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# Appeal Decision

Inquiry held on 21, 22 and 26 September 2022

Site visit made on 23 September 2022

**by M Woodward BA (Hons) MA MRTPI**

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

**Decision date: 11 October 2022**

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## **Appeal Ref: APP/Y1110/W/22/3296946**

### **Land to the west of Clyst Road, Topsham**

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant outline planning permission.
  - The appeal is made by Waddeton Park Ltd against the decision of Exeter City Council.
  - The application Ref 21/0894/OUT, dated 1 June 2021, was refused by notice dated 20 January 2022.
  - The development proposed is phased outline planning application for the construction of up to 100 dwellings and associated infrastructure (all matters reserved).
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### **Decision**

1. The appeal is allowed and planning permission is granted for phased outline planning application for the construction of up to 100 dwellings and associated infrastructure (all matters reserved) at Land to the west of Clyst Road, Topsham, in accordance with the terms of the application, Ref 21/0894/OUT, dated 1 June 2021, subject to the conditions contained in the attached Schedule.

### **Preliminary Matters**

2. The planning application was submitted in outline form with all matters reserved except for access. Prior to the Inquiry the appellant sought to withdraw 'access' from consideration, seeking to reserve it for later determination. Several submitted plans<sup>1</sup> show the location of the access, the point of access being a requirement of the GDPO<sup>2</sup> in relation to outline applications. No objections were raised to the access either by the Council or the Highway Authority when the planning application was considered. Removal of access from consideration at this stage would not give rise to procedural unfairness and would align with the *Wheatcroft Principles*<sup>3</sup>.
3. As a result of the foregoing, I have amended the description of development in the banner heading above, from that stated on the application form, to reflect that the proposal is being considered in outline form with all matters reserved.
4. Several plans are included which show details of 'reserved matters'. I have treated these plans as illustrative only, and I have taken them into account only insofar as it shows how the site could be developed in future.

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<sup>1</sup> Including plan ref – 190614 L 02 01 A

<sup>2</sup> Part 3, Article 5 of The Town and Country Planning (Development Management Procedure) (England) Order 2015

<sup>3</sup> *Bernard Wheatcroft Ltd v SSE* [JPL 1982 P37]

5. A Unilateral Undertaking (UU) under Section 106 of the Town and Country Planning Act 1990 was submitted by the appellant during the Inquiry. However, it was agreed during the Inquiry that further planning obligations relating to designated European sites mitigation would be necessary. Therefore, I was provided with a further UU alongside a S106 planning agreement shortly after the Inquiry closed. I deal with these documents in my reasoning below.

### **Main Issues**

6. A pre-Inquiry case management conference was held which identified the likely main issues. I have refined the first main issue taking into account exchanges of evidence and all that I heard during the Inquiry. As a result, the main issues in this case are:
  - The effect of the proposal on the character and appearance of the area, with particular regard to the 'strategic gap' and any perceived or actual coalescence between Exeter and Topsham.
  - The effect of the proposal on the integrity of designated European Sites (Exe Estuary Special Protection Area and Pebblebed Heaths Special Area of Conservation and Special Protection Area), including any mitigation proposed.

### **Reasons**

#### *Background*

7. The appeal site is located outside a defined settlement boundary and comprises a number of fields. One side of the appeal site lies adjacent to a recently consented scheme for up to 155 dwellings and a residential care home, the outline element of which was allowed on appeal<sup>4</sup>. This scheme is currently under construction. Access to the appeal site would rely on a connection to this adjacent scheme (hereafter referred to as 'phase 1'), which itself is accessed from Clyst Road.

#### *Character and appearance*

8. The appeal site lies within the 'strategic gap' between Topsham and Exeter. Policy CP16 of the Exeter City Council Core Strategy 2012 (Core Strategy) states that the character and local distinctiveness of areas, including the strategic gap between Topsham and Exeter, will be protected. The importance of this strategic gap in maintaining the distinct identities of the settlements is reinforced by the supporting text to policy LS1 of the Exeter Local Plan First Review 2005 (Local Plan)<sup>5</sup>.
9. From the outset, it is clear to me that the provision of up to 100 houses along with associated roads and infrastructure would constitute notable urban encroachment into an area of countryside which is largely free from development, diminishing the site's openness and rurality. The appellant also accepts that the proposal would have a moderate adverse effect on the rural character of the site<sup>6</sup>. However, it is nevertheless important to clarify the

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<sup>4</sup> Appeal ref - APP/Y1110/W/18/3202635

<sup>5</sup> Paragraph 11.8 of the Local Plan

<sup>6</sup> Appellant's Landscape Proof of Evidence

extent and nature of the harm that would arise and the subsequent effect on the strategic gap.

