



Appeal Decision

Inquiry held on 1, 2, 7, 20-22 May 2025

Site visit made on 22 May 2025

by **A Dawe BSc (Hons), MSc, MPhil, MRTPI**

an Inspector appointed by the Secretary of State

Decision date: 11th July 2025

Appeal Ref: APP/U1105/W/24/3357849

Land east of Colestocks Road, Sherwood Cross, Feniton

- The appeal is made under section 78 of the Town and Country Planning Act 1990 (as amended) against a failure to give notice within the prescribed period of a decision on an application for outline planning permission.
 - The appeal is made by Taylor Wimpey UK Ltd against East Devon District Council.
 - The application Ref is 24/0431/MOUT.
 - The development proposed is Outline planning application for up to 86 dwellings with access from Colestocks Road; the provision of public open space, landscaping, drainage, and associated highways improvements and infrastructure; all matters to be reserved except for access.
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Decision

1. The appeal is allowed and planning permission is granted for Outline planning application for up to 86 dwellings with access from Colestocks Road; the provision of public open space, landscaping, drainage, and associated highways improvements and infrastructure; all matters to be reserved except for access at Land east of Colestocks Road, Sherwood Cross, Feniton in accordance with the terms of the application, Ref 24/0431/MOUT, subject to the conditions in the attached schedule in Annex A.

Preliminary Matters

2. The appeal relates to an outline planning application with all matters reserved for future consideration other than access. In considering access, this relates to solely to the primary access from Colestocks Road. The matters of appearance, landscaping, layout and scale would therefore be for future consideration were the appeal allowed. The Appellant has however submitted a concept masterplan which I have therefore taken into consideration.
3. Further to the Council's failure to issue a decision on the planning application, it has since made a determination as to what its decision would have been, including putative reasons for refusal (putative RfRs), as set out in its Statement of Case for this appeal.
4. Since the Inquiry, the Planning Practice Guidance relating to Plan-making has been updated, with the inclusion of paragraph 86 Reference ID:61-086-20250616 of dated 26 June 2025. This relates to the question of how do the implementation aspects of the National Planning Policy Framework (the Framework) apply to plans where more than one round of Regulation 19 consultation has been undertaken. It states that some local planning authorities may undertake more than one round of Regulation 19 consultation on a plan. Where this is the case, for the purposes of

implementing Annex 1 of the Framework, a plan is normally to be taken as having reached the Regulation 19 stage at the date on which the first round of Regulation 19 consultation commenced. However, in some limited circumstances, a plan is to be taken as having reached Regulation 19 on the date that a subsequent round of consultation commenced. These limited circumstances could include instances such as when the content of an emerging plan has changed significantly from the one presented at the initial Regulation 19 stage. The Council and Appellant have commented on this and so would not be prejudiced by my consideration of this revision to the NPPG, which I shall refer to in my planning balance.

5. I have received further evidence from the Appellant comprising another appeal decision issued since the Inquiry, relating to a proposed housing development in Faversham, Kent¹. Both parties have been given the opportunity to comment on this decision and so would not be prejudiced by it being taken into consideration in this decision, albeit that I do not have the full details of that case and have determined the current appeal on its own merits.

Main Issues

6. The Council and Appellant have agreed the planning obligations secured in an agreement under section 106 of the Act (s106 Agreement), addressing the Council's putative RfRs 3-7, albeit that I will consider these for myself within this decision.
7. I also heard evidence from the Appellant in relation to affordable and accessible housing matters, and housing need and supply matters, albeit that the two parties are in agreement in relation to the range relating to what they also agree to be a substantial shortfall in 5 year supply of deliverable housing sites (5 year HLS). I will consider those matters under my planning balance section rather than as separate main issues.
8. The main issues for consideration are therefore:
 - i) the effect of the proposed development in terms of the Council's spatial strategy, with particular regard to the distribution and location of housing and balanced communities, having regard to local and national policy;
 - ii) The effect of the proposed development on local drainage and flood risk;
 - iii) Other related planning matters, including any benefits of the proposed development to be weighed in the planning balance.

Reasons

Spatial strategy

9. Strategy 1 of the East Devon Local Plan 2013 to 2031, adopted 28 January 2016 (the Local Plan) sets out, amongst other things, that provision will be made in the plan period for a minimum of 17,100 new homes and that development in smaller towns, villages and rural areas will be geared to meeting local needs. Strategy 2 then sets out the scale and distribution of residential development, feeding into projected future house building.

¹ Appeal Ref APP/V2255/W/24/3350524

10. Strategy 4 of the Local Plan concerns balanced communities comprising a match between jobs, homes, education, and social and community facilities. Strategy 7 sets out that development in the countryside will only be permitted where it is in accordance with a specific Local or Neighbourhood Plan policy that explicitly permits such development and where it would not harm the distinctive landscape, amenity and environmental qualities within which it is located.
11. Policy SP01 of the East Devon Local Plan 2020 to 2042, Regulation 19 Publication Draft February 2025 (the emerging Local Plan) sets out that new development will be directed towards the most sustainable locations in East Devon, allowing limited development at the Service Villages, of which Feniton is one. Policy SP03 then sets out the housing requirement by designated neighbourhood area, representing the minimum housing development in each of the areas over the plan period. In the case of Feniton, this is set out as a minimum of 127 homes. It goes on to say that proposals for additional housing will be supported where they are in accordance with other strategic policies in the Plan and supported by appropriate evidence.
12. Emerging Local Plan policy SP06 states that in locations outside of the defined settlement boundaries development will not be permitted unless it is in accordance with a specific Local or Neighbourhood Plan policy that explicitly permits such development. Policy SD18 sets out development allocations at Feniton. These comprise two sites for housing development at Land at Burlands Mead (Feni_05) for around 42 dwellings, and Land adjacent to Beechwood (Feni_08) for around 60 dwellings. In addition, a site at Land to the south-east of Bridge Cottages (Otry_20) is allocated for employment use.
13. Emerging Local Plan policy SE06, also referred to in the Council's putative reasons for refusal, relates to town centre hierarchy and so is not directly relevant in this case which concerns housing development at a Service Village.
14. The proposed development would be located outside of the built up area boundary for Feniton, in the countryside, on a site that is not allocated for development. As such, it is not disputed between the main parties that the proposed development would conflict with the adopted and emerging development plan policies relating to the Council's spatial strategy and I have no basis to find otherwise.
15. However, as referred to above, housing requirements set out in the emerging Local Plan, include a minimum of 127 new homes relating to Feniton, putting forward those intended allocation sites. As well as being a minimum requirement, notwithstanding a resolution to grant planning permission subject to a section 106 agreement for 35 homes at Burlands Mead, there is no certainty that the emerging allocations will become adopted, given that the second round of Regulation 19 consultation and the examination itself remains to be conducted. I also understand that a planning application has recently been submitted and validated for the Beechwood site, although it remains to be determined such that the outcome is currently unknown.
16. In terms of completions amounting to 25 and the granted scheme at Burlands Mead, that totals 60 homes, which is significantly less than the minimum 127 figure referred to above. Were the appeal proposal allowed then that would take the total up to a maximum of 146 dwellings which is not significantly over that minimum figure. That would increase to around 206 dwellings should the Beechwood site

come forward, albeit that is not a certainty due to the current circumstances referred to above.

