



Appeal Decision

Hearing held on 4 June 2025

Site visit made on 4 June 2025

by **S Leonard BA (Hons) BTP MRTPI**

an Inspector appointed by the Secretary of State

Decision date: 16 July 2025

Appeal Ref: APP/U1105/W/24/3356636

Land Between Meeting Lane and Strawberry Hill, Lympstone EX8 5DG

- The appeal is made under section 78 of the Town and Country Planning Act 1990 (as amended) against a refusal to grant planning permission.
 - The appeal is made by Mr Nick Yeo (3West Strawberry Hill Ltd) against the decision of East Devon District Council.
 - The application Ref is 23/1269/MFUL.
 - The development proposed is the construction of 42 residential units, affordable housing, new vehicular accesses from Meeting Lane and Strawberry Lane, pedestrian access onto Meeting Lane, associated internal roadways, SuDS features and landscaping.
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Decision

1. The appeal is allowed, and planning permission is granted for the construction of 42 residential units, affordable housing, new vehicular accesses from Meeting Lane and Strawberry Lane, pedestrian access onto Meeting Lane, associated internal roadways, SuDS features and landscaping at land between Meeting Lane and Strawberry Hill, Lympstone EX8 5DG in accordance with the terms of the application Ref 23/1269/MFUL, subject to the conditions listed at the end of this Decision.

Preliminary Matters

2. The description of development in the banner heading above is taken from the decision notice and the appeal form, since this more precisely describes the appeal scheme than that on the application form.
3. Following the refusal of the planning application and the submission of the appeal, a revised version of the *National Planning Policy Framework* (the Framework) was published on 12 December 2024. The main parties have had the opportunity to comment on the revised Framework, and I have taken it into account where relevant to my decision.
4. A signed and executed legal agreement pursuant to S106 of the Town and Country Planning Act 1990 dated 25 June 2025 (the legal agreement) was submitted after the Hearing. This contains obligations in respect of the provision of on-site affordable housing and public open space, the implementation of a Travel Plan, and financial contributions towards off-site affordable housing, habitat mitigation for the Pebblebed Heath Special Protection Area (SPA) and off-site highways works.
5. The legal agreement replaces an earlier version dated 12 June 2025, due to legal issues identified by the appellant in respect of an expired power of attorney. The

revised version does not alter the details of the aforesaid obligations. As such, my acceptance of the recent version does not prejudice any interested parties. I deal with the matter of the legal agreement later in my decision.

6. The Council, in advance of the Hearing, confirmed that it would not be defending its first reason for refusal. This is in part due to a change in circumstances in respect of the Council's housing land supply position, which at the time of the determination of the planning application, stood at 4.5 years in respect of the then required 4-year housing land supply. Following the December 2024 update to the Framework, the Council's housing land supply figure is now 2.97 years assessed against the now required 5-year housing land supply.
7. Moreover, since the refusal of the appeal scheme planning application, the Council has granted outline planning permission¹ (the May 2025 OPP) for the redevelopment of the appeal site with up to 42 dwellings including affordable housing and associated infrastructure. This is a material consideration in my determination of the appeal.
8. A review of the Council's Local Plan is currently underway. At the Hearing the Council confirmed that the Regulation 19 consultation period on the *Draft East Devon Local Plan 2020-2042* (the eLP) closed at the end of March 2025. Based on the limited information before me, including that the eLP is yet to be submitted for examination, I find that it is at such an early stage that, in general, I am unable to afford any more than very limited weight to its emerging policies.
9. The exception to the above is in respect of Draft Strategic Policy SD10 which relates to the proposed site allocations for Lymptone, in so far as this draft policy proposes the allocation of the appeal site for 42 new homes (Site Ref GD/ED/73). Notwithstanding that objections have been submitted in respect of this emerging policy, I afford it moderate weight because of the May 2025 OPP. I shall determine the appeal on this basis.
10. Notwithstanding paragraph 6 above, I have set out what I consider to be the main issues for this appeal based upon all the original reasons for refusal on the Council's decision notice. This is in the interests of fairness since interested parties have raised objections in respect of the principle of the residential redevelopment of the site.
11. The appeal site lies within the Zone of Influence of the Exe Estuary and Pebblebed Heaths European Protected Sites (EPS). Whilst not a matter in dispute, within the context of this appeal, the responsibility for assessing the effects of the proposal on the EPS falls to me as the competent authority. For this reason and having regard to my conclusion in respect of the merits of the appeal scheme, this matter warrants consideration as a main issue.
12. After the refusal of the planning application, a revised Proposed Site Layout drawing Ref PL102 revAC was submitted. This includes changes to the positioning of several of the dwellings in the north and eastern part of the development and the realignment of parts of the internal access roads and footpaths. The main parties confirmed that the amendments improve the relationship between the new built development and existing trees and hedgerows, but do not alter the Council's position in relation to its second reason for refusal.

¹ LPA Ref 24/0301/MOUT granted 19 May 2025

13. In considering whether or not to accept this drawing, which was not before the Council at the time that it made its decision, I have had regard to the 'Procedural Guide: Planning Appeals – England'², which advises that if an appeal is made the appeal process should not be used to evolve a scheme, and it is important that what is considered by the Inspector is essentially what was considered by the Local Planning Authority, and on which interested people's views were sought.
14. Whilst the revised drawing does not involve fundamental changes to the application scheme, it would result in minor changes to the positioning of new built development in relation to some neighbouring properties. Having regard to the tests in *Holborn Studios Ltd*³, and noting that a number of interested parties commented upon the planning application, who would not have been made aware of the revisions, in the interests of ensuring fairness to all parties, I have determined the appeal on the basis of the scheme that was before the Council at the time of determination. I have not considered the merits or otherwise of the aforesaid revised plan submitted with the appeal.

Main Issues

15. The main issues are:

- Whether the appeal site represents an appropriate location for the proposed housing, having regard to the relevant provisions of the development plan and the Framework;
- The effect of the proposal on the character and appearance of the area, having particular regard to the impact upon protected trees;
- Whether the proposal would make adequate provision for affordable housing, having particular regard to the proposed distribution of affordable housing within the development; and
- The effect of the proposal on the integrity of the Exe Estuary and Pebblebed Heaths European Protected Site (EPS).

Reasons

Whether or not an appropriate location for the housing development

16. Strategies 1 and 2 of the *East Devon Local Plan 2013 – 2031* (January 2016) (the Local Plan) set out a spatial strategy for the sustainable delivery of residential development within the district. The planned housing development is focussed on the major strategic growth area of West End and the 7 main towns within the district, with a much smaller proportion of housing being directed to the smaller towns and larger villages where it is suited to meeting local needs. The Built-Up Area Boundaries (BUABs) define the town and village settlement limits within which new development is permitted.
17. The appeal site comprises agricultural land which lies to the north of the village of Lypstone. The village is designated as a 'small town and larger village' incorporating a range of accessible services and facilities to meet the everyday

² Updated 16 April 2025

³ *Holborn Studios Ltd v The Council of the London Borough of Hackney* [2017] EWHC 2823

needs of local residents and having reasonable public transport links, in accordance with Local Plan Strategy 27.

18. Although abutting the village BUAB, the appeal site lies within open countryside for the purposes of the Council's settlement strategy, where Local Plan Strategy 7 does not usually permit new-build residential development, unless there are other local or neighbourhood plans which explicitly allow such development.
19. The site is not allocated for residential development through either the Local Plan or the *Lympstone Neighbourhood Plan 2017 – 2026* (Made March 2015) (the LNP). Moreover, the scheme is too large to fall within the exception site mixed affordable and open market housing schemes allowed outside of village BUABs under Local Plan Strategy 35, and the appellant has not sought to justify the proposal based on it requiring a rural location.
20. Having regard to the above, the appeal scheme would be clearly in conflict with the Council's spatial strategy for development due to the site location beyond the BUAB of Lympstone and the absence of any relevant and applicable residential 'exception' policy. The proposal would therefore be contrary to the aforesaid approach to the distribution of new residential development as embodied in Local Plan Strategies 1, 2, 7 and 27.
21. There would also be conflict with the strategy represented by the LNP, as the site is not allocated for residential development therein, and LNP Policy 3 seeks to restrict new development within the Coastal Preservation Area in the interests of retaining the rural identity of the community and resisting coalescence with Exmouth.
22. Accordingly, having regard to the relevant provisions of the development plan and the Framework, the site does not represent an appropriate location for the proposed housing.
23. Notwithstanding the above, the Council is currently unable to demonstrate a five-year supply of deliverable housing sites. Therefore, within the context of the presumption in favour of sustainable development, as set out in Paragraph 11 of the Framework, the most important policies for determining this appeal are deemed to be out-of-date.
24. I will consider the full implications of this housing land supply shortfall and the apportionments of weight to identified policy conflicts later in the Planning Balance section of my Decision.
25. The Council's first reason for refusal also refers to conflict with Local Plan Strategy 5B which requires new development to be located where it promotes and secures sustainable modes of travel and transport. The appeal site lies immediately adjacent to the settlement boundary of Lympstone and there are a number of community facilities and services that can be reached within a 15-minute walk from the appeal site. These include a primary school, convenience store, public house, medical surgery, church and village hall. The mainline railway station is within the same walking distance of the site, with routes including regular services to Exmouth and Paignton. Several bus stops are also within reasonable walking distance from the site with regular services to and from Exmouth.