10. The Exeter Fringes Landscape Sensitivity and Capacity Study 2007 (LSCS) states that the site falls within 'zone 21', which is identified as a rural buffer between Topsham and the M5 motorway, with low intrinsic value and medium landscape sensitivity. It highlights that the capacity for additional housing is limited due to the openness and rural character of the area.
11. It is apparent, however, that since the publication of the LSCS and the adoption of the Core Strategy, housing and other developments have reduced the extent of the strategic gap, with further consented developments likely to erode it further<sup>7</sup>. This situation is not exclusive to zone 21. For example, when travelling along Exeter Road and Topsham Road within an adjacent LSCS zone, recently constructed development has blurred the separate identity of Topsham and Exeter in places. This erosion of the strategic gap over time underlines the importance of the remaining open land, which includes the appeal site, in fulfilling its role as an anti-coalescence buffer.
12. Paragraph 10.38 of the Core Strategy also identifies that the strategic gap between Exeter and Topsham is particularly important, as it prevents coalescence, as well as protecting Topsham's attractive setting. Dealing with the latter point first, Topsham's attractive setting mostly derives from the surrounding landscape relating to the historic core. The appeal site does not form part of this landscape; thus, Topsham's attractive setting would be preserved, a matter undisputed by the main parties.
13. Turning to coalescence. In the context of this appeal, Topsham and Exeter are located on either side of, and constrained by, the M5 motorway. However, that does not mean that coalescence cannot occur, as development could be located on each side of the motorway in a manner which would result in the merging of the two settlements.
14. As far as actual separation is concerned, the proposal would be *circa* 110m from the M5 motorway, and 135m from the nearest buildings in Exeter which lie on the opposite side of the M5<sup>8</sup>. As a spatial concept, this would result in the retention of land between the appeal site and existing built elements.
15. However, the distance between urban features on a map does not take into account the multi-faceted make up of landscapes, the qualitative characteristics of which assist in instilling a perception of place. To appreciate the likelihood of coalescence occurring based on perception, it is important to understand the views likely to be experienced by people as they travel through the local area. Alongside the evidence submitted, I have used my own judgment based on the observations I made on my site visit.
16. Appended to the Council's landscape proof is a Zone of Theoretical Visibility map. However, it is based on 'bare ground' conditions and does not take into account vegetation or buildings which have had a significant effect on the appeal site's visibility. The appellant's visually impact analysis on the other hand was comprehensive, reflective of the observations I made on my site visit and carried out in line with best practice guidance<sup>9</sup>. Based on this assessment,

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<sup>7</sup> ID4

<sup>8</sup> ID5

<sup>9</sup> Core Document 31

a summary of visual effects from various viewpoints in the locality was also undertaken<sup>10</sup>. I agree with the appellant's findings insofar as I find no significant visual degree of effect at any of the viewpoints, and in my view the site overall is relatively well contained visually. Nevertheless, there are several obtainable viewpoints which warrant further analysis in determining the extent to which the strategic gap would be eroded.