17. That figure of 206 dwellings would be noticeably greater than the minimum 127 dwelling requirement, particularly in the context of the existing number of dwellings in the village, and its limited existing places of employment and facilities and services to serve day-to-needs of residents. In this respect I note that the percentage growth in households, relating to an increase of 206 dwellings, would be greater than that for any other Tier 4 settlements, albeit just taking account of allocations in those other places. I also note that the proposed allocations for Feniton would on their own be greater than those for any other Service Villages. Nevertheless, the percentage growth for Feniton would not be substantially greater than a small number of those other settlements.
18. Additionally, I note supporting evidence relating to the emerging Local Plan, in the form of the Council's Role and Function of Settlements (V3 Final Draft for SPC 05.10.21) report, which although untested through Examination is nevertheless a material consideration. In that report I note reference to the high economic activity rates within Feniton and that it has the lowest jobs to workers ratio, and the finding that further residential development in isolation is likely to perpetuate unsustainable travel to work patterns.
19. I acknowledge that there is an allocation for employment in the emerging Local Plan. However, whilst that indicates some degree of commitment, there is no certainty at this stage that this will proceed, with no evidence provided of any interest from potential employment operators, together with the need to go through the emerging Local Plan Examination.
20. Notwithstanding the above findings, the village has a small number of facilities and services, including a primary school, community centre and playing fields, small convenience store and dentist, albeit I understand that it is not taking NHS patients, within comfortable walking and cycling distance of the site. Safe and convenient walking into the village would be enabled with the provision of a footway linking from the site to that existing on Colestocks Road. Whilst there is no certainty that the potential pedestrian connection to the sports ground indicated on the concept masterplan, at north-east corner of the site, could be implemented, the more indirect route via Colestocks Road, referred to above, would be unlikely to significantly lessen the degree of accessibility to that facility or others in its vicinity.
21. Furthermore, I have no substantive evidence to indicate that the primary school would not be able to provide capacity to accommodate children from the proposed development, and likewise in respect of secondary schools serving the village, whereby there is provision under the Community Infrastructure Levy (CIL) for education contributions to be made. Also, whilst I note that the local convenience shop is small, I have no substantive evidence to demonstrate that it would not be able to cope with the potential additional demand resulting from the proposed development. Noting concerns raised about additional pressure from the proposed development on existing health facilities, I understand that NHS contributions would also fall under the CIL requirements by way of mitigation. Additionally, whilst I note concern raised about there already being long waiting lists for extracurricular activities for children, I have no substantive evidence as to the extent to which that is a problem.

22. Nevertheless, residents would have to travel greater distances to other centres for access to a wider range of facilities and services to serve the everyday needs of prospective residents such as supermarkets, a wider range of shops, and more extensive leisure services, doctors' surgeries, chemist, also noting that the Feniton post office is located some distance from the site in Old Feniton.
23. There is a train station serving the village, within comfortable walking distance of the appeal site, albeit currently providing a service that may not be convenient for all needs, particularly those relying on it for getting to and from other places of employment. There is also a bus service close to the site that provides access to local centres, together with the proposed provision of new stops near to the site access on Colestocks Road. Whilst it is a limited service in terms of frequency, together with rail use, there would be some degree of choice of transport mode over the car, albeit likely that the car would be the dominant form. Additionally, there is a nearby bus service dedicated to serve the secondary school in Ottery St Mary for students living in Feniton.
24. As such, whilst there is some degree of accessibility to facilities and services locally and to wider destinations by public transport, this is limited and reflects the Council's strategy to direct new development to the most sustainable locations, limiting that within villages. The proposed development would therefore noticeably and significantly expand the amount of housing within the village, the demand on the existing services and facilities, and be likely to exacerbate existing shortcomings in public transport, particularly for travel to work purposes. Together with the currently limited employment in the village, this is likely to weaken the balance between jobs, homes, education, and social and community facilities.
25. In this respect, I have no reason to disagree with my colleague in relation to the so called 'super-Inquiry' of 2014², relating to proposals for development including housing in Feniton, who stated that in substantially increasing the number of residences in a settlement, without proportionate increases in the provision of local shops, infrastructure, employment opportunities and other local services, risks eroding community cohesion. The Inspector did however find that such a consideration could not on its own outweigh the pressing need to address the housing shortfall at that time, albeit acknowledging that decisions about capacity should be taken through the Local Plan process.
26. Nevertheless, despite finding that the type of impact was hard to quantify, the Inspector found that even the smallest of those 'super-Inquiry' proposals, resulting in a 12.2% growth, would constitute a sizeable expansion, and that this would have an adverse impact, of some weight, on the vitality and social inclusivity of the community at Feniton, albeit that that particular proposal was allowed following the planning balance. It was also found that adding any of the other housing relating to that Inquiry would increase the weight to the adverse impact, principally due to the additional harm that would be caused to the community.
27. Whilst all but the smallest of the four proposals relating to the 'super-Inquiry' were dismissed, this was in the context of balancing a range of issues, based on the circumstances at that time. Whilst the findings relating to spatial strategy in the 'super-Inquiry' decision are pertinent and material, I have determined this appeal on

² Appeal Refs. APP/U1105/A/13/2191905, APP/U1105/A/13/2197001, APP/U1105/A/13/2197002, APP/U1105/A/13/2200204 which included proposals for a total of 294 homes across four different planning applications and three sites, although the actual provision was for either up to 174 or 235 homes, as one of the sites involved two alternative proposals for 59 and 120 homes respectively.

its own merits and based on current circumstances, which includes an increased housing requirement.

28. I have had regard to comments about previous housing developments in Feniton having been abandoned or left incomplete, raising concerns over the viability of further projects. However, I do not have the full details of the circumstances of such other developments, and have no basis to consider that those scenarios would occur in the case of the proposal at hand.
29. For the above reasons, the proposed development would fail to accord with the Council's spatial strategy, with particular regard to the distribution and location of housing and balanced communities, having regard to local and national policy. As such, it would be contrary to Strategies 1, 2, 4 and 7 of the Local Plan and emerging Local Plan policies SP01, SP03, SP06 and SD18.
30. However, as referred to above, and whilst recognising the importance of such conflict in a plan-led system, this is in the context of the emerging Local Plan setting a minimum requirement for additional housing, where there also remains some degree of uncertainty as to the allocations, particularly that relating to the Beechwood site; where the percentage growth, even including that site, would not be substantially greater than a small number of other Service Villages; and in a settlement where, as referred to above, there is some degree of accessibility to facilities and services locally, and to wider destinations by public transport. These are therefore factors which lessen the weight afforded to the conflict with development plan and emerging Local Plan policies. I shall consider this further in the planning balance.

Drainage/flood risk

31. The proposed development site, although in an area of lowest risk of flooding from rivers and watercourses, being in Flood Zone 1, is located within a critical drainage area (CDA). However, the evidence indicates that the site itself is at very low risk of surface water flooding with a small section of Colestocks Road within the red line site boundary being at low risk, albeit further to the south on that road the risk rises to medium and high where the submissions indicate that flooding does occur. The submissions indicate that this arises from surface water flow from north of that section of the road.
32. The topography of the site and land to its north and north-east, slopes broadly south-westwards, which is therefore towards Colestocks Road. The submitted Flood Risk Assessment (FRA) identifies that the nature of the soils and geology relating to the site suggest the potential for some infiltration of surface water, with specific reference to some of the lower parts of the site, but that infiltration cannot be relied upon site-wide.
33. The site, and land to its north is therefore conducive to overland water flow in high rainfall events. Notwithstanding some limited photographic evidence and comments from some interested parties about water flowing from the site during high rainfall events, it is not conclusive as to the degree to which the flooding referred to arises from surface water flowing via the site. However, the above factors, along with Lidar data, together with a much lesser extent of south-eastwards sloping land on the opposite side of Colestocks Road, indicate the likelihood of the site being a significant route for such water. The topography and presence of hedgebank indicates that such overland water flows would gravitate towards the south-west

corner of the site. However, the extent to which that would be the case, due to the potential for routes through the hedgebank further up, along the west side of the site, remains inconclusive from the evidence, and from my observations due to the thickness of the hedge and leaf cover at the time of my site visit.