26. With the above in mind, I find no conflict with the aforesaid objectives of Local Plan Strategy 5B.

Character and Appearance – Trees

27. The Council's second reason for refusal relates to potential future harm to protected trees arising from their proximity to some of the proposed dwellings thereby resulting in adverse impacts upon occupier living conditions and associated pressure to carry out tree works or tree felling to resolve these issues, which include garden shading, safety and nuisance concerns and inconvenience.
28. The decision notice does not identify precisely the trees in question, referring to the impact of the layout of development upon protected trees 'particularly along the south-western boundary'. The Council's appeal statement refers to the relationships between plot 19 and the Oak referred to as T11 in the appellant's supporting Arboricultural Impact Assessment, Tree Protection Plan and Arboricultural Method Statement⁴ (the Arboricultural Impact Assessment), plots 2 and 3 and Oak T17, plot 4 and Oak T8 and plot 20 and Ash T12.
29. However, the Council has not put forward detailed substantive evidence in respect of potentially harmful impacts upon Oaks T8 and T17 and Ash T12, and its appeal statement confirms that the most significant concern in relation to the appeal scheme and one which has not been addressed by the appellant, is in respect of the impact of the proposal upon Oak T11. Moreover, this was confirmed by the Council during the Hearing. Accordingly, I have dealt with this issue on the basis of the impact of the appeal scheme upon tree T11 alone.
30. Oak T11 is a mature single stemmed specimen which, notwithstanding some dead wood and a recent branch failure, is in a good condition. and has a height of approximately 18m. It has high visual amenity value and visual presence on the appeal site, due in part to its almost central position within the western half of the appeal site and its significant height of around 18m. Whilst the appellant's Arboricultural Impact Assessment has identified some veteran features, at the Hearing, both main parties agreed that tree T11 is not a veteran tree.
31. The tree is sited to the north of, and outside of, the proposed residential curtilages of plots 19 and 20. It has a crown spread of around 9.5 – 11m. As such, the tree crown would be sited around 3.5m from the rear wall of the dwelling on plot 19 and there would be a crown overhang of approximately 5.5m into the rear garden of that plot, affecting about one third of the garden area.
32. The house would be sited within 14.5m of the trunk of T11, which, the Council states, fails to accord with the minimum required distance of 16m within the *Leeds City Council Guideline Distances from Development to Trees* (2021). This document is not referred to in the Council's second reason for refusal, nor have I been provided with supporting information from the Council in respect of how the distance figure within the guidance has been derived and the extent to which it is particularly relevant to the specific circumstances of the appeal site. As such, I am not persuaded based on the evidence before me that this guidance is determinative to my decision.

⁴ Advanced Arboriculture V1.1 dated 2 October 2023

33. Moreover, whilst BS5837:2012 seeks to achieve a long-term compatible relationship between retained trees and new built development, it does not specify minimum distances between trees and dwellings. Neither does the Council have any adopted policy for such distances.
34. No tree works are needed to T11 to accommodate the appeal scheme, and the Council has not raised any objection in respect of the impact of the proposal on the tree's root system. The Council's concern is that the proximity of the tree to plot 19 would lead to future occupiers seeking to undertake tree works to alleviate issues including shading impacts adversely affecting the enjoyment of the garden, safety concerns and nuisance from debris falls.
35. The Council is concerned about such works further adding to the incremental tree and hedge removal that has either already occurred on the site or has been considered acceptable as part of the appeal scheme, thereby resulting in further tree erosion to the detriment of the character of the site and visual amenity.
36. T11 comprises one of only a small number of larger trees of this size on the appeal site and, as such, it makes a noteworthy positive contribution to the character and appearance of the appeal site. It would be protected during construction by means of tree protection measures to be ensured through a planning condition. Whilst the Council's concerns are acknowledged, in this instance, the tree in question lies outside of the proposed private residential curtilage and within the proposed area of landscaped public open space whose future management and maintenance would be secured through the submitted legal agreement.
37. Moreover, the tree would be afforded a high degree of future protection by virtue of being protected by a TPO so that future proposed tree works would require consent from the Council and are therefore reasonably capable of being controlled, even considering that there may be repeated tree work applications and possible future increases in crown density resulting from any approved pruning works.
38. Moreover, any future purchaser of plot 19 in carrying out due diligence, would reasonably be expected to be aware of the presence of T11 and its protected status prior to purchasing the property, and may positively choose to live close to a mature tree.
39. Less than 50% of the rear garden of plot 19 would be affected by shading under the tree canopy and this would be limited to early morning shading which would affect the part of the garden furthest away from the dwelling. This would reasonably be expected to be the least-used area of the garden. This view is supported by the proposed dwelling layout and rear elevation fenestration which include two pairs of double doors leading directly off the kitchen/dining room and lounge onto an outside patio area adjacent to the rear wall of the house which would comprise the main outdoor living area. This area would not lie within the tree canopy spread area and would not experience tree shadow impacts.
40. The juxtaposition of the tree in relation to plot 19 is such that it would not result in direct shade being cast into the house, which, notwithstanding this, has been designed with a generous amount of fenestration on the rear elevation in order to maximise daylight penetration into the building. Also, the appellant has

confirmed that the BS5837 shade arcs would not fall onto the garden and would only affect the open space to the north. This has not been disputed by the Council.

41. Moreover, the combined height of the tree crown and its density enable good daylight penetration both from above and from the sides. This, together with the daily hours of direct sunlight which would be unaffected by the tree would result in the garden receiving levels of daylight and sunlight which would, notwithstanding some likely late afternoon shading of the garden due to the proposed buildings on plots 18 and 19, be entirely reasonable for the occupiers of the property, without necessitating works to reduce the canopy spread of tree T11.
42. I have considered the potential for future pressure for tree works as a result of safety and nuisance impacts arising from branch and debris fall from tree T11 onto plot 19. The tree canopy would only partially cover the rear garden of the property, would be sited away from the dwelling itself, and would not be directly overhead of any designated parking or outdoor amenity area on the proposed plot layout.
43. Moreover, dealing with matters such as leaf and acorn fall and bird droppings within the garden associated with the tree would reasonably comprise a normal part of garden maintenance where trees are present. Future control over the management of the tree would mitigate against the potential for debris or branch fall as a result of decay.
44. With all of the above in mind, and given that the tree would fall under the overall management regime for the landscaped public open space and TPO controls, I am satisfied that these matters would not directly and alone result in tree works that would be unduly harmful to the tree.
45. There is a difference of opinion between the main parties as to the potential likely future growth of tree T11. The appellant's view is that, notwithstanding an expected remaining life expectancy of over 40 years, the tree has reached its mature canopy size and that future growth will be small. The Council suggests that the tree has the potential to grow significantly in size in the future and cites examples of nearby 25m high Oaks, thereby potentially exacerbating the impact of the appeal scheme upon the tree.
46. However, I have not been provided with cogent evidence that the location and growing conditions of the larger Oaks within the locality of the appeal site are similar to the future growing conditions of tree T11, and I have noted the appellant's view that it is unusual for Oak canopies to extend beyond 12m in normal circumstances. Accordingly, in the absence of substantive evidence in respect of the future growth of T11, my determination of this appeal is based upon the reasonably likely impacts of the appeal scheme on the tree as it currently exists. In so doing, I have taken account that the tree is already a mature specimen and that the initial canopy overhang into the garden of no.19 would take up less than half of the garden area, so that a large amount of future canopy growth would be required in order to cover the whole garden.
47. The Council states that appeals elsewhere for tree works in similar circumstances

to those of tree T11 have been allowed. However, I only have a specific reference for one such appeal⁵ and on the basis of the evidence before me, this is not directly comparable to the appeal scheme in respect of matters including the species of tree, its juxtaposition in relation to the dwelling and garden and the amount of canopy spread over the garden. For these reasons, I am unable to afford significant weight to this decision in my determination of this appeal.

48. For the above reasons, I therefore conclude that the proposal would not materially harm the character and appearance of the area, having particular regard to the impact upon protected trees. As such, the proposal would accord with Local Plan Policies D1 and D3, in so much as these policies seek to ensure that new development is of a high-quality design and is locally distinctive by, amongst other things, not adversely affecting trees worthy of retention and by ensuring that the development delivers a harmonious and sustainable relationship between structures and trees, taking into account the recommendations of BS5837:2012.
49. The Council has drawn my attention to works to trees and hedgerows that have previously taken place on the appeal site. The information before me is that these works were carried out prior to the TPO⁶ being made and that they were not undertaken by the appellant. There is no substantive evidence before me to connect these works to the current appeal scheme. As such, they do not alter my conclusion above on this main issue.