17. In particular, Clyst Road is a key route which passes through the landscape to the east of the appeal site and forms a connection between Exeter and Topsham<sup>11</sup>. The road is well screened by hedgerows and other vegetation, although punctuated by field gates and other gaps along its length which allows intermittent views of the appeal site depending on precise location<sup>12</sup>. Even though I conducted my site visits during the summer months, the dense arrangement of vegetation along Clyst Road indicates a notable degree of screening, even during winter months<sup>13</sup>.
18. Moreover, whilst phase 1 was described by the Council as the 'rounding off' of Topsham given its proximity to existing housing and Clyst Road, the context of the appeal proposal is different as it would extend housing in a generally northerly direction away from Topsham and into the countryside, and set away from Clyst Road. Therefore, the scheme would comprise a relatively narrow encroachment into a wider area of open land, whilst retaining a large swathe of open land between Clyst Road and the appeal site.
19. Therefore, views of the scheme would be intermittent, and the proposal's position, beyond an area of open land relative to Clyst Road, would reduce its prominence. Moreover, the submitted illustrative framework plan<sup>14</sup> demonstrates that extensive landscaping could be provided along the eastern boundary. Given the higher level of the site relative to surrounding land, and the extensive urbanisation proposed, it would not completely screen the development. However, it would assist in assimilating the proposal with its verdant surroundings, and would further reduce the perception of urban encroachment into the strategic gap when viewed from Clyst Road and its immediate environs. I am satisfied that suitable landscaping could be secured as part of future reserved matters.
20. It is put to me by the Council that the proposal would be seen alongside phase 1, existing housing which lies on the opposite side of the railway line on Newcourt Road, and a stadium and hotel which occupy the urban edge of Exeter. However, as I saw on my site visit, appreciation of the entire extent of the development referred to involves a panoramic view from a limited number of viewpoints on Clyst Road, requiring the observer to change orientation, this being unrepresentative of the intermittent and fleeting views typically experienced when travelling along Clyst Road. In any event, given the distance involved between each of the obtainable views and all of the developments referred to, and the extent of intervening open land and vegetation, urban form within the panorama appears intermittently and often inconspicuously. The addition of the appeal scheme to this panorama would not contribute to a

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<sup>10</sup> Summarised in Appendix 6 of Appellant's Landscape Proof of Evidence

<sup>11</sup> via Sidmouth Road

<sup>12</sup> View points 4 and 5 as detailed in ID3

<sup>13</sup> My findings are consistent with the appellant's 'winter' assessment under Appendix 6 of the Landscape Proof of Evidence

<sup>14</sup> Plan ref - 190614 L 02 01

'near continuous band of development across the skyline', as is alleged by the Council<sup>15</sup>.

21. Turning to other notable obtainable views. Whilst the proposal would be visible from various points along Newcourt Road, and would diminish the rurality of the appeal site, it would appear as a continuation of the housing associated with phase 1. There would be no discernible visible connection between the scheme and built form in Exeter.
22. In respect of views from other transport corridors, a railway line runs close to the western boundary of the appeal site connecting Exeter and Topsham. However, kinetic views from the train are fleeting at best with trees, hedgerows and other features interrupting obtainable views of the landscape beyond the rail corridor. Whilst the appeal scheme would occupy several fields and would close the existing divide, a brief but noticeable gap comprising a single field would remain in between the appeal site and Newcourt station<sup>16</sup>. In all, with the appeal scheme in place, the strategic gap would continue its actual and perceived anti-coalescence function when viewed from the train.
23. I appreciate that the strategic gap is valued by local people, in part reflected in the objections received to this proposal. My findings above have also taken into account another appeal decision which confirmed that the open land seen after the M5 when travelling towards Topsham from Exeter is important in maintaining their separate identities<sup>17</sup>.
24. However, even if I was to take the settlement edge of Exeter as the M5 motorway, which is closer to the appeal site than the nearest buildings in Exeter, when travelling along the local transport corridors, the current sense of arrival and departure experienced when travelling between the two settlements would not be materially altered by the proposal. This, along with the generally limited and localised visual effects, and the fact that the proposal would not impinge on the existing visual relationship between Exeter and Topsham, leads me to conclude that there would be a sufficient physical and perceptual gap between the two settlements so that coalescence would not arise.
25. Therefore, in conclusion, the extent of encroachment into the strategic gap would be limited overall and would not result in coalescence. Whilst the proposal would materially reduce the openness of the appeal site and harm the rural character and appearance of the area due to the introduction of built development, this would be tempered to some extent by the potential for boundary landscaping and limited landscape and visual effects. Consequently, there would be moderate conflict with policy CP16 of the Core Strategy and policy LS1 of the Local Plan. I address the weight to be afforded to this conflict in my 'planning balance'.
26. In respect of the identified policy conflict, the appellant points to appeal decisions where a degree of 'harm' was tolerated when the respective schemes were measured against policy CP16<sup>18</sup>. However, I take a different view in this case based on the particular landscape circumstances of this case which differs from those referred to.