34. Due to the soils and geology relating to the site, and being in a location of high sensitivity in terms of hydrogeology and groundwater resources, an infiltration-based drainage system would not be suitable for the development. The proposals therefore appropriately include provision for surface water attenuation along the northern and western sides of the site, those to the north, to intercept flows from the land north of the site, and those to the west relating to water flowing from the proposed development area. It is proposed to restrict discharge to significantly lower peak runoff rates than the existing undeveloped greenfield rates for the 1:2, 1:30 and 1:100 year events, with that for the latter event being less than is currently the case in the 1:2 year event.
35. Based on the proposals before me, and also taking account of the FRA, the attenuation to the north of the site would therefore have a dual function. It would protect the proposed development from excessive surface water flows and risk of flooding with the intention also to provide likely betterment in terms of the extent of any flooding on Colestocks Road through that regulation of water discharge, albeit subject to further detailed drainage details that would need to be secured by condition. However, the effectiveness of such proposals in terms of controlling the flow of water into Colestocks would be reliant on the suitable provision for outfall of that water.
36. South West Water (SWW) has made it clear that no surface water from the site could be discharged into its existing infrastructure, whereby there would be a risk of flooding were that to occur. Currently, there is no certainty that Devon County Council Highway Development Management (DCCHDM) would agree to a connection for surface water drainage to its highway drainage system that would remain as their responsibility. If that were to occur, DCCHDM would stipulate what would be required for connection, and also subject to the modelling figures being submitted and accepted, and overcoming the current issue regarding the point of outfall and the likely associated liability risks which remain. The latter includes not having identified the riparian owner of the section of the drainage system beyond that owned by DCC. I also note that DCCHDM may decide not to accept any future drainage proposal should there not be any genuine betterment or benefit to be gained.
37. Without an agreed point of discharge, that would be contrary to DCC's Sustainable Drainage Systems: Guidance for Devon (2023), the SUDS Manual, and paragraph 059 of the Flood Risk and Coastal Change Planning Practice Guidance (PPG). Although not policy, it is material information in support of policy. Paragraph 059 of the PPG relates to information needed to reduce delays in the planning process and highlights that Local Planning Authorities should consider setting out requirements for supporting information on sustainable drainage systems as part of their local list of information requirements. I note that the Council includes such a list in its planning application Validation Checklist (2022), including a requirement for evidence of an agreed point of discharge for surface water and robust explanations as to the viability or otherwise of draining surface water to, amongst other things, a surface water sewer or highway drain with written permission.

38. Policy EN22 of the Local Plan sets out that planning permission for new development will require, amongst other things, that the surface water run-off implications of the proposal have been fully considered and found to be acceptable; and that where remedial measures are required away from the application site, the developer is in a position to secure the implementation of such measures. Furthermore, policy F1 of the Feniton Neighbourhood Plan (the NP) sets out that proposals for development will only be supported where they, amongst other things, demonstrate that they have taken full account of and recognise the impact of flood risk.
39. In this case, notwithstanding the above position of DCCHDM, they have not raised an outright objection. Instead, in the interim or until an alternative solution is sought, they recommend a Grampian condition to require no commencement of development until an appropriate right of discharge for surface water has been obtained, and the submission and approval of a drainage scheme for the site. The drainage works would then need to be carried out in accordance with the approved details.
40. As such, in terms of risk, the proposed development would not proceed until the required measures were secured and all of the necessary information had been fully considered and approved. I acknowledge that it is for the LLFA to assess proposed on-site drainage and that there is not a complete picture of drainage discharge due to the lack of an outfall agreement, having regard to the above policies EN22 and F1. However, DCCHDM would require that various information before agreeing the outfall. The on-site drainage proposals would then need to be considered and designed in more detail at the reserved matters stage, whilst maintaining the principles relating to the proposed development. There is currently no clear indication that the development as proposed would be unachievable, requiring fundamental changes, and with the Council retaining control over the suitability of the reserved matters. As such, I also have no substantive basis to consider that the genuine betterment or benefit to be gained, as referred to above, would not be achieved. A Grampian condition would therefore be appropriate in this case.
41. I understand that there have been problems with the implementation of drainage schemes on other developments within the village, including that relating to the adjacent Feniton Park housing scheme, raising concerns about whether any proposed flood attenuation and drainage measures would be properly implemented in this current case. However, I do not have full details of the circumstances relating to those other developments and in any case have no substantive basis to consider that the necessary measures would not be properly put in place for the proposal at hand, subject to appropriate conditions.
42. As such, although not in full accordance with policies EN22 and F1 due to the outstanding information needed, subject to the imposition and compliance with an appropriate Grampian condition, the proposed development would be protected from flooding, and there would be no increased flood risk off-site in Colestocks Road, with such risk likely to be reduced.
43. I have had regard to two appeal decisions referred to by the Council relating to housing developments in Beckington, Frome³ where the Inspector had concerns as

³ Appeal Refs. APP/Q3305/W/21/3288474 & APP/Q3305/W/21/3289537

to whether satisfactory surface water drainage could be achieved, relating to doubts about whether a suitable outfall for surface water drainage could be achieved in each case. I do not have the full details of those cases to enable a proper comparison. Nevertheless, I note the Inspector's reference in the first of those cases to the importance of demonstrating that the principle for the drainage strategy is sound, and in the second, to the requirement of a higher degree of confidence. However, based on the decisions submitted, there is no evidence in both cases, to indicate that existing surface water from the respective sites flows into the watercourse or culvert intended to receive the proposed discharges. The circumstances in those respects therefore appear to be different to the proposal at hand, and I have in any case determined the appeal on its own merits.

44. Policy EN21 of Local Plan relates to river and coastal flooding and in particular the need to undertake sequential and, if necessary, exception tests. However, it does not take account of CDAs and as such is therefore not directly relevant in this case or fully consistent with the Framework which includes consideration of any form of flooding. The Framework is nevertheless an important material consideration, and I have therefore had regard to whether the Sequential Test needs to be undertaken in this case, relating to the risk-based approach to the location of development.
45. The Framework requires such an approach to be taken in areas known to be at risk now or in the future from any form of flooding. It goes on to identify an exception to such a requirement in situations where a site-specific flood risk assessment demonstrates that no built development within the site boundary would be located on an area that would be at risk of flooding from any source, now and in the future (having regard to potential changes in flood risk). I have also had regard to the PPG relating to Flood Risk and Coastal Change which refers to the Sequential Test being applied in areas at risk of flooding, but not required where, amongst other things, the site is in an area at low risk from all sources of flooding, unless the Strategic Flood Risk Assessment, or other information, indicates there may be a risk of flooding in the future.
46. As previously referred to, in this case the site is in a CDA where, beyond the site, including on Colestocks Road there is a medium or high risk of flooding, although the site itself has a very low or low risk of surface water flooding. Nevertheless, the FRA identifies that in order to mitigate flood risk from surface water runoff it would be necessary to intercept flows from the higher land and manage them to ensure that the development would not be at risk. Therefore, based on the proposals before me, without that mitigation in place, it appears that there would be some degree of flood risk to the proposed development in the absence of any other proposed mitigation measures. The same applies in respect of potentially exacerbating that existing level of flood risk off-site referred to above, due to the significant introduction of hard surfacing proposed, without the attenuation measures in place. Taking a risk-based approach, without reliance on the proposed flood mitigation measures, this therefore triggers the need for a Sequential Test.
47. The Sequential Test undertaken by the Appellant has not considered potential housing sites in the wider local authority area, as identified by the Council. That is on the basis of the Appellant's claimed position that the proposal would uniquely include flood alleviation measures that would significantly lessen the flood risk off-site within that part of Feniton to the south of the site along Colestocks Road and further to the south, and that there are no other sites that could provide such benefits to Feniton. However, whilst the flood mitigation measures are an element

of the proposal, as previously referred to, the northern attenuation areas have a dual function including to protect the proposed development from any flood risk.