Affordable Housing

50. The Council has confirmed that there is a critical need for affordable housing within the district and that there are 5857 households on the East Devon district-wide waiting list. The proposed affordable housing is therefore necessary to help address the housing needs of the district and is a material consideration upon which I place substantial weight.
51. The Section 106 planning obligation would secure 35% of the development as affordable housing comprising 10 social rented or affordable rented dwellings and 4 affordable shared ownership dwellings. It would also secure a 15% off-site affordable housing contribution (£292,925) thereby amounting to a 50% combined affordable housing percentage.
52. At the Hearing, both main parties confirmed that, whilst Local Plan Strategy 34 requires the affordable housing to be provided on site, there is no dispute between the main parties in respect of the proposed percentage of on-site affordable housing, the size and tenure of these dwellings, and the amount of financial contribution towards the provision of off-site affordable housing.
53. However, Strategy 34 also states that the on-site affordable housing should be 'pepper-potted' or dispersed throughout the development scheme. The Council's concern is that by clustering the affordable housing units in the southwestern part of the site rather than spreading the dwellings more widely throughout the development, the affordable housing would be segregated from much of the market housing contrary to achieving social cohesion and a mixed and balanced community.

⁵ Appeal Ref: APP/TPO/U1105/8517

⁶ TPO Ref: 23/0022/TPO - 28 November 2023

54. The Council considers that the alleged social division would be reinforced by the proposal not meeting the objectives of its Affordable Housing SPD⁷ of ensuring that new homes and streets are “tenure-blind,” so that market and affordable dwellings are not distinguished from each other in terms of, amongst other things, their design and site location.
55. In this respect the Council considers that due to their location grouped together in the southwest part of the site where mature landscaping and trees limit the area in which to site the new built development, and having regard to being conspicuously smaller than the dwellings in the main part of the site, the affordable housing units would appear congested and incongruous within the overall housing development and therefore clearly identified as affordable housing. In the Council’s view, this would reinforce a social division between the affordable and open market housing.
56. The proposal comprises two separate elements of housing development to the west and north of the housing at Gulliford Close. Both areas include 3-bed semi-detached houses but a different preponderance of the remaining unit sizes. The housing to the north of Gulliford Close and east of the proposed landscaped public open space includes a number of large detached 4- and 5-bed dwellings as well as 3-bed detached dormer bungalows. These dwellings are generally set within larger more spacious plots than those of the smaller housing units within the development.
57. Apart from a single detached 4-bed dwelling, the housing in the southwestern part of the development, south of the proposed landscaped area of public open space, contains a number of 1 and 2-bed dwellings in addition to 3- bed houses. As such, it has a higher overall density of built development.
58. All of the proposed affordable housing would be located in the latter part of the development and would comprise 4 x 1 bed, 5 x 2 bed and 5 x 3 bed dwellings including a mix of flats and semi-detached houses. There would also be some open market 3 and 4 bed roomed detached houses adjacent to and directly opposite proposed affordable housing.
59. Whilst the affordable units would include more 1 and 2 bed units than those associated with the open market housing of the development, the Council has confirmed that there is a need for this size of affordable housing within the district.
60. As such, these smaller units respond to an identified housing need and would reasonably be expected to have smaller private gardens than the larger 3, 4 and 5 bed dwellings. I do not consider the proposed plot sizes to be unduly small, nor the proposed layout of the affordable units to give rise to an unduly cramped and discordant appearance within the context of the overall development which comprises a mix of dwelling and plot sizes.
61. Moreover, having regard to the appearance of the buildings and their materials and design quality, I find no distinguishable difference between the affordable and market dwellings. In these respects, I consider the affordable units to achieve the “tenure-blind” requirements of the Affordable Housing SPD.
62. The affordable housing would comprise small groups of housing units which would be separated from each other by the intervening road turning head and interspersed open market units. The Affordable Housing SPD (paragraphs 5.4 –

⁷ East Devon Affordable Housing Supplementary Planning Document (November 2020)

5.7) sets out the Council's requirements for pepper-potting affordable housing units⁸. When applied to the southwestern part of the development alone, the proposed positioning of the affordable units would meet these stipulations.

63. With this in mind and noting that the proposed affordable houses would not be of a discernibly lower quality outward appearance, build quality or materials than those of the market housing, I find that, within the southwestern part of the development, there would be no obvious visual distinction between the affordable housing and market elements of the scheme.
64. Notwithstanding this, no affordable housing units are proposed within the northeast part of the development, which would comprise a lower density of development with a greater preponderance of larger properties set within bigger plots than those which typify the southwestern part of the site. As such, I find that the proposed layout would not achieve a high level of integration of affordable housing within the development as a whole. This would be in clear conflict with Local Plan Strategy 34 in so much as this policy requires the affordable housing to be dispersed throughout the scheme.
65. I accept that the grouping of affordable units into blocks offers future management and maintenance benefits for the Registered Providers and that the appellant has provided evidence⁹ of support for the proposed affordable housing arrangement from a number of Registered Providers. However, there is no cogent evidence before me that the inclusion of some affordable housing within the northeast part of the development would not be acceptable to Registered Providers.
66. Moreover, having regard to the proposed design quality and materials of the affordable units, there appears to be no reason why the affordable units could not be dispersed throughout the development without materially harming the character and appearance of the area. Nor has any cogent viability evidence been put forward by the appellant to justify the approach taken.
67. For the above reasons, I therefore conclude that the proposal would not make adequate provision for affordable housing, having particular regard to the proposed distribution of affordable housing within the development. As such, the development would be contrary to Local Plan Strategy 34 and the Affordable Housing SPD in so much as this policy and guidance aim to ensure social cohesion by, amongst other things, the dispersal of affordable housing throughout the scheme.
68. This accords with the Framework objective in relation to the provision of affordable housing of creating mixed and balanced communities (Paragraph 64).

EPS

69. The site lies within a 10 km zone of influence (ZOI) of the Exe Estuary SPA and Ramsar site and the East Devon Pebblebed Heaths SAC and SPA site which are of international importance. The Conservation of Habitats and Species Regulations 2017 (as amended) (the Habitat Regulations) require that where a project is likely to result in a significant effect on an EPS (either alone or in combination with other plans or projects), the competent authority is required to carry out an Appropriate

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⁹Affordable Housing Report – CJH Land (23 September 2024)

Assessment (AA) of the project's implications in view of the relevant site's conservation objectives. For the purposes of this appeal, I am the competent authority.

70. The Exe Estuary SPA is designated for its internationally important populations of birds, including overwintering populations of migratory species. The Pebblebed Heaths designations recognise the wet and dry heathland vegetation that supports a diversity of species and associated communities that include rare insects and birds. A threat to the integrity of the estuary and heaths is public access and recreational activities associated with additional development. The proposed net increase in dwellings would support an increase in population likely to utilise the EPS for recreational purposes, with the potential for degradation and disturbance to the habitat sites and species during occupation. Potential significant in-combination effects on the integrity of the EPS cannot therefore be excluded.
71. The Council's strategy for the mitigation of recreational disturbance is set out within the *South-East Devon European Site Mitigation Strategy* (2014) (the SMS) which was produced by several local Council's in cooperation with Natural England, the relevant statutory nature conservation body. This represents a costed strategic approach to mitigating recreational impacts, which in conjunction with monies collected from CIL (Capital Habitat Mitigations) contributes towards non-infrastructure habitat mitigations (including on-site wardens and management of sites, information and education initiatives and on-going monitoring, and the provision of off-site Suitable Alternative Natural Green Space (SANGS). A per new residential unit tariff is operational and has been updated to reflect costs from 1 March 2021.
72. The required Habitat Mitigation Contribution of £367.62 per dwelling, as detailed within the SMS would be secured from the proposed development through the completed legal agreement. The Council has no record of carrying out an AA nor of receiving a consultation response from Natural England in respect of the planning application or the appeal. However, after the Hearing, the Council subsequently confirmed that Natural England responded to the Council's consultation in respect of the May 2025 OPP. In this instance Natural England advised that the specific measures (including financial contributions) identified in the SMS can prevent harmful effects from increased recreational pressure on the EPS within the ZOI and that if these measures are implemented, they will be effective and sufficiently certain to prevent an adverse impact on the integrity of the EPS within the ZOI for the duration of the proposed development.
73. Given the recent date of the aforesaid Natural England consultation response to a planning application in respect of the same number of dwellings as the appeal scheme, and noting that the SMS was devised in conjunction with Natural England, I am satisfied that this represents proportionate mitigation that would be delivered in an expedient manner in the event planning permission be granted. I am therefore satisfied that this passes the Regulation 122 tests. This enables me to conclude that the development would not have an adverse effect on the integrity of the EPS because of recreational impacts.
74. The appeal scheme would therefore accord with Local Plan Strategy 47 in so much as this policy seeks to ensure that the integrity of Internationally designated sites is maintained and that appropriate mitigation measures are provided. This accords with paragraphs 192 and 193 of the Framework.

