesting birds and roosting bats in the built fabric of the dwellings shall be submitted to and approved in writing by the Local Planning Authority. The approved details shall be fully implemented as part of the development and retained thereafter.
- 21) No external lighting shall be installed as part of any phase of the development unless details of the lighting for that phase have been submitted to and approved in writing by the Local Planning Authority (including location, type and specification). The details shall demonstrate how the lighting has been designed to minimise impacts on local amenity and wildlife (including isoline drawings of lighting levels and mitigation if necessary). The lighting shall be installed in accordance with the approved details.
- 22) Prior to the first occupation of the development hereby permitted a phasing plan for delivery of site access(es) shall be submitted to and approved by the Local Planning Authority. The approved access and egress points for each phase as set out in the approved phasing plan shall be delivered prior to first occupation of any dwelling, with the remaining points delivered in accordance with the approved phasing plan details. The site access and visibility splays shall be constructed, laid out and maintained for that purpose in general accordance with approved drawings 47450/5505/SK06A, 47450/5505/SK02B and 47450/5505/SK01B where the visibility splays provide intervisibility between any points on the X and Y axes at a height of 0.6 metres above the adjacent carriageway level and the distance back from the nearer edge of the carriageway of the public highway (identified as X) shall be 2.4 metres and the visibility distances along the nearer edge of the carriageway of the public highway (identified as Y) shall be 43 metres in both directions.
- 23) No dwelling shall be occupied until cycle parking has been provided in accordance with details previously submitted to and approved in writing by

the Local Planning Authority. The parking shall be in general accordance with the minimum parking standards for residents in Table 2 of the Sustainable Transport SPD (March 2013) (or any subsequent adopted version) and be designed in accordance with the guidance contained therein. The cycle parking shall be maintained at all times thereafter.

- 24) No dwelling shall be occupied until the car parking for the dwelling and access thereto has been provided and made available for use. The car parking provided shall be in general accordance with the details set out in the Residential Design Guide SPD (adopted September 2010) (or any subsequent adopted version) (including number of spaces, access and size) and shall be maintained at all times thereafter and kept permanently available for the purpose of car parking.
- 25) No dwelling shall be occupied until refuse and recycling stores have been provided in accordance with details previously submitted to and approved in writing by the Local Planning Authority. The refuse/recycling stores shall remain in situ for their intended use at all times thereafter.
- 26) No phase of the development shall be occupied until a Travel Plan (including recommendations and arrangements for monitoring and review) for that phase has been submitted to and approved in writing by the Local Planning Authority. Thereafter the recommendations of the Travel Plan shall be implemented, monitored and reviewed in accordance with the approved document.
- 27) Prior to first occupation of any dwelling hereby approved a phasing plan for highway works shall be submitted in writing to, and approved by, the Local Planning Authority. This phasing plan shall set out delivery of all roads, footways, footpaths, drainage, statutory undertakers' mains and apparatus, junction, access, retaining wall and visibility splays. The works shall be completed in accordance with the approved timeframe unless otherwise approved in writing by the Local Planning Authority.
- 28) The primary vehicle highway connecting the approved access points to Old Rydon Lane shall be designed to be suitable for bus traffic movements.
- 29) No part of the development hereby approved shall be brought into its intended use until details of club car parking and club-bike stations, including delivery timescales, have been submitted to, and approved in writing by, the Local Planning Authority. The approved club car parking and club-bike stations shall be delivered in accordance with the approved timetable and retained at all times thereafter.
- 30) Prior to the commencement of the development hereby permitted a Landscape and Ecological Management Plan (LEMP) shall be submitted to and approved in writing by the local planning authority. The LEMP shall complement the Ecological Mitigation and Enhancement Strategy and shall include the following details:
 - a) a description and evaluation of features to be managed;
 - b) ecological trends and constraints on site that might influence management;
 - c) aims and objectives of management;

- d) appropriate management options for achieving aims and objectives;
- e) prescriptions for management actions;
- f) a work schedule (including an annual work plan capable of being rolled forward over a five-year period);
- g) identification of the body or organization responsible for implementation of the LEMP;
- h) ongoing monitoring and remedial measures; and
- i) the legal and funding mechanisms by which the long-term implementation of the LEMP will be secured with the management bodies responsible for its delivery.

The LEMP shall also set out how contingencies and/or remedial action will be identified, agreed and implemented so that the development still delivers the fully functioning biodiversity objectives of the originally approved scheme.

The development shall then be implemented and thereafter managed in accordance with the approved LEMP.