48. The proposal is therefore fundamentally a housing scheme with attenuation measures necessary, in the absence of any other proposed mitigation, to protect it from flood risk, which would also take the opportunity to provide betterment to off-site flood risk. There is no substantive evidence to indicate that the various other potential sites for housing put forward by the Council would be unsuitable or not have a lower risk of flooding. As such, I have no substantive basis to find that there are no reasonably available sites appropriate for the proposed development in areas with a lower risk of flooding. The proposed development therefore fails the sequential test, in conflict with the Framework in this respect.
49. I shall consider my findings on this main issue further in the planning balance, taking account of the High Court judgement relating to *Mead Realisations Limited v SSLUHC [2024] EWHC279 (Admin) (Mead)* which clarifies that a failure of the sequential test is not automatically fatal to a planning application and clarifies that any such failure does not obviate the need to weigh this in a planning balance. That broad approach is also taken in two other appeal decisions presented as evidence, those comprising the Faversham case referred to previously⁴, and that for a development including housing in Yatton⁵. I do not have the full details of those other two cases to enable a proper comparison, albeit they appear to involve different flood risk issues to that of the appeal at hand, and they are also in different parts of the country from this appeal case. Furthermore, I have determined this appeal on its own merits. Nevertheless, they remain as material considerations particularly in terms of that broad approach relating to the sequential test referred to above in relation to *Mead*.
50. Having regard to foul drainage, premature connection to the public foul sewerage system would be likely to result in overloading the Feniton Wastewater Treatment Works (FWTW), with the resultant risk of spillage and pollution. As such, connection to that system cannot be made until the planned upgrades to the FWTW have been completed. As there is a strong likelihood of those works being completed by 2030, it would be reasonable to impose a condition to prevent premature connection to the public system, together with scope for the Appellant to put forward an alternative.

Other Matters

51. I have had regard to concerns raised about the effect of additional traffic on the roads, including in light of the narrowness and quality of the lanes in the vicinity, including Colestocks Road. However, the submitted Transport Statement demonstrates that vehicle trip generation resulting from the proposed development would not materially impact on the operation of the local highway network, including in relation to traffic queuing at the nearby level crossing. Furthermore, the proposals include measures to provide a suitable access to the site, including localised road widening, that would provide space for vehicles to give way to oncoming traffic on the narrower stretches of the road beyond, and appropriate visibility splays, together with the re-positioning of the speed limit sign to a position north of the proposed access. Additionally, I have no substantive basis to find that suitable provision for parking on the site would not be provided, details of which

⁴ Appeal Ref APP/V2255/W/24/3350524

⁵ Appeal Ref APP/D0121/W/24/3343144

could be controlled at the detailed reserved matters stage. As such, the proposed development would be unlikely to significantly add to existing levels of on-street parking within the village. Furthermore, the Highway Authority has raised no objections in these respects, including in respect of highway safety, subject to conditions, and I have no substantive evidence to find otherwise.

52. I have had regard to the ecology of the site which currently comprises part of a modified grassland field with hedgerow along one side, and concerns raised about the impact on an existing range of fauna using the site. Survey work undertaken has found the presence of commuting and foraging bats and breeding birds, with the potential for hedgehog, brown hairstreak butterfly and a range of common vertebrates, brown hare, common amphibian species, reptiles and badgers. Mitigation and compensation for the ecological impacts of the proposals is proposed, and which could be secured through conditions to ensure provision and management of the measures concerned. That would include the provision and implementation of a lighting plan to maintain dark corridors; a landscape and ecological management plan; a Construction, Surface Water and Ecological Management Plan; and the maintenance and management of the proposed translocated hedgerow alongside Colestocks Road. An appropriate level of Biodiversity Net Gain for the site would also be secured through a planning obligation. With such measures secured, and in the absence of substantive evidence of any likely harm that would be caused to any other species, the proposals would not result in ecological harm.
53. The proposed development would be adjacent to existing residential properties that back onto the site on two sides. In this respect, notwithstanding the clear change to the character and appearance of the site from an open agricultural field to a built up area, given that degree of confinement the proposal would therefore not significantly intrude on the wider countryside. The proposed highway works would result in that road widening and creation of visibility splays referred to above, resulting in the relocation of the existing mature roadside hedges. That would inevitably cause a noticeable change to the lane's character and appearance initially with the removal of those existing sections of hedge. However, the maintenance and management of proposed replacement hedgerows could be secured and controlled by condition so as to ensure their establishment and maturity for the longer term. Furthermore, the visibility splays for the proposed access would not result in the need to remove the nearby Oak tree, which is proposed to be retained.
54. In terms of the living conditions of those adjacent existing residents, again there would be a clear change to the current open outlook from their properties to the countryside beyond. However, together with considerations of privacy and sunlight and daylight, there is no substantive basis to find at this outline stage, that the proposals would cause unacceptable harm in these respects. Such considerations could be appropriately considered in detail at the reserved matters stage when the landscaping, layout and scale of the development would be assessed. Similarly, in respect of any security concerns, again, there is no substantive basis to find that this could not be appropriately addressed through the reserved matters details.
55. There would inevitably be increased activity on the site compared to the existing situation. However, with the proposal comprising residential use, there is no substantive basis to find that such activity would be to an extent not expected or appropriate for a residential area, including in terms of noise and disturbance and

air quality once operational. Additionally, I have no substantive evidence to indicate that noise and pollution levels from additional traffic movements in the surrounding area would be significantly increased. Furthermore, construction activity could be appropriately controlled through conditions so as to prevent unacceptable harm to living conditions during the development of the site.

Best and Most Versatile agricultural land (BMVAL)

56. Policy EN13 of the Local Plan sets out that BMVAL (Grades 1, 2 and 3a) will be protected from development not associated with agriculture or forestry. It goes on to say that planning permission for development affecting such land will only be granted exceptionally if there is an overriding need for the development and either: sufficient land of a lower grade is unavailable or that available lower grade land has an environmental value recognised by a statutory wildlife, historic, landscape or archaeological designation and outweighs the agricultural considerations; or that the benefits of the development justify the loss of high quality agricultural land.
57. I have also taken account of the Framework which states in paragraph 187 that planning decisions should contribute to and enhance the natural and local environment by, amongst other things, recognising the wider benefits from natural capital and ecosystem services, including the economic and other benefits of the best and most versatile agricultural land. Local Plan policy EN13 is therefore broadly consistent with the Framework with regard to this matter.
58. The proposed development would result in the loss of 4.15 hectares of Grade 2 agricultural land, comprising approximately half of a larger field parcel. However, the area of land concerned would represent a relatively small loss of BMVAL locally in the context of the amount that would be retained in the vicinity of the village. In this respect, I understand from the Agricultural Land Classification and Soil Resources report submitted, that all of the agricultural land around the village is either of Grade 1 or 2. For that reason, whilst there would be harm caused by the loss of BMVAL, that harm would be limited. I shall consider this further in the planning balance.