Other Matters

Heritage

75. In considering whether to grant planning permission for development which affects a listed building or its setting, Section 66(1) of the Planning (Listed Buildings and Conservation Areas) Act 1990 requires that special regard be had to the desirability of preserving the building or its setting or any features of special architectural or historic interest which it possesses.
76. There are 4 Grade II listed buildings located within the vicinity of the appeal site comprising Gulliford Meeting Burial Ground, Boundary Cottage and Gulliford Cottages to the northeast and Thorn Farmhouse to the southeast. Whilst the Council has raised no concern in respect of impacts upon heritage assets, I have a statutory duty to consider the effect of the proposal on the settings of these designated heritage assets given their proximity to the appeal site.
77. The random rubble limestone and brick perimeter wall and 3 notable tomb chests (Jervis, Lee and Stogdon) amongst many other tombstones of varying states of decay within the Gulliford Meeting Burial Ground are listed. Their significance and special interest derive largely from their historic value comprising part of a non-conformist burial ground founded shortly after the passing of the Act of Uniformity in 1685 and attached to the now demolished Gulliford Chapel. These heritage assets have an intimate contained roadside setting which is in part contained by neighbouring woodland and residential properties. The latter separate the site from the proposed appeal site development. As such, the proposal would not materially impact upon the setting and significance of these heritage assets.
78. Boundary Cottage lies on the west side of Exmouth Road, to the northeast of the burial ground and is a detached 2-storey cottage possibly dating back to the 17th century with roughcast cob walls under a hipped thatched roof and incorporating later 20th century additions and alterations. Its significance is derived from its age, architectural form and historic fabric. Its principal front elevation faces southwards towards its garden which is well-screened by trees and Devon bank hedging. The boundary treatment, together with intervening built development and further mature boundary vegetation on other land to the southwest of the building, mean that the appeal proposal would not materially impact upon the setting and significance of this cottage.
79. Gulliford Cottages comprise a 2-storey building occupied by 3 dwellings located on the west side of Exmouth Road to the north of Boundary Cottage. The roughcast cob building with a gable-ended slate pitched roof originally comprised a single dwelling dating back to 1743 which has had subsequent 19th and 20th century extensions and alterations. The building's significance is derived from its age, architectural form and historic fabric. The property is sited a greater distance away from the appeal site than Boundary Cottage with more intervening structures and boundary screening, including Boundary Cottage and other dwellings on the west side of Exmouth Road, between it and the appeal site. As such, there would be no intervisibility between the property and the appeal site and the appeal scheme would not materially impact upon the setting and significance of the building.
80. Having regard to the above, I am satisfied based on the evidence before me, which includes the appellant's submitted Historic Environment Impact Assessment, and my site visit, that the significance of the heritage assets of Gulliford Meeting Burial

Ground, Boundary Cottage and Gulliford Cottages would not be adversely affected by the appeal scheme.

81. Thorn Farmhouse lies on the east side of Exmouth Road and comprises a 2-storey roughcast cob walled dwelling with a gable-ended pantiled roof. It dates back to the 17th Century, with later additions, including a rear wing and several high chimney stacks. The dwelling fronts the road facing westwards towards a large area of grazing land between Strawberry Hill and Exmouth Road, with the appeal site located beyond this to the northwest of the farmhouse.
82. The significance and special interest of the farmhouse as a designated heritage asset derives in part from its age, architectural form, historic fabric and relevance to the historic evolution and rural history of the local area. The building has retained a continued legibility as the principal structure of a farmstead complex of agricultural buildings including barns which lie adjacent. The wider setting of the building includes surrounding farmland associated with Thorn Farm on the same side of the road, as well as grazing fields on the opposite side of the road which separate it from the appeal site. As such, the openness and rural character of the setting of the listed building would be retained as would the agricultural significance of the building's setting. Whilst the appeal scheme would result in some agricultural land loss, the notable distance between the proposed housing and the listed building, together with boundary tree and hedge screening and rising land levels on the intervening agricultural land would mean that the development would only be glimpsed in views from Thorn Farmhouse and there would be only a small reduction in the historical significance of the setting of the listed farmhouse.
83. For the above reasons, I find that there would be a very low level of harm to the heritage significance of Thorne Farmhouse by virtue of a large amount of new built development being brought forward within the wider rural setting of this listed building.
84. This would amount to an identifiable conflict with Local Plan Strategy 49 in so much as this policy requires the historic environment of the district to be conserved and enhanced. Having regard to the Framework, I consider the harm to the significance of the heritage asset to amount to 'less than substantial', which, according to paragraph 215 should be weighed up against the public benefits of the proposal. I return to this later under the Heritage Balance section of my decision.

Third parties

85. I acknowledge the third-party concerns in respect of highway safety and traffic congestion. These include impacts arising from additional traffic on the local road network, including on the narrow Meeting Lane and Strawberry Hill which have no pedestrian footpaths, on the busy junctions of Meeting Lane with the A376 and at the Saddlers Inn, and through the village. Concerns have also been raised about the safety of the new vehicular accesses onto Meeting Lane and Strawberry Hill and the adequacy of the proposed on-site parking.
86. The appellant has submitted a Transport Statement which confirms that the proposed vehicular accesses would satisfy MfS geometric and visibility requirements. The Council has not identified any conflict with its adopted car parking standards, and the proposed on-site parking would be secured and maintained via a planning condition.

87. The Transport Statement also includes an assessment of trip generation associated with the appeal scheme using the TRICS database which demonstrates that the proposal would result in a minor uplift in vehicle movements during the peak network hours and when assigned to the local road network there would be no materially harmful impacts upon the operation of the road network.
88. Mitigation of highway safety impacts associated with construction traffic would be addressed through the requirements of a Construction Method Statement, the implementation of which would be secured by a planning condition.
89. Noting interested party concerns about the safety of the Harefield Cross junction, the S106 legal agreement would secure a financial contribution towards highway improvements to the junction of the A376 with Meeting Lane.
90. Moreover, the appellant has submitted a Travel Plan to enable the provision of measures to encourage travel by means other than the private car, the implementation of which would be secured through the submitted S106 legal agreement.
91. With the above in mind, noting that the site lies immediately north of the village built up area boundary, and having regard to my own observations in respect of the village services and facilities and public transport connections during my site visit, I find that, notwithstanding third party concerns in this regard, there is satisfactory access to facilities and services by means other than by car. This includes bus stops which are readily accessible from the appeal site serving reasonably regular services to and from Exmouth and a rail station in the village serving a route between Exmouth and Paignton and including Exeter. The proposal would provide pedestrian links to connect into the existing pedestrian routes into the village and the facilities and services therein.
92. As such, I am satisfied that, subject to appropriately worded conditions and the transport related obligations of the S106 legal agreement, there would be no material harm to highway safety. In coming to this view, I have noted that the Highway Authority has raised no objection to the proposal on this basis. This is significant since the Highway Authority is responsible for the safety of users of the local highway network.
93. I have noted third party concerns regarding potential harm to ecology and biodiversity. The site currently comprises grassed agricultural land with trees and hedging around its boundaries and along field boundaries within the site. There would be some loss of frontage hedging to accommodate the proposed new vehicular accesses and some trees would be removed. However, having regard to the appellant's supporting information which includes an Ecological Impact Assessment, protected species surveys and proposed Planting Plans, I am satisfied that there would be no significant loss of particularly valuable features, and that protected species could be safeguarded through the implementation of appropriate measures.
94. The development would incorporate a large area of soft-landscaped open space as well as the retention of significant trees and the introduction of new soft landscaping. Moreover, the appellant has demonstrated that the development would result in a net gain in biodiversity. Accordingly, subject to conditions including those to secure the submission and implementation of a Construction Ecological Management Plan (CEcMP), a Landscape and Ecology Management Plan (LEMP)

and a Biodiversity Management Plan (BMP), appropriate tree and hedge protection measures and suitable lighting, I am satisfied that there would be no unduly harmful impact upon biodiversity and ecological interests.