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<sup>15</sup> Council's closing submission

<sup>16</sup> Newcourt station is the closest railway station in Exeter relative to the appeal site

<sup>17</sup> Appeal ref - APP/Y1110/W/15/3005030

<sup>18</sup> Appeal refs - APP/Y1110/A/14/2215771 and APP/Y1110/W/21/3278148

### *Habitats Sites*

27. The appeal site lies within the zone of influence for the Exe Estuary Special Protection Area (SPA) and East Devon Pebblebed Heaths Special Area of Conservation (SAC) and SPA. They comprise habitats sites<sup>19</sup> which are protected under the Conservation of Habitats and Species Regulations 2017 (the Habitats Regulations). Policy CP16 of the Core Strategy also seeks to prevent harm to these sites.
28. The Exe Estuary SPA is internationally important mainly due to its large winter population of Avocet, migratory species over winter such as Oystercatcher and Brent Goose, and a regular assemblage of at least 20,000 wintering waterfowl. The Pebblebeds Heaths SAC mainly comprises extensive lowland heath, including a diverse range of associated heathland communities. This includes North Atlantic wet heaths and European dry heaths. As part of its SPA status, it supports a number of breeding Nightjar and Dartford Warbler.
29. The South-East Devon European Site Mitigation Strategy 2014 (SEDESMS) recognises that new housing will increase the number of local residents who may be drawn to the habitat sites due to their recreational value. Consequently, given the proposal would involve up to 100 new dwellings and it falls within the zone of influence of these habitats sites, likely significant effects on the important interest features of the habitats sites, as a result of an increase in recreational pressure, cannot be screened out. As a result, I am obliged under the Habitats Regulations as the competent authority to carry out an Appropriate Assessment.
30. As the SEDESMS highlights, a range of recreational activities within the Exe Estuary SPA can result in birds taking flight due to disturbance. A disturbance study found that most flight events were caused by dog walkers, particularly when dogs are off their leads, but walking in general in certain other areas also caused disruption. In the East Devon Pebblebed Heaths SPA and SAC, disturbance to birds is also an issue, as is the trampling of heathland, fires, and nitrogen impacts from dog waste. Consequently, due to the impacts of the proposal in combination with other residential developments in Exeter, there would likely be an increase in visitor pressures on these habitats sites, leading to the recreational impacts as described above.
31. To mitigate these effects, the SEDESMS sets out a range of measures<sup>20</sup>. This includes Suitable Alternative Natural Greenspace (SANG) to divert visitors from sensitive sites and includes enhancing some existing parks within the local area. It also includes Strategic Access Management and Monitoring (SAMM) which involves, amongst other things, creating exclusion zones and fencing, providing dedicated dog exercise areas, and wardens to communicate with users of the sites. The SANG and SAMM require monetary contributions from residential developments in order to mitigate impacts.
32. The SEDESMS is also advocated by Natural England as per their consultation response on the planning application. Within this response they advise that a financial contribution would be required to prevent harmful effects from occurring, and permission should not be granted until this has been secured. I

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<sup>19</sup> As per the glossary in the National Planning Policy Framework

<sup>20</sup> Table 26 of the SEDESMS

am satisfied that a financial contribution is capable of delivering the strategic approach to habitats mitigation as advocated by the SEDESMS.

33. In order to mitigate impacts, the appellant proposed CIL contributions, and the Council confirms that they utilise CIL for this purpose where development is liable, by top slicing CIL receipts for habitats contributions. This is based on a set amount per dwelling and has been factored into the overall CIL charging schedule. However, the Council's CIL charging schedule includes a range of exemptions and reliefs, including social housing.
34. During the Inquiry the Council were unable to clarify whether or not the per dwelling charge factored in affordable housing exemptions, but I see no reason why affordable housing should be exempt from contributing towards habitat mitigation given the recreational pressures I have previously identified as likely as a result of population increase.
35. In order to address the potential shortfall in contributions arising from CIL exemptions, the appellant has provided planning obligations in the form of a S106 Agreement which would ensure that a habitat mitigation contribution would also be applicable in relation to the proposed affordable housing units.
36. As a result of the foregoing, I am satisfied that the mitigation can be appropriately secured by CIL and by way of a S106 Agreement. Therefore, the proposal would not lead to adverse effects on the integrity of the habitat sites either alone or in-combination with other plans and projects. The proposal would comply with policy CP16 of the Core Strategy in this respect, which requires that European Sites are protected.