Heritage

59. The proposed development would be close to and within part of the setting of the Grade II listed buildings (LBs) to the west of the site comprising two storey thatched cottages named as Sheridon and Sherwood Cottage (list entry numbers 1162244 and 1098181 respectively). Paragraph 212 of the Framework states that when considering the impact of a proposed development on the significance of a designated heritage asset (HA), great weight should be given to the asset's conservation (and the more important the asset, the greater the weight should be). Paragraph 213 goes on to state, amongst other things, that any harm to, or loss of, the significance of a designated HA should require clear and convincing justification.
60. The two LBs are located opposite each other a short way along a lane running westwards from Colestocks Road, which I understand are historically functionally associated with Sherwood Farm to the south-west, along with a group of fields including the appeal site. However, there remains a noticeable degree of separation between the LBs and the appeal site, with an undulating intervening large field, mature hedgerows either side of Colestocks Road, and the road itself. As such, the appeal site, whilst comprising land reflecting the wider agricultural

nature of land surrounding the LBs, is not a significant component of the immediate setting of the LBs.

61. The proposed development would introduce substantial built form to, and change the use from, the existing agricultural nature of the appeal site, albeit in the context of being an immediate continuation of the built up village. Furthermore, due to the rise of the land east and north-eastwards away from Colestocks Road, and despite the outline nature of the proposal at this stage, it is likely that there would be some degree of intervisibility between the LBs and the proposed development. Nevertheless, those factors referred to above, albeit with the partial realignment of the site's boundary hedge, together with any additional proposed planting, would be likely to limit the degree to which any such intervisibility and the presence of and activity associated with the proposed development would affect the LB's immediate setting. For those reasons, it is likely that the setting and integrity of the LBs would be preserved.
62. The integrity of other HAs within the wider vicinity of the site would not be affected by the proposed development, due either to the degree of physical separation or lack of intervisibility.

Appropriate Assessment under the Habitats Regulations

63. The appeal site lies within the impact zone of the East Devon Heaths Special Protection Area (SPA) and the zone of influence for recreational pressure impacts for the East Devon Pebblebed Heaths Special Area of Conservation (SAC). The SAC and SPA have a matching boundary covering an area of approximately 1119 hectares.
64. The Pebblebed Heaths is a nationally important representative of the inland Atlantic-climate lowland heathlands of Great Britain and north-west Europe, with a significant feature being the diversity of heathland associated communities. These include dry heath dominated by the heather *Calluna vulgaris* with bell heather *Erica cinerea*, western gorse *Ulex gallii* and heathland grasses, grading to wet heath in a series of shallow valleys with mineral rich flushes on the valley sides, and valley mire in the valley bottoms with the cross-leaved heath *Erica tetralix* and a range of characteristic mire and flush species.
65. The SAC is designated primarily for the north Atlantic wet heaths with cross-leaved heath *Erica tetralix*, European dry heaths and the populations of southern damselfly *Coenagrion mercurial*. The Pebblebed Heaths is considered one of the best areas in the UK for these features.
66. The East Devon Heaths are classified a SPA under the Birds Directive, as the area regularly supports 2.4% of the UK population of breeding nightjar *Caprimulgus europaeus* (as at 1992), and 8% of the UK population of breeding Dartford warbler *Sylvia undata* (as at 1994). The Nightjars nest on the ground with eggs easily visible to predators if not covered by the sitting birds. Dartford warblers are insectivorous and foraging sites under thick vegetation, particularly gorse bushes, when there have been snowfalls, are important for their survival in hard winters. Their nests are also located close to the ground in heather or gorse.
67. Nightjar nests are therefore susceptible to predation if the birds are disturbed and flushed off the nest by humans or their pets, including dogs. Furthermore, research indicates that the higher the degree of disturbance to Dartford warblers the later

hatching occurs, thereby reducing overall breeding productivity, significantly so in heather territories.

68. Other harmful effects include those relating to airbourne nitrogen from burning fossil fuels by, amongst other things, traffic, whereby many heathland plant species can only survive and compete successfully on soils with low nitrogen availability. Dog fouling is also a source of nutrients which therefore again affects those heathland plants. Heathland is also particularly vulnerable to trampling which can kill the plants and cause soil erosion. Litter and fly tipping also results in nutrient enrichment, birds being trapped, increased fire risk, and surface or ground water pollution.
69. It has been identified in the South-East Devon European Site Mitigation Strategy (the SEDESMS) that there is a 10-kilometre zone of influence relating to the SAC/SPA within which residential development is clearly linked to recreation use of the European sites. As the proposed development falls within that zone, it is particularly likely that prospective residents would visit the SAC/SPA, with the risk that they would contribute to the above threats to the habitats and features concerned.
70. Measures to manage such increases in visitors are therefore required, including habitat management measures; management of visitor flows and access on adjacent land to the SAC/SPA; and visitor management measures such as in relation to car parking, path design and management, signage and visitor information, codes of conduct, additional wardening, and the creation of Suitable Alternative Natural Greenspace (SANGs).
71. The SEDESMS sets out mechanisms to enable such management measures. In this respect, the Council secures financial contributions towards infrastructure, including SANGs, via the Community Infrastructure Levy (CIL); with non-infrastructure measures such as monitoring and some on and off-site measures funded by a set contribution per new dwelling through s106 Agreements.
72. Natural England is content that securing appropriate financial contributions to deliver the proposed mitigation measures outlined in the SEDESMS is sufficient to ensure that an adverse impact on the integrity of the SAC and SPA can be avoided. I have no substantive basis to find differently.
73. The submitted s106 Agreement includes an obligation relating to the payment of the appropriate financial contribution. As such, I am satisfied that, together with any appropriate CIL, this would avoid the likely significant effect that would otherwise be caused by the proposed development. As such, the proposed development would have no adverse impact on the integrity of the SAC and SPA.

Conditions and planning obligations

74. The Council has provided a schedule of suggested conditions in the event of the appeal being allowed which I have considered in the light of advice in the National Planning Practice Guidance. The Appellant has commented upon that schedule and the two parties have reached agreement on its content following further discussion and some suggested amendments during the course of the Inquiry. I have referred to the condition numbers, cross referenced to the attached annex, in brackets for clarity purposes.

75. The standard conditions (1 & 2) would be necessary to secure the submission of the reserved matters and to set the timescales for that and the commencement of development. For certainty, a condition requiring the development to be carried out in accordance with the approved plans, or in the case of the concept masterplan in general accordance with it, would also be necessary (3).
76. In the interests of the character and appearance of the surrounding area, it would be necessary to secure details of materials and finishes that would be used on the external walls and roofs together with a schedule of windows and doors of the proposed development (4).
77. In the interests of highway safety, the following conditions would be necessary, to secure: the implementation of the proposed site access, including visibility splays, in accordance with the approved plan (5); the implementation of the proposed off-site highway works, also in the interests of sustainable travel (6); and the submission and implementation of a Construction Management Plan, also in the interests of the amenities of existing and future local residents (16).
78. In order to protect local ecological interests, the following conditions would be necessary, to secure the implementation of: measures within the submitted Ecological Impact Assessment (7); a landscape and ecological management plan, following its submission and approval (8); a Construction, Surface Water and Ecological Management Plan following its submission and approval, also to prevent inappropriate connection to the public sewerage system, to protect the health and safety of existing and future residents, and to prevent pollution of or detriment to the local environment (9); and a Lighting Design, following its submission and approval (10).
79. To ensure acceptable drainage for the proposed development, conditions would be necessary to secure the submission and implementation of: a detailed surface water strategy (11); and a strategy for foul water drainage and the disposal of sewage from the site (12). Also, to ensure the suitable supply of potable water to the proposed development, a condition would be necessary to secure improvement of the public water distribution network in order to accommodate the increase of supply (13).
80. In the interests of environmental sustainability, conditions would be necessary to secure the submission and implementation of: a Water Conservation Strategy (14); and a waste audit statement (17).
81. To ensure that any features on the site of archaeological interest are properly recorded, a condition to secure the implementation of a programme of archaeological work in accordance with a written scheme of investigation would be necessary (15).
82. As referred to previously, planning obligations have been submitted under s106 of the Act. Those obligations make provision for the following:
 - No less than 50% of the proposed dwellings to be affordable housing, with a mix comprising 70% social rented dwellings or affordable rented dwellings (or a combination of the two); and 30% affordable shared ownership dwellings; and, would be constructed in accordance with design standards relating to the Building Regulations for Category 2: accessible and adaptable dwellings, Homes England design and quality standards, and would be