95. I have taken account of third-party objections in respect of impacts on neighbouring living conditions. I am satisfied that material harm would not arise in respect of these impacts, having regard to the design of the appeal scheme and the juxtaposition and separation distances between the proposed development and neighbouring properties. This is subject to a condition ensuring controls during the construction process.
96. I acknowledge third-party concerns in respect of drainage, including surface water flooding onto land beyond the appeal site and foul drainage capacity. The appellant has provided a Flood Risk Assessment (FRA) including a surface water strategy. The FRA confirms that the site lies within the Environment Agency Flood Zone 1 and as such is at a low risk of fluvial flooding. Due to ground conditions being inappropriate for the use of soakaways, an on-site pond detention basin is proposed, with either attenuated discharge to an on-site surface water ditch or pumped surface water runoff to the existing adopted surface water network. The former would potentially address confirmation from the statutory water Undertaker, South West Water Limited (SWWL) that no surface water from the development would be accepted into the Undertaker's public sewer system.
97. Foul water would be dealt with by means of an on-site pumping station to pump water to the closest available public sewer in Glebelands. SWWL has confirmed that the existing sewerage infrastructure has capacity to accommodate foul flows from the site.
98. Based on the evidence submitted, and in the absence of an in-principle objection from the Lead Local Flood Authority (LLFA), I am satisfied that suitable assurances have been provided to demonstrate that, subject to appropriate pre-commencement planning conditions, the appeal scheme would be acceptable having regard to flood risk/drainage. The conditions include a requirement to incorporate water efficiency measures into the development in light of SWWL's evidence of potential issues in the area associated with increased water demand arising from new residential developments.
99. In response to interested party concerns about the design of the development being inappropriate within the locality, on the basis of the evidence before me and my site visit observations, I have no reason to disagree with the Council's view that the density and design of the appeal scheme is appropriate having regard to neighbouring built residential development, and subject to conditions to ensure appropriate design details, including materials and landscaping.
100. I have noted third party concerns that other community facilities, including a local school and doctor's surgery, have inadequate capacity to accommodate occupiers of the proposal. There is no substantive evidence before me to demonstrate why this matter should not be dealt with separately through any required Council Community Infrastructure Levy (CIL) payments. Moreover, it is the Council's view that contributions towards these items of infrastructure as requested by the Local Education Authority and NHS Devon would fail the statutory tests for a planning obligation.

101. Notwithstanding that third parties have compared the proposed layout of development with that of the May 2025 OPP, my decision must be based solely on the merits of the appeal scheme before me.

Legal Agreement

102. The Section 106 planning obligation would secure 35% of the development as affordable housing comprising a mix of social rented or affordable rented dwellings and affordable shared ownership units, the tenure of which broadly accords with that sought by Local Plan Strategy 34, as well as providing the details and processes for its delivery. It would also secure a contribution of £292,925 towards the provision of off-site affordable housing. The Council has confirmed that this figure has been calculated in accordance with its adopted affordable housing commuted sum calculator.

103. Local Plan Strategy 34 requires 50% on-site affordable housing in rural areas which include the appeal site. In this instance, the Council's Housing Strategy/Enabling Officer has accepted the proposed lower percentage of on-site affordable housing provision without requiring a viability appraisal from the appellant to justify this figure. This is because of viability constraints associated with the current economic climate and associated high interest rates, and acknowledging the significant social and economic benefits to the district as a result of the proposed on and off-site affordable housing provision. I have no cogent evidence to dispute the Council's stance on this matter. Moreover, the off-site affordable housing contribution would equate to the remaining 15%, so that there would be a blended policy compliant percentage of affordable housing.

104. The Planning Obligation would also provide for on-site Public Open Space which would be available for use by future residents of the development. The landscaping thereof, and future management and maintenance in perpetuity by either the Parish Council or an appointed Management Company would also be secured. This reflects the objectives of Local Plan Strategy 43.

105. The legal agreement would also secure a financial contribution of £14,000 towards off-site highways works to improve the A376/Meeting Lane junction. This is reasonably required in compliance with Local Plan Policy TC7 which seeks to ensure that the road network is operated safely, having regard to the additional traffic generated by the proposed new access off Meeting Lane.

106. The Planning Obligation requirements for the implementation of an approved Travel Plan and the payment of a Travel Plan Voucher Contribution of £200 per new dwelling are reasonably required in accordance with Local Plan Strategy 5B and Policy TC2.

107. I have already set out why I consider the Habitat Mitigation Contribution contained within the Planning Obligation to be necessary to mitigate the impacts on the EPS.

108. I am satisfied on the evidence before me, which includes a CIL Compliance Statement by the Council setting out the development plan policies relevant to the obligations, that the planning obligations contained within the Section 106 Agreement would meet the three tests set out in Paragraph 58 of the Framework and Regulation 122(2) of the Community Infrastructure Levy Regulations 2010. They would all be necessary to make the development acceptable in planning terms, directly related to the development, and fairly and reasonably related in

scale and kind to it. I am also satisfied that the monitoring fee secured would be proportionate and reflect the actual costs of monitoring.

Heritage Balance

109. I have identified that the appeal scheme would cause less than substantial harm to the significance of Thorne Farmhouse through development within its setting. In this respect, it is noteworthy that even less than substantial harm to a designated heritage asset carries considerable importance and great weight.
110. In terms of public benefits, the proposal would provide 42 additional housing units within a local authority area where the agreed housing land supply position is a 2.97 year-supply. This represents a substantial shortfall when compared to the minimum five-year supply threshold that applies and is endorsed by the Framework. In these circumstances, the additional dwellings would make a meaningful and important contribution to the supply deficit. This attracts significant weight as a public benefit.
111. Moreover, the delivery of 35% of the new dwellings as affordable homes as part of the housing mix, together with an off-site financial contribution equating to 15% would promote the delivery of distinct social benefits and respond to authority-wide levels of currently unmet and identified future need. This is also a benefit upon which I place significant weight.
112. There would also be economic benefits because of the creation of jobs during the construction phase and increased household spending in the area once the dwellings are occupied. Having regard to the number of new dwellings, I apportion considerable weight to these economic benefits.
113. Moreover, there would be social benefits from the development arising from the provision of public open space and a contribution towards off-site highways works to improve the A376/Meeting Lane junction. Taken together, these benefits attract considerable weight.
114. A net gain in biodiversity is also proposed as part of the development. This also attracts considerable weight.
115. Cumulatively the public benefits associated with the appeal scheme would be very significant and would attract substantial weight. In my judgement, such benefits would outweigh the less than substantial harm that I have separately identified would be caused to the heritage significance of Thorne Farmhouse.
116. As such, the appeal scheme would comply with the historic environment conservation and enhancement policies of the Framework in so much as they provide the opportunity for any less than substantial harm identified to a designated heritage asset to be outweighed by the public benefits of a development proposal.

Overall Planning Balance

117. As the Council cannot currently demonstrate a five-year supply of deliverable housing sites, and the policies of the Framework that protect areas or assets of particular importance do not provide a strong reason for refusing the development proposed, the presumption in favour of sustainable development is engaged.

118. For decision-making, the engagement of the presumption in favour of sustainable development means that planning permission should be granted unless any adverse impacts of doing so would significantly and demonstrably outweigh the benefits, when assessed against the policies of the Framework taken as a whole, having particular regard to key policies for directing development to sustainable locations, making effective use of land, securing well-designed places and providing affordable homes, individually or in combination.
119. I have identified conflict with the Council's spatial strategy as set out in the Local Plan and the LNP, due to the location of the site beyond Lymington's defined limits of development. The restrictions on housing development resulting from the Council's relevant housing delivery policies, namely Local Plan Strategies 1, 2, 7 and 27 have prejudiced the ability to demonstrate a satisfactory supply of deliverable housing sites. This limits the weight I attach to the scheme's identifiable conflicts with the Council's spatial strategy and the LNP.
120. I have found no conflict with Local Plan Strategy 5B in respect of the accessibility of the appeal site, and the eLP indicates an intention to allocate the site for a similar amount of housing as the appeal scheme. Moreover, the May 2025 OPP is a material consideration to which I attach significant weight.
121. Within the context of all of the above, I attach very limited weight to the scheme's identifiable conflicts with the Council's adopted spatial strategy and the LNP.
122. I have also identified conflict with Local Plan Strategy 34 (Affordable Housing). The harm I have identified is low as it is restricted to the extent of the proposed dispersal of affordable housing throughout the development, specifically in respect to the northeastern part of the scheme. In other respects, including the amount, tenure, mix and design of the affordable housing, I have found no harm. Moreover, there is no evidence before me that the proposal would deter potential future Registered Providers. For these reasons, I attach limited weight to this policy conflict.
123. I have also found conflict with Local Plan Strategy 49 which aims to conserve the historic environment. However, on the basis that this policy does not incorporate a mechanism for balancing public benefits against heritage harm, unlike the Framework, I attach limited weight to this conflict. Notwithstanding this, the less than substantial harm identified to the heritage significance of a designated heritage asset attracts great weight.
124. Having considered the benefits (as discussed in the Heritage Balance above) and adverse impacts of the appeal scheme, I conclude that the adverse impacts identified, namely conflict with the Council's spatial strategy, limited harm in respect of the proposed affordable housing provision and less than substantial harm to the heritage significance of the listed building at Thorne Farmhouse would not, cumulatively, significantly and demonstrably outweigh the substantial benefits of the proposal when assessed against the policies of the Framework taken as a whole. Therefore, the presumption in favour of sustainable development, as set out in the Framework, applies.
125. Notwithstanding identifiable conflict with policies of the development plan, in this instance there are material considerations, including the Framework and the extant May 2025 OPP, that indicate that the proposals should be determined otherwise than in accordance with the development plan.