### **Other Matters**

37. During the Inquiry, concerns were aired by the Council that the landscaping detailed on the illustrative framework plan did not form part of the proposal. Whilst I understand that this plan is illustrative, the Council did not provide me with any evidence to suggest that the landscaping envisaged would not be deliverable. In any event, consideration of landscaping has been reserved for future consideration and the Council retains control over this element to be determined as and when it is sought. Should a proposal be submitted at reserved matters stage then the Council retains the power to refuse it, should they find any reserved matters proposal unacceptable. Allowing this appeal would not prejudice the Council's position with regard to the reserved matters.
38. Concerns have been raised by interested parties regarding the locational suitability of the site. Moreover, it is alleged that the roads leading from the development are unsafe and of poor quality, and that there would be an impact on nearby junctions, particularly junction 30 of the M5. However, access to the appeal site would be taken via the adjacent phase 1 scheme, thus the proposal would be reliant on access to Clyst Road as secured as part of phase 1. Furthermore, improvements to footway provision along Clyst Road are also provided as part of phase 1, which would also be of benefit to future residents of the appeal scheme<sup>21</sup>.
39. In addition, the proposal would promote sustainable transport. As addressed in the 'planning obligations' section, sustainable travel provisions are provided as part of the proposal, including travel vouchers and a mobility hub which could

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<sup>21</sup> As set out in the Core Document 7

provide access to a shared car club vehicle and electric bikes. Therefore, whilst I accept that the scheme would likely be largely reliant on the private car given its location and lack of nearby bus stops, I am satisfied that opportunities have been pursued to promote sustainable travel for future residents of the scheme.

40. In respect of highway safety, I note that the Highway Authority<sup>22</sup> raises no objection on highway safety grounds, nor do National Highways object to the likely traffic impact on junction 30 of the M5. Moreover, the submitted Transport Assessment (TA) assessed the impact of the proposal along with other committed developments and concluded that the impact of traffic on the local network as a result of the scheme in combination would be very low. Therefore, even if I was to accept the assertion made by an interested party that, due to economic recovery post COVID-19, baseline traffic levels have increased since the TA was commissioned, there is no substantive evidence before me to suggest that any of the junctions affected by the scheme's traffic would be anywhere close to exceeding capacity, even factoring in potential baseline traffic increases.
41. In respect of other concerns raised by interested parties, ecological impacts, including those concerning protected species, would be dealt with as part of biodiversity enhancement and construction mitigation (see planning conditions section).
42. The proposed drainage strategy would involve ground water infiltration. The submitted ecological report confirms that the Clyst Marshes County Wildlife Site would be sufficient distance away, along with the intervening topography, to ensure no adverse effects on the quality of these habitats. In any event, conditions would be imposed requiring the submission and subsequent approval of a final drainage strategy.
43. Whilst the appeal site lies in close proximity of the M5, the submitted air quality assessment confirms that concentrations of air pollutants meet relevant limits, thus there would be no significant impact on human health.

### **Planning Balance**

44. The Council's housing land supply position stands at approximately 4 years<sup>23</sup>. As such, they are unable to demonstrate a five-year supply of deliverable housing sites as required by paragraph 68 of the National Planning Policy Framework (the Framework). Therefore, the policies which are the most important for determining the application are considered out of date. In such circumstances, paragraph 11d)(ii) of the Framework indicates that permission should be granted unless any adverse impacts of doing so would significantly and demonstrably outweigh the benefits, when assessed against the policies in the Framework taken as a whole.
45. I am aware that the Council's recent housing delivery test measurement was 155%<sup>24</sup>. This is a past delivery assessment, indicating that housing delivery appears to be on an upward trajectory, in comparison with previous years when the shortfall was particularly acute. I am also aware that when the emerging local plan is adopted, the Council will be able to demonstrate sufficient housing land. However, the emerging local plan is at an early stage

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<sup>22</sup> Devon County Council

<sup>23</sup> See Statement of Common Ground

<sup>24</sup> Core Document 32



and carries limited weight. In any event, neither of these factors compensates for the fact that the Council are unable to deliver 5 years' supply of housing land, and there is no substantive evidence to suggest that the Core Strategy's minimum target of *circa* 12,000 homes is likely to be met during the plan period. Therefore, I conclude that the Council's housing land supply shortfall is at least moderate.