materially indistinguishable from private dwellings in respect of their appearance. The provision would therefore accord with Strategy 34 of the Local Plan, relating to district wide affordable housing provision targets, and paragraphs 64 and 66 of the Framework.

- Provision and management of appropriate on-site open space which would also include a child and youth play area. This would be in accordance with Strategy 43 of the Local Plan relating to open space standards, and would be necessary in the interests of the amenities, health and well-being of prospective residents.
- Biodiversity Net Gain (BNG) through the submission and implementation, following its approval by the Council, of a Biodiversity Gain Plan, and the payment of a BNG monitoring fee. This would include provision for 30-year BNG maintenance and monitoring and relate to a combination of on-site and off-site measures. It would also be on the basis of 20% net gain, or such other percentage gain as may be agreed with the Council but not less than 10% on the biodiversity pre-development site value. This would be necessary to ensure that biodiversity is conserved and enhanced and to meet statutory requirements in this respect.
- Appropriate financial contribution towards non-infrastructure measures to mitigate the impacts of the proposed development on the East Devon Heaths Special Protection Area and East Devon Pebblebed Heaths Special Area of Conservation. This is necessary for the reasons set out in the Appropriate Assessment.
- A Travel Plan, defined in the Framework as a long-term management strategy for an organisation or site that details how agreed sustainable transport objectives are to be delivered, and which is monitored and regularly reviewed. This relates to ensuring that the trip generation from the proposed development is maintained at an acceptable level in terms of the impact on the local highway network and encouraging prospective residents to use sustainable travel options, in the interests of environmental sustainability. Such provision would therefore accord with paragraph 118 of the Framework.

Planning balance

Harms

83. I have found that the proposed development would fail to accord with the Council's spatial strategy, and acknowledge that associated with this would be a likely increase in cars on the road and the potential emissions that would go with that. However, I have found there to be factors which lessen the weight that I afford to that conflict.
84. I have also found that, in respect of flood risk, the proposal fails the sequential test and does not fully accord with policy EN22 of the Local Plan and F1 of the NP, having regard also to the absence of an agreed surface water outfall. However, I have also found that there would be likely betterment relating to off-site flood risk resulting from the proposals, in the context of the proposals making the development safe without increasing flood risk elsewhere. That would be subject to compliance with a Grampian condition to secure acceptable surface water

drainage, which I have found would be appropriate in the circumstances of this case. Those factors therefore lessen the weight afforded to the above failures relating to the sequential test and development plan policy.

85. Furthermore, I have found that there would be harm caused by the loss of BMVAL, although only limited.

Benefits

86. Having regard to the Government's objective of significantly boosting the supply of homes, the proposed development would have the benefit of contributing up to 86 new dwellings towards the District's supply. This is in the context of the need for significantly more housing than is provided for through the adopted development plan and a greater housing requirement than was the case at the time of the 'super-Inquiry'; and that for the plan period to date, there has been a delivery shortfall of 466 homes over that required, with a shortfall of 1,879 homes anticipated over the plan period. The Council is also unable to demonstrate a 5-year HLS, with the current figure standing within the range of 2.57 to 3.08 years' worth. This represents a substantial shortfall, even if the supply is at the higher end of that range. The range represents a shortfall of between 2,313 and 2,922 dwellings which is anticipated to persist and worsen for the foreseeable future in the absence of a new Local Plan.
87. Under the emerging Local Plan, currently the housing requirement would meet 83% of the minimum local housing need, representing a shortfall of just over 4,300 homes, albeit that this could be less, given the 9.8% headroom surplus, were there to be full delivery from all sources. I note the Council's position that this accords with the Framework which in paragraph 234 sets out that for the purpose of preparing local plans, the policies in the Framework will apply from 12 March 2025 other than where, amongst other things, a plan has reached Regulation 19 (pre-submission stage) on or before 12 March 2025, and its draft housing requirement meets at least 80% of local housing need.
88. The emerging Local Plan was subject to a first round of Regulation 19 consultation at the beginning of 2025 and the Council intends to conduct a second round of Regulation 19 consultation later this year. Based on the submissions to this appeal I cannot be certain that the content of the emerging Local Plan will not have changed significantly from that presented at the first-round stage, nor that the proposed District wide allocations for housing would all be found acceptable, which in any case are matters for the Examination process and not for this appeal.
89. As such, for the purposes of determining this appeal, I afford limited weight to the Council's position relating to meeting that 80% of local housing need figure. In any case, even if the draft housing requirement of at least 80% of local housing need were applicable, a local housing need shortfall would still remain.
90. Furthermore, the proposed housing provision would include the added benefit of 50% of the units being affordable dwellings, of an appropriate mix of tenures. That would represent a significant addition to local supply against a backdrop of an ongoing and acute need for such housing in the District. Additionally, all of the proposed dwellings would be accessible and adaptable, which would be in excess of the requirement set out in Local Plan Strategy 36.

91. For the above reasons, those benefits relating to additional housing generally and the affordable dwellings would be substantial.
92. As referred to above, I have also found that there would be likely betterment relating to off-site flood risk resulting from the proposals, which would be a substantial benefit. Furthermore, the intended provision for BNG would provide a moderate benefit.
93. The proposed development would also be likely to generate moderate economic benefits, particularly during the construction phase, including through providing direct and indirect jobs, albeit only for the duration of that phase.

Balance

94. Due to the harm that I have found would be caused in respect of the first two main issues and the associated conflict with development plan policies, the proposed development would be contrary to the development plan as a whole. That is therefore an important consideration in the context of a plan-led system whereby planning law requires that applications for planning permission be determined in accordance with the development plan, unless material considerations indicate otherwise.
95. Having regard to the Framework as a material consideration, under paragraph 11(d) of that document, in light of the shortfall in the 5-year HLS, the policies which are most important for determining the application are out-of-date. In having regard to paragraph 11(d)(i) of the Framework, the benefits that I have highlighted above outweigh the flood risk harm that I have identified, notably the failure of the sequential test and to fully accord with policy EN22 of the Local Plan and F1 of the NP. As such, the application of policies in the Framework that protect areas at risk of flooding do not provide a strong reason for refusing the development proposed. Furthermore, I have found that it is likely that the setting and integrity of the LBs would be preserved and that the integrity of other heritage assets within the wider vicinity of the site would not be affected by the proposed development. I have also found that the proposed development would have no adverse impact on the integrity of the SAC and SPA.
96. In light of the above, paragraph 11(d)(ii) of the Framework is therefore triggered. As such, it is necessary to consider whether any adverse impacts of granting permission would significantly and demonstrably outweigh the benefits, when assessed against the policies in 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.
97. The adverse impacts are those identified previously in respect of the spatial strategy, flood risk and drainage, and that limited harm relating to the loss of BMVAL, whilst the benefits are those set out above. For all of the reasons given, I find that the adverse impacts would not significantly and demonstrably outweigh the benefits, having regard to paragraph 11(d)(ii) of the Framework. This outweighs the conflict I have found would be caused with the development plan.