Conditions

126. In the event that the appeal was allowed, in advance of the Hearing, a list of draft planning conditions was worked upon by the main parties to this appeal. Following further discussion at the Hearing, I have considered the conditions in light of the tests set out in Paragraph 57 of the Framework and the National Planning Practice Guidance (PPG). As a result, I have imposed them where I consider them to be necessary and reasonable, incorporating some amendments for consistency, clarity and precision purposes, and deleting some to avoid duplication between conditions. I have had regard to the evidence provided by the statutory water undertaker and the contents of the S106 legal agreement when considering the drainage and highways conditions respectively.
127. Some conditions require scheme pre-commencement submission and approval in the instances where such details need to be considered in the construction of the development, and therefore go to the heart of the planning permission.
128. In addition to the standard implementation condition (1), it is necessary to define the plans for certainty (2).
129. In the interests of protecting the living conditions of local residents, highway safety and protecting ecology/biodiversity, conditions are necessary to ensure the implementation of an approved Construction Method Statement (CMS) (3) and Construction Environmental Management Plan (CEMP) (4).
130. In order to ensure that surface and foul water are suitably managed and that any associated flood risk is appropriately guarded against and resulting impacts upon the infrastructure of the statutory sewerage and surface water undertaker are satisfactorily managed, conditions are necessary to ensure appropriate surface water and foul water drainage strategies (5), (6) and (7).
131. Conditions are required in the interests of safeguarding protected species and maintaining and enhancing biodiversity (8), (9), (10), (11), and (12).
132. In the interests of protecting the character and appearance of the area, conditions are necessary to ensure appropriate external materials (13), protect existing trees and hedges (14), remove Permitted Development rights in respect of a number of plots for works that could reasonably potentially harm significant trees and buffer landscaping (15) and (16). The latter 3 of these conditions are also in the interests of preserving and enhancing biodiversity.
133. In the interests of promoting sustainable forms of construction and sustainable modes of travel, conditions are required to ensure the installation of air source heat pumps and solar panels and the provision of secure cycle storage facilities (17) and (18) respectively.
134. Conditions are required in the interests of highway safety to ensure that the development provides appropriate on-site access roads, footpaths and parking (19) and (20).

Conclusion

135. The proposed development would conflict with the development plan, but material considerations indicate that a decision should be made other than in accordance with it.

136. For the reasons given above, I conclude that the appeal should succeed, and planning permission be granted subject to conditions.

S Leonard

INSPECTOR

Schedule of Conditions

- 1) The development hereby permitted shall be begun before the expiration of 3 years from the date of this permission.
- 2) The development hereby permitted shall be carried out in accordance with the following plans: 1781_PL100_A Site Location (A3 1:1250); 1781_PL101_A Existing Site Plan (1:1000 @ A3); 1781_PL102_V Proposed Site Layout (1:1000 @ A3); 1781_PL103_C Materials Plan (1:1000 @ A3); 1781_PL104_E Enclosures Plan (1:1000 @ A3); 1781_PL105_C Surfaces Plan (1:1000 @ A3); 1781_PL106_C Parking Plan (1:1000 @ A3); 1781_PL107_C Refuse Collection Plan (1:1000 @ A3); 1781_PL108_B Green Infrastructure Plan (1:1000 @ A3); PL300_D HT1B Apts Overview (Plans) (A3 1:100); PL301_D HT1B Apts Overview (Elevations) (A3 1:100); PL310_E HT2B4P Type 2 Overview (Plans _ Elevations) (A3 1:100); PL316_B HT3B Bung Dormer Option (Plans) (A3 1:100); PL317_B HT3B Bung Dormer Option (Elevations) (A3 1:100); PL320_E HT3B A Overview (Plans _ Elevations) (A3 1:100); PL322 HT2B3P & HT3BA (Wide) Combined [Plans] (1:100 @ A3); PL323 HT2B3P & HT3BA (Wide) Combined [Elevations] (1:100 @ A3); PL325_C HT3B B Overview (Plans _ Elevations) (A3 1:100); PL330_D HT3B C Overview Option A [Plans & Elevations] (1:100 @ A3); PL331_HT3B C Overview Option B [Plans and Elevations] (1:100 @ A3); PL332_B HT3B_C Overview Option C [Plans & Elevations] (1:100 @ A3); PL335_E HT3B D Overview (Plans _ Elevations) (A3 1:100); PL340_C HT3B E Overview (Plans _ Elevations) (A3 1:100); PL342 HT3B F Overview [Plans] (1:100 @ A3); PL343 HT3B F Overview [Elevations] (1:100 @ A3); PL345_E HT4B A Type 1 [Plans & Elevations] Plot 27 (1:100 @ A3); PL347_C HT 4B A Type 2 [Plans & Elevations] Plots 26 33 (1:100 @ A3); PL349_C HT 4B A Type 3 [Plans & Elevations] Plot 20 (1:100 @ A3); PL350_E HT 4B B Overview [Plans] (1:100 @ A3); PL351_E HT 4B B Overview [Elevations] (1:100 @ A3); PL352_E HT4B B Type 2 Overview [Plans] (1:100 @ A3); PL353_E HT4B B Type 2 Overview [Elevations] (1:100 @ A3); PL354_B HT4B B Type 2 [Elevations] Option B (1:100 @ A3); PL355_D HT5B A Type 1 Overview (Plans) (A3 1:100); PL356_D HT5B A Type 1 Overview (Elevations) (A3 1:100); PL360_B HT5B A Type 2 Overview (Plans) (A3 1:100); PL361_B HT5B A Type 2 Overview (Elevations) (A3 1:100); PL365_E HT5B B Overview (Plans) (A3 1:100); PL366_D HT5B B Overview (Elevations) (A3 1:100); PL375_D Single Garage & Office (1:100 @ A3); PL380_E Double Garage & Office [HT 4B B] (1:100 @ A3); PL385_E Single Garage (1:100 @ A3); 1781_PL200_B Street Scene A+B (1:200 @ A3); 1781_PL201_B Street Scene C+D (1:200 @ A3); 1781_PL202_B Site Sections A-D (1:500 @ A3); 1781_PL203_A Site Sections E-F (1:200 @ A1); 936_01 Planting Plan West Rev B (A1 1:250); 936_02 Planting Plan East Rev A (A1 1:250); 936_03 Details and Notes Rev B; 1414-01-PDL-1001-G Preliminary Drainage Layout (A1 1:500); 1414-01-PHL-1001-C Levels Plan (A1 1:500); 1414-01-RP-1001-A Long Section (Sht 1 of 2) (scale as shown); 1414-01-RP-1002-A

Long Section (Sht 2 of 2) (scale as shown); 1414-01-ATR-1001-C Refuse Tracking Plan (1:500); and 1414-01-ATR-1101-C Fire Tender Tracking Plan (A1 1:500).

- 3) Prior to the commencement of the development hereby permitted, a Construction Method Statement (CMS) shall be submitted to, and approved in writing, by the Local Planning Authority. The plan shall include: (1) construction vehicle details (number, size and type); (2) vehicular routes and delivery hours; (3) the parking of vehicles of site operatives and visitors; (4) loading and unloading of plant and materials; (5) storage of plant and materials used in constructing the development; (6) the erection and maintenance of security hoarding including decorative displays and facilities for public viewing, where appropriate; (7) wheel washing facilities; (8) measures to control the emission of dust and dirt during construction; (9) a scheme for recycling/disposing of waste resulting from construction works; (10) daily hours of working; (11) a timetable of the works; (12) details of any road closures; and details of the site's drainage output in so far as it relates to the highway. The approved CMS shall be adhered to throughout the construction period.
- 4) Prior to the commencement of the development hereby permitted, a Construction Environmental Management Plan (CEMP) shall be submitted to and approved in writing by the Local Planning Authority. The CEMP shall address Air Quality, Dust, Water Quality, Lighting, Noise and Vibration, Pollution Prevention and Control, and Monitoring Arrangements. The approved CEMP shall be adhered to throughout the construction period.
- 5) No development hereby permitted shall commence until details of a scheme for the provision of surface water has been submitted to and approved in writing by the Local Planning Authority. The details shall include:
 - a. A detailed drainage design based upon the Land off Strawberry Hill, Lymptone Flood Risk Assessment (Report Ref. 1414, Rev. C, dated 6th October 2023) and covering letter entitled 23/1269/MFUL - Land South of Meeting Lane, Lymptone (Letter Ref. 1414, dated 24th November 2023);
 - b. Detailed proposals for the management of surface water and silt runoff from the site during construction of the development hereby permitted;
 - c. Proposals for the adoption and maintenance of the permanent surface water drainage system;
 - d. A plan indicating how exceedance flows will be safely managed at the site;
 - e. A detailed assessment of the condition and capacity of any existing surface water drainage system/watercourse/culvert that will be affected by the proposals, the scope of which shall be agreed with the Local Planning Authority in consultation with the Lead Local Flood Authority. The assessment should identify and commit to, any repair and/or improvement works to secure the proper function of the surface water drainage receptor; and
 - f. Evidence there is agreement in principle from SWW/landowner/DCC Highways to connect into their system.No surface water from the development shall be permitted to connect, directly or indirectly, into the public sewer network, unless with the written agreement of the Local Planning Authority.
No dwelling hereby permitted shall be occupied until the works have been approved and implemented in accordance with the approved details and the

approved drainage system shall be retained and maintained as such for the lifetime of the development.