Conclusion

98. For the above reasons, the appeal should be allowed.

A Dawe

INSPECTOR

Richborough

ANNEX A – CONDITIONS

1. Details of the appearance, landscaping, layout, and scale (hereinafter called "the reserved matters") shall be submitted to and approved in writing by the Local Planning Authority before any development takes place and the development shall be carried out as approved.
2. Application for approval of the reserved matters shall be made to the Local Planning Authority not later than one year from the date of this permission. The development hereby permitted shall commence not later than 2 years from the date of approval of the last of the reserved matters to be approved.
3. The development hereby permitted shall be carried out in accordance with drawing nos: 2007-039-SK05-E and P23-0554_DE_004_D_01 and in general accordance with drawing no. P23-0554_DE_005_E_01.
4. Prior to the commencement of development above slab level, a schedule of materials and finishes, including British Standard of manufacturers colour schemes, and, where so required by the LPA, samples of such materials and finishes, to be used on the external walls and roofs, together with a schedule of windows and doors for the proposed development, shall be submitted to and approved in writing by the Local Planning Authority. The development shall be carried out in accordance with the approved details.
5. The development shall not commence until the access has been constructed in accordance with plan no. 2007-039-SK05-E. The site access road shall be hardened, surfaced, drained and maintained thereafter to the satisfaction of the Local Planning Authority for a distance of not less than 20 metres back from its junction with the public highway. Visibility splays shall be provided, laid out and maintained for that purpose at the site access in accordance with plan no. 2007-039-SK05-E where the visibility splays provide intervisibility at a height of 0.6 metres above the adjacent carriageway level and the distance back from the nearer edge of the carriageway of the public highway shall be 2.4 metres and the visibility distances along the nearer edge of the carriageway of the public highway shall be 43 metres in both directions.
6. There shall be no occupation of the development until the off-site highway works as shown in the Transport Statement (undertaken by TPA, dated August 2024) at paragraphs 4.7 and 4.8 have been constructed. The works include: provision of a footway from the proposed access to the existing pedestrian infrastructure on Colestocks Road to the south of the access; a bus stop and shelter on both sides of Colestocks Road in the vicinity of the access; a footway adjacent to the proposed southbound bus stop; access to the northbound bus stop via an uncontrolled pedestrian crossing, and section of footway on the west side of Colestocks Road; inclusion of dropped kerbs and tactile paving at the existing Lincoln Close pedestrian crossing; new section of footway and uncontrolled pedestrian crossing close to the Colestocks Road/Station Road junction.

7. Works shall proceed in accordance with the Ecological Impact Assessment (GE Consulting, September 2024), in particular the ecological mitigation and enhancement measures detailed in Section 5 and illustrated in Figure 4. The development shall not be occupied until the local planning authority has been provided with evidence, including photographs, that all ecological mitigation and enhancement features, including bat boxes and bird boxes (1 bat or bird box per dwelling) and permeable fencing has been installed/constructed, and compliance with any ecological method statements in accordance with details within the submitted LEMP and CSWEcoMP.
8. Prior to the commencement of the development, a landscape and ecological management plan (LEMP) shall be submitted to, and approved in writing by, the Local Planning Authority. It shall include the location and design of all ecological mitigation and enhancement features including bird boxes and bat boxes (1 bat or bird box per dwelling), permeable fencing, the maintenance and management of the hedgerow along Colestocks Road frontage that is to be translocated, and other features to be shown clearly on submitted plans. The LEMP shall include biodiversity measures as referred to in the Ecological Impact Assessment (GE Consulting, September 2024) and shall 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 organisation responsible for implementation of the plan.
 - 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.

Furthermore, the LEMP shall 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 shall be implemented in accordance with the approved details.

9. No development shall take place (including ground works) until a Construction, Surface Water and Ecological Management Plan (CSWEcoMP) has been submitted to and approved in writing by the local planning authority. The CSWEcoMP 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.
- h) Use of protective fences, exclusion barriers and warning signs.
- i) Construction Surface Water Management Plan (no land drainage from the development site shall be permitted to connect, directly or indirectly, to the public sewerage network).

The approved CSWEcoMP shall be adhered to and implemented throughout the construction period strictly in accordance with the approved details, unless otherwise agreed in writing by the Local Planning Authority.

10. No works shall commence on site until a Lighting Design including lux contours, based on the detailed site design and most recent guidelines (currently GN08/23 and DCC 2022), has been submitted to, and approved in writing by, the Local Planning Authority. The design shall clearly demonstrate that specified boundary hedges and buffer zones remain as dark corridors, including proposals for their management. 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. Under no circumstances shall any other external lighting be installed without prior consent from the local planning authority.
11. No development shall commence until a detailed surface water drainage strategy for the site, based on the principles within the Flood Risk Assessment and providing for the highest type of system within the SUDS hierarchy, has been submitted to and approved in writing by the Local Planning Authority. The strategy shall include the following details:
- a) Evidence confirming an agreement to discharge surface water from the site into an appropriate receiving system. The suitability of the receiving system shall be demonstrated to the Local Planning Authority. A drainage scheme for the site showing details of the outfall, gullies, connections, soakaways and means of attenuation on site shall be submitted to and approved in writing by the Local Planning Authority. The drainage works shall be carried out in accordance with the approved details, unless otherwise agreed in writing with the Local Planning Authority. Should an alternative outfall location be proposed, instead of that shown within the Flood Risk Assessment, then details, as above, shall be submitted to and approved in writing by the Local Planning Authority.
 - b) Updated surface run-off calculations for rate and volume for pre and post development using the appropriate methodology;

- c) Updated soakaway test results in accordance with BRE365, ground water monitoring results in line with DCC groundwater monitoring policy, and evidence of the level of risk for groundwater re-emergence downslope of the site from any proposed soakaways or infiltration basins;
- d) The detailed design of Sustainable Drainage Systems (SuDS) and attenuation basins to be used on the site in accordance with best practice and the CIRIA SuDS Manual (C753) as well as details on the delivery, maintenance and adoption of those SuDS features, such features shall not exceed existing run off rates;
- e) Detailed drainage layout drawings at an identified scale indicating catchment areas, referenced drainage features, manhole cover and invert levels and pipe diameters, lengths and gradients. Basins and ponds to have varied side slopes if appropriate with a maximum slope of 1 in 3;
- f) Detailed hydraulic calculations for rainfall events listed below. The hydraulic calculations shall take into account the connectivity of the entire drainage system including the connection with the system/watercourse/culvert that will be affected by the proposals. The results shall include design and simulation criteria, network design and result tables, manholes schedule tables and summary of critical result by maximum level during the 1 in 1, 1 in 30 and 1 in 100 (plus an allowance for climate change) rainfall events. The drainage features shall have the same reference as the drainage layout;
- g) Evidence that runoff exceeding design criteria has been considered. Calculations and exceedance flow diagram/plans must show where above ground flooding might occur and where this would pool and flow;
- h) Evidence that Urban Creep has been considered in the application and that a 10% increase in impermeable area has been used in calculations to account for this;
- i) Information evidencing that the correct level of water treatment exists in the system in accordance with the Ciria SuDS Manual C753;
- j) No surface water from the development approved shall be permitted to connect, directly or indirectly, with the public sewerage network, unless with the prior written agreement of the Local Planning Authority;
- k) Details of an implementation and management plan (including timetable). This shall include arrangements for adoption by any public body or statutory undertaker, or any other arrangements to secure the effective operation and management of the sustainable drainage system.