- 6) No development hereby permitted shall commence until details of a scheme for the provision of foul water has been submitted to and approved in writing by the Local Planning Authority. The details shall include:
- a. A description of the foul water systems operation;
 - b. Details of the final scheme including estimated flow volumes and layout;
 - c. A construction quality control plan;
 - d. Confirmation of details pertaining to the intended maintenance / adoption arrangements of the final drainage scheme, including responsibilities for the drainage systems. The plan must include a drawing which clearly delineates the management responsibility for each drainage element and schedule of maintenance; and
 - e. A timetable of construction.

No dwelling hereby permitted shall be occupied until the works have been approved and implemented in accordance with the approved details and the approved drainage system shall be retained and maintained as such for the lifetime of the development.

- 7) No development hereby permitted shall commence until a Water Conservation Strategy (WCS) has been submitted to and approved in writing by the Local Planning Authority. The WCS shall include a water efficiency specification for each dwelling type, based on the Fitting Approach set out in Part G of the Building Regulations 2010 (2015 edition or any future successor) demonstrating that all dwellings shall be able to achieve a typical water consumption standard of no more than 110 litres per person per day, in line with Building Regulations Optional Requirement G2.

The approved strategy shall be implemented in full accordance with the approved details prior to first occupation of any residential dwelling and thereafter shall be retained.

- 8) No external lighting shall be installed on site until a Lighting Impact Assessment (LIA) including lux contours, based on the detailed site design, most recent guidelines (currently GN08/23 and DCC 2022), and recommendations within the Ecological Impact Assessment (Encompass Ecology, October 2023), has been submitted and approved in writing by the Local Planning Authority. All lighting shall be installed in accordance with the specifications and locations set out in the design, and these shall be maintained thereafter in accordance with the design. No other external lighting be installed unless otherwise agreed in writing with the Local Planning Authority.
- 9) A landscape and ecological management plan (LEMP) shall be submitted to, and be approved in writing by, the local planning authority prior to the commencement of the development. The LEMP shall include biodiversity measures as referred to in the Ecological Impact Assessment (Encompass Ecology, October 2023) including Section 5 (impact of proposed works, mitigation and enhancement) and those that refer to a Biodiversity Enhancement Plan (BEP) and shall also include the following:
- (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) Preparation of a work schedule (including an annual work plan capable of being rolled forward over a minimum 30-year period);
- (g) Details of the body or organization responsible for implementation of the plan; and
- (h) Ongoing monitoring and remedial measures.

The LEMP shall also include details of the legal and funding mechanism(s) by which the long-term implementation of the plan will be secured by the developer with the management body(ies) responsible for its delivery. The plan shall also set out (where the results from monitoring show that conservation aims and objectives of the LEMP are not being met) 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 approved plan will be implemented in accordance with the approved details.

- 10) No development shall commence until a Biodiversity Management Plan to ensure that there is a quantifiable net gain in biodiversity within a 30-year period as a result of the development has been submitted to, and approved in writing by, the Local Planning Authority. The net biodiversity impact of the development shall be measured in accordance with the DEFRA biodiversity metric as applied in the area in which the site is situated at the relevant time, and the Biodiversity Management Plan shall include:
- 1. Proposals for on-site biodiversity net gain (full details of which will be provided in relation to each phase of development (where applicable) and/or for off-site offsetting);
 - 2. A management and monitoring plan for any on-site and off-site biodiversity net gain, including 30-year objectives, management responsibilities, maintenance schedules and a methodology to ensure the submission of monitoring reports in years 2, 5, 10, 15, 20, 25 and 30 from commencement of development, demonstrating how the biodiversity net gain is progressing towards achieving its objectives, evidence of arrangements and any rectifying measures needed;
 - 3. A methodology for the identification of any site(s) to be used for offsetting measures and the identification of any such offsetting site(s); and/or
 - 4. Details of any payments for offsetting measures including the biodiversity unit cost and the agreed payment mechanism.

The development shall be implemented in full accordance with the requirements of the approved Biodiversity Management Plan and shall be retained as such thereafter.

- 11) No development shall take place (including ground works) until a Construction and Ecological Management Plan (CECoMP) has been submitted to and approved in writing by the Local Planning Authority.

The CECoMP shall include the following:

- (a) Risk assessment of potentially damaging construction activities;
- (b) Identification of "biodiversity protection zones";
- (c) Practical measures (both physical measures and sensitive working practices) to avoid or reduce impacts during construction (may be provided as a set of method statements);
- (d) The location and timing of sensitive works to avoid harm to biodiversity features;

- (e) The times during construction when specialist ecologists need to be present on site to oversee works;
 - (f) Responsible persons and lines of communication, including reporting compliance of actions to the LPA;
 - (g) The role and responsibilities on site of an ecological clerk of works (ECoW), including any licence requirements; and
 - (h) Use of protective fences, exclusion barriers and warning signs.
The approved CEcoMP shall be adhered to and implemented throughout the construction period strictly in accordance with the approved details.
- 12) Each dwelling shall not be occupied until the dwelling-specific ecological mitigation and enhancement features (where applicable) have been installed/constructed in accordance with the submitted LEMP and CEcoMP.
Prior to the Occupation of 80% of the residential units, the site-wide ecological measures must be installed/constructed in accordance with the approved LEMP and CEcoMP.
- 13) Notwithstanding the details provided, no development hereby permitted shall take place above foundation level until details of the proposed materials to be used externally on each plot have been submitted to and approved in writing by the Local Planning Authority.
The development shall thereafter be carried out in accordance with the approved details.
- 14) Prior to the commencement of the development hereby permitted, (including any groundworks, site clearance or tree works), a Tree Protection Plan (TPP) and an Arboricultural Method Statement (AMS) for the protection of all retained trees, hedges and shrubs, shall be submitted to and approved in writing by the Local Planning Authority.
The TPP and AMS shall adhere to the principles embodied in BS5837:2012 and shall indicate exactly how and when the trees will be protected during the development process. Provision shall be made for the supervision of the tree protection by a suitably qualified and experienced arboriculturist and details shall be included within the AMS. The AMS shall provide for the keeping of a monitoring log to record site visits and inspections along with: the reasons for such visits; the findings of the inspection and any necessary actions; all variations or departures from the approved details and any resultant remedial action or mitigation measures. On completion of the development, the completed site monitoring log shall be signed off by the supervising arboriculturist and submitted to the Local Planning Authority for approval and final discharge of the condition.
The development shall be carried out in accordance with the approved details.
- 15) Notwithstanding the provisions of the Town and Country Planning [General Permitted Development] Order 2015 [or any order revoking and re-enacting that Order with or without modification], no development permitted by Classes A, B and E of Part 1 of Schedule 2 of the Order, other than works that do not materially affect the external appearance of the building and any enclosure approved as part of the landscape management scheme, shall be carried out on

- plots 5,6,7,8,9,10,11,12,13,14,15,16,17,18,19,20,25,37 without a prior grant of planning permission.
- 16) Notwithstanding the provisions of the Town and Country Planning [General Permitted Development] Order 2015 [or any order revoking and re-enacting that Order with or without modification], no fences, gates or walls permitted by Class A of Part 2 of Schedule 2 shall be erected within the curtilage of any dwellinghouse on plots 1,2,3,4 without a prior grant of planning permission.
- 17) No development above foundation level shall take place until the locations of the air source heat pumps and solar panels for each unit as indicated in Section 10 of the Design and Access Statement have been identified and the designs of the air source heat pumps have been submitted to and approved in writing by the Local Planning Authority. The dwellings to which they relate shall not be occupied until the approved solar panels and/or air source heat pumps have been installed in accordance with the approved details.
- 18) Notwithstanding the details provided, prior to first occupation of each dwelling, details of the location and appearance of the proposed cycle stores shall be submitted to and approved in writing by the Local Planning Authority. The cycle stores as approved shall be provided prior to first occupation of the dwelling they serve and thereafter retained and maintained for such purposes.
- 19) The occupation of any dwelling in an agreed phase of the development shall not take place until the following works have been carried out to the written satisfaction of the Local Planning Authority:
- a. The main road and cul-de-sac carriageway including the vehicle turning head within that phase shall have been laid out, kerbed, drained and constructed up to and including base course level, the ironwork set to base course level and the sewers, manholes and service crossings completed;
 - b. The main road and cul-de-sac footways and footpaths which provide that dwelling with direct pedestrian routes to an existing highway maintainable at public expense have been constructed up to and including base course level;
 - c. The cul-de-sac visibility splays have been laid out to their final level;
 - d. The street lighting for the main road and cul-de-sac and footpaths has been erected and is operational;
 - e. The car parking and any other vehicular access facility required for the dwelling by this permission has/have been completed;
 - f. The verge and service margin and vehicle crossing on the road frontage of the dwelling have been completed with the highway boundary properly defined;
 - g. The street nameplates for the main road and cul-de-sac have been provided and erected; and
 - h. The pedestrian links to the existing footpath network have been provided as indicated on the approved site plan.
- 20) The garages and parking spaces indicated on the approved site plan - drawing number PL102 Rev V shall be provided prior to first use of the property they serve and thereafter retained for parking purposes only.

*****End of Conditions*****

DOCUMENT RECEIVED DURING THE HEARING

Written copy of the Council's response to the appellant's claim for costs

APPEARANCES

FOR THE APPELLANT:

- David Matthews – 3West Group
- Nick Yeo – 3West Group
- James Fowler – 3West Group
- Stuart Houlet – PCL Planning
- Dominic Scanlon – Aspect Tree Consultancy
- Bob Cocker – SLR Consulting
- Sarah Griffin – CJH Land

FOR THE LOCAL PLANNING AUTHORITY:

- Lynn Shwenn – Senior Planning Officer East Devon District Council
- Paul Golding – Principal Planning Officer East Devon District Council
- Alistair Jeans – Arboricultural Officer East Devon District Council

INTERESTED PARTIES:

- Susan Francis – Lympstone Parish Councillor
- Nick Linfoot – local resident
- Geoff Jung – Ward Councillor



Costs Decision

Hearing held on 4 June 2025

Site visit made on 4 June 2025

by **S Leonard BA (Hons) BTP MRTPI**

an Inspector appointed by the Secretary of State

Decision date: 16 July 2025

Costs application in relation to Appeal Ref: APP/U1105/W/24/3356636

Land Between Meeting Lane and Strawberry Hill, Lympstone, Devon, EX8 5DG

- The application is made under the Town and Country Planning Act 1990, sections 78, 322 and Schedule 6 and the Local Government Act 1972, section 250(5).
 - The application is made by Mr Nick Yeo (3West Strawberry Hill Ltd) for a full award of costs against East Devon District Council.
 - The appeal was against the refusal of planning permission for the construction of 42 residential units, affordable housing, new vehicular accesses from Meeting Lane and Strawberry Lane, pedestrian access onto Meeting Lane, associated internal roadways, SuDS features and landscaping.
-

Decision

1. The application for an award of costs is refused.

Reasons

2. The Planning Practice Guidance (the Guidance) advises that parties in planning appeals are normally expected to meet their own expenses. Irrespective of the outcome of the appeal, costs may only be awarded against a party who has behaved unreasonably, and thereby causes the party applying for costs to incur unnecessary or wasted expense in the appeal process.
3. The Guidance advises that parties who pursue an appeal unreasonably without sound grounds for appeal, may have an award of costs made against them. It confirms that awards against local planning authorities may be either procedural, having regard to behaviour in relation to completing the appeal process, or substantive, relating to the planning merits of the appeal. The applicant is seeking a full award of costs on procedural and substantive grounds.

Procedural

4. The applicant's claim on procedural grounds relates to the Council's behaviour during the determination of the planning application, particularly regarding the length of time taken to process the planning application and the level of engagement and communication with the applicant during the application process.
5. Whilst the Guidance states that costs cannot be claimed for the period during the determination of the planning application, it advises that behaviour and actions at the time of the planning application can be taken into account in the Inspector's consideration of whether or not costs should be awarded, and that, where local planning authorities have exercised their duty to determine planning applications in a reasonable manner, they should not be liable for an award of costs.

6. I appreciate the applicant's frustration in respect of the time taken to place the planning application before the Planning Committee. However, I note that prior to the Committee date there had been on-going dialogue between Council officers and the applicant, including positive pre-application discussions, and that the parties had been working towards a positive officer recommendation to the Planning Committee.
7. Moreover, the Council informed the applicant of its reasons for delaying the determination of the application following the publication of the revised Framework in December 2023 and the amended housing land supply requirements therein, which resulted in the Council seeking to resolve uncertainty that arose in respect of its housing land supply, including the extent to which it complied with the temporary 4-year requirement and whether the tilted balance should continue to be applied in cases of similar policy and accessibility circumstances to that of the appeal scheme.
8. I find that the Council's actions in this respect were reasonable having regard to the conflict of the scheme with the Council's adopted spatial strategy, the, at that time, early stage of the emerging Local Plan whereby the site had not yet been confirmed as a preferred site at Regulation 19 stage, and the Council's most recent Housing Position Statement indicating a 4.5 year housing supply.
9. Following a further resolution by the Strategic Planning Committee in July 2024, the planning application was considered at the August 2024 Planning Committee with an officer recommendation to approve, that, despite conflict with adopted policy and no requirement to apply the tilted balance, gave significant weight to the need to support housing schemes that would contribute to the Council's housing delivery beyond the next 4 years.
10. Having regard to the above, I find that the Council took a measured and reasonable approach leading up to the Planning Committee meeting, having regard to the Council's separate Strategic and Planning Committee procedures, its decision to take legal advice, the on-going changes to national planning guidance, and the particular circumstances of the appeal scheme. Moreover, it is evident that this included some collaboration with the applicant and an intention by officers to achieve approval of the scheme.

Substantive

11. In consideration of the applicant's substantive grounds for seeking costs as set out in paragraph 2.1 of its costs application, I find that in coming to a decision, members of the Planning Committee are not bound to agree with the views of council officers, so long as a reasonable case can be put forward to the contrary. The officer report to committee undertook a balanced view in favour of the appeal scheme, and the planning committee was entitled not to weigh the balance in favour of the scheme, having regard to the development plan policy conflicts it identified in its 3 reasons for refusal.
12. Having regard to the policy position at the time of the determination of the application, including the December 2023 Framework, the Council's understood position in respect of achieving its required 4-year housing land supply, the

Regulation 18 stage of the emerging plan preparation and the absence of an extant permission to redevelop the appeal site with housing, I do not consider that the Council acted unreasonably by including its first reason for refusal in respect of conflict with the Council's adopted spatial strategy.

13. My appeal Decision explains why I have found no conflict with Local Plan Strategy 5B, and I appreciate the applicant's concern about the inclusion of a sustainable location argument within the Council's first reason for refusal, given the close proximity of the site to the settlement boundary of Lympstone which is recognised within the Local Plan as a settlement incorporating a range of accessible facilities and services.
14. However, by the time of the applicant's lodging of the appeal, the Council had confirmed that the appeal site would be carried forward as a preferred site in the Regulation 19 phase of the emerging Local Plan and had also resolved to approve what subsequently became the May 2025 outline planning permission. As such, the Council had now accepted the principle of the residential development of the site for the appeal scheme number of dwellings. As the applicant was fully aware of this position and had already submitted evidence in respect of the accessibility of the site by means of travel other than the car as part of its planning application submission, I do not consider that the accessibility element of the Council's first reason for refusal necessitated the applicant incurring unnecessary appeal costs.
15. Moreover, the Council acted reasonably in light of the above by deciding not to defend its first reason for refusal at appeal.
16. Whilst the specific trees of concern are not listed within refusal reason 2, the Council's statement of case provides a detailed analysis of its concerns in respect of the protected Oak T11, confirming that this is the focus of its case. My appeal Decision, which should be read in conjunction with this costs Decision, sets out why I have reached a different conclusion on this issue than that of the Council. Notwithstanding this, I find that the Council has provided sufficient evidence to support this reason for refusal, which references Local Plan Strategies D1 and D3 which seek to ensure new development is locally distinctive by, amongst other things, not adversely affecting trees worthy of retention.
17. I have found the Council's reference to historical tree works not to be relevant to my Decision, but I am not persuaded on the evidence before me, that this has led to the applicant incurring unnecessary costs in respect of the appeal.
18. The accompanying appeal Decision explains why I concur with the Council's third reason for refusal having regard to the failure of the scheme to distribute the affordable housing throughout the development. I find that this reason clearly and precisely explains the Council's concerns with reference to the relevant Local Plan Strategy. There is no reference to the Council's Affordable Housing SPD in the reason for refusal, but it is evident from the applicant's planning application submissions that it was aware of this document and its relevance to the affordable housing issue at the time of the submission of the application and a lack of reference to it in the reason for refusal has not led to additional costs to the applicant in association with the appeal.
19. The Council's appeal statement confirms that its concerns include a proposed lack of any affordable housing in the northeastern half of the development and that its

reference to a perceived obvious difference between the affordable and market housing primarily relates to the proposed higher density of development within the southwestern part of the site. Accordingly, there is no cogent evidence before me that the applicant has incurred unnecessary costs arising from any unreasonable behaviour in respect of the Council's defence of this reason for refusal.

20. The Council's appeal statement confirms that, as required having regard to the December 2024 Framework and the Council's housing land supply at the time of the appeal, it has applied the tilted balance and considers the harms arising from its second and third reasons for refusal outweigh the benefits of the appeal scheme.
21. Having regard to all of the above, although I have allowed the appeal, I find that the Council was entitled to refuse the application and defend the appeal and has not acted unreasonably in so doing.
22. Accordingly, I find that unreasonable behaviour resulting in unnecessary or wasted expense, as described in the Planning Practice Guidance, has not been demonstrated.

S Leonard

INSPECTOR