The surface water drainage strategy shall be managed and maintained in accordance with the approved details for the lifetime of the development.

12. Prior to the commencement of development a strategy detailing the provision to be made for foul water drainage and the disposal of sewage from the site has been

submitted to and approved in writing by the Local Planning Authority. The details shall include:

- a) The estimated volume of waste water from the development at full occupation;
- b) Any temporary arrangements and the final foul drainage scheme and its management and operation;
- c) Construction proposals;
- d) A timetable for construction;
- e) No foul sewage flows from the development approved shall be permitted to connect, directly or indirectly, with the public sewerage network without confirmation to the Local Planning Authority that improvements necessary to accommodate the development within the public sewerage system have been completed. If it is identified that upgrade works are required to ensure adequate foul sewage capacity, no dwelling shall be occupied until the upgrades to the public foul sewerage infrastructure have been completed and confirmed in writing to the Local Planning Authority.

There shall be no occupation within the development until foul sewerage provision has been completed in accordance with the approved foul drainage strategy.

- 13. Prior to any building being occupied or brought into use, all works necessary to improve the public water distribution network – in order to safely and adequately accommodate the increase of supply to the development – shall have been completed and confirmed in writing to the Local Planning Authority (or within 18 months from the grant of the final reserved matters, whichever shall be the sooner).
- 14. No development shall commence until a Water Conservation Strategy has been submitted to and approved in writing by the Local Planning Authority. The strategy 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.
- 15. No development shall take place until the developer has secured the implementation of a programme of archaeological work in accordance with a written scheme of investigation (WSI) which has been submitted to and approved in writing by the Local Planning Authority. The development shall be carried out at all times in accordance with the approved scheme as agreed in writing by the Local Planning Authority. The development shall not be occupied until the post investigation assessment has been completed in accordance with the approved Written Scheme of Investigation. The provision made for analysis, publication and dissemination of results, and archive deposition, shall be confirmed in writing to, and approved by, the Local Planning Authority.

16. Prior to commencement of development a Construction Management Plan (CMP) shall be submitted to, and approved in writing by, the Planning Authority, which shall be implemented and remain in place throughout the development. The CMP shall include:

1. Traffic Management elements to include:

- a) the timetable of the works;
- b) daily hours of construction;
- c) any road closure;
- d) hours during which delivery and construction traffic will travel to and from the site, with such vehicular movements being restricted to between 8am and 6pm Mondays to Fridays inc.; 8am to 1pm Saturdays, and no such vehicular movements taking place on Sundays and Bank/Public Holidays unless agreed by the Local Planning Authority in advance;
- e) the number and sizes of vehicles visiting the site in connection with the development and the frequency of their visits;
- f) the compound/location where all building materials, finished or unfinished products, parts, crates, packing materials and waste will be stored during the demolition and construction phases;
- g) areas on-site where delivery vehicles and construction traffic will load or unload building materials, finished or unfinished products, parts, crates, packing materials and waste with confirmation that no construction traffic or delivery vehicles will park on the County highway for loading or unloading purposes, unless prior written agreement has been given by the Local Planning Authority;
- h) hours during which no construction traffic will be present at the site;
- i) the means of enclosure of the site during construction works;
- j) details of proposals to promote car sharing amongst construction staff in order to limit construction staff vehicles parking off-site;
- k) details of wheel washing facilities and obligations;
- l) the proposed route of all construction traffic exceeding 7.5 tonnes;
- m) details of the amount and location of construction worker parking;
- n) photographic evidence of the condition of adjacent public highway prior to commencement of any work.

2. Environmental elements to include:

- a) air quality;
- b) dust;
- c) water quality;
- d) lighting;
- e) noise and vibration including all audible alarms;
- f) pollution prevention and control;
- g) monitoring arrangements.

Any equipment, plant, process or procedure provided or undertaken in pursuance of this development shall be operated and retained in compliance with the approved CMP. Construction working hours shall not be outside 8am to 6pm Monday to

Friday and 8am to 1pm on Saturdays, with no working on Sundays or Bank Holidays. There shall be no burning on site.

17. Prior to the commencement of development, a waste audit statement shall be submitted to, and approved in writing by, the Local Planning Authority. This statement shall include all information outlined in the waste audit template provided in Devon County Council's Waste Management and Infrastructure Supplementary Planning Document. The following points shall be addressed in the statement:

- a) demonstrate the provisions made for the management of any waste generated to be in accordance with the waste hierarchy;
- b) the amount of construction, demolition and excavation waste (in tonnes) set out by the type of material;
- c) identify targets for the re-use, recycling and recovery for each waste type from during construction, demolition and excavation, along with the methodology for auditing this waste including a monitoring scheme and corrective measures if failure to meet targets occurs;
- d) the predicted annual amount of waste (in tonnes) that will be generated once the development is occupied;
- e) identify the main types of waste generated when development is occupied;
- f) the details of the waste disposal methods likely to be used; including the name and location of the waste disposal site;
- g) identify measures taken to avoid all waste occurring.

The development shall be carried out in accordance with the approved statement.

----- End of Schedule -----

ANNEX B - APPEARANCES

FOR THE APPELLANT:

Paul Cairnes KC Instructed by Taylor Wimpey UK Ltd

Jessica Allen Instructed by Taylor Wimpey UK Ltd

who called:

George Ballard MEng, CEng MICE Director, Phoenix Design Partnership Ltd

James Stacey BA (Hons) TP Dip MRTPI Managing Director, Tetlow King Planning

Jeremy Gardiner BA (Hons) BPI DipConsAA MRTPI Senior Director, Pegasus Group

Neil Tiley BSc (Hons) Assoc RTPI Senior Director, Pegasus Group

and, for the planning obligations/conditions round table discussion (RTD):

Elizabeth Pottage Taylor Wimpey

James Darrall Transport Planning Associates

Richard Harding Osborne Clarke

FOR THE LOCAL PLANNING AUTHORITY:

Odette Chalaby Instructed by Damian Hunter, Planning Solicitor, East Devon District Council

who called:

Joshua Lewis BSc (Hons) Senior Flood Coastal Risk Officer, Devon County Council

Simon Andrew Croft BSc (Hons) Growth Planning Manager, South West Water Limited

Gareth Stephenson BA (Hons) MA MRTPI Principal Planning Officer, East Devon District Council

Matthew Dickins BA (Hons) PGDip MSc MRTPI Planning Policy Manager, East Devon District Council

and, for the planning obligations/conditions RTD:

Sophie Emerson	Solicitor, Trowers & Hamlins
Alison Langmead	Solicitor, Pennon Group

INTERESTED PARTIES:

Martyn Smith	Chair of Feniton Parish Council
David Ewings	Local resident
Miles Butler	Local resident

ANNEX C – INQUIRY DOCUMENTS

1. Opening statement on behalf of the Appellant
2. Opening statement on behalf of the Council
3. Colour coded track changes schedule of conditions V5
4. Statement made by David Ewings
5. Statement made by Martyn Smith
6. Statement made by Miles Butler
7. Updated schedule of conditions
8. Closing submissions on behalf of the Council
9. Closing submissions on behalf of the Appellant