46. In any event, like the main parties, I consider that the delivery of the proposed market homes should be afforded significant weight in light of the Framework's objective of significantly boosting housing supply, and the Council's housing supply shortfall. In addition, there has been significant under-delivery of affordable housing in the past and the need is now acute. Therefore, I also attribute substantial weight to the scheme's affordable housing contribution.
47. The benefits to the local economy, both during construction and indirectly through a likely increase in local spending by future residents, would be modest.
48. I concur with the Council that the amount of biodiversity net gain that will be achieved remains uncertain at this outline stage. However, whilst the Framework advocates biodiversity net gain, it does not prescribe a specific amount. Moreover, the Council does not provide any evidence to suggest that enhancement on the appeal site could not be realised, and the submitted ecological appraisal sets out the type of measures which could be incorporated, to an extent this is reflected in the submitted illustrative framework plan. Therefore, I conclude that biodiversity benefits could be delivered, secured in detail at reserved matters stage. Therefore, I attribute moderate weight to this benefit.
49. Public open space provision would at least meet the Council's requirements as set out in the Local Plan and supplementary planning guidance. This is mitigation necessary to make the development acceptable in planning terms and attracts neutral weight. I find no adverse effects on the integrity of habitat sites, and the mitigation necessary does not attract weight either for or against the scheme.
50. In terms of harm. I have identified conflict with policy CP16 of the Core Strategy and policy LS1 of the Local Plan. However, this is specifically in relation to the scheme's urbanising effect and reduction in the site's openness, albeit within a landscape which is not highly sensitive<sup>25</sup>. The proposal would not result in coalescence, nor would it detract from Topsham's attractive setting. In addition, it appears likely that unallocated land covered under policy CP16 would need to be released for housing in order to address the Council's housing supply shortfall. Consequently, I afford moderate weight to the conflict with policy CP16 I have identified. I attribute only limited weight to the conflict with policy LS1 of the Local Plan, as this policy advocates a blanket approach to protecting the countryside, at odds with the more flexible approach advocated by the Framework.
51. With regards paragraph 174 of the Framework, the scheme would not lie within a valued landscape, nor would it harm the undeveloped coast<sup>26</sup>. Harm to the

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<sup>25</sup> As per figure 2 of Core Document 25

<sup>26</sup> Paragraph 174 a) and c) respectively

intrinsic character of the countryside would be limited, as set out above<sup>27</sup>. Despite this<sup>28</sup>, the development could be designed to be visually attractive and to establish a strong sense of place, in line with paragraph 130 of the Framework.

52. Overall, the adverse effects arising from the scheme would be limited. Those impacts would not significantly and demonstrably outweigh the benefits, when assessed against the policies in the Framework taken as a whole. Therefore, the proposal benefits from the presumption in favour of sustainable development and this is a material consideration of sufficient weight, clearly indicating that planning permission should be granted in this case, notwithstanding identified conflict with the development plan.

### **Planning Obligations**

53. Signed Unilateral Undertakings (UUs) are included with this appeal along with a S106 Agreement which binds the appellant, the Council and Devon County Council. The first UU was submitted with the appeal, followed by a 'top up' UU relating to habitat mitigation submitted shortly after the Inquiry. The S106 Agreement (Agreement) was also submitted shortly after the Inquiry. The UUs and the Agreement contain clauses allowing me to make a finding as to which legal arrangement is preferable.
54. In this respect, the 'top up' UU contains a typographical error which has been acknowledged by the appellant. The error concerns a nominal shortfall in the monetary contribution necessary to mitigate habitats impacts, although the Council confirms that this has been addressed and provided separately by the appellant. Moreover, the UUs also contain an education provision which is no longer sought by the County Council. These anomalies are effectively addressed in the Agreement. As a result, my decision is based on the S106 Agreement<sup>29</sup>. I do not consider the UUs further.
55. The Agreement includes a number of planning obligations, including the provision of 35% affordable housing. This, along with the mechanism to deliver affordable housing as set out, would address policy CP7 of the Core Strategy, and is necessary to make the development acceptable.
56. The Agreement also includes separate contributions towards the Royal Devon and Exeter NHS Foundation Trust (NHS Trust) and Topsham GP surgery (through NHS Devon CCG). Be that as it may, the necessity of these provisions is disputed by the appellant, and there is a clause in the Agreement which would allow me to strike out either of these provisions if I do not deem them CIL compliant.
57. The NHS Trust did not attend the inquiry; thus, I have relied on their written response to the planning application, alongside other evidence received from the appellant and the Council's CIL compliance statement. The NHS Trust identifies that future population growth will require additional healthcare infrastructure. In their view, as they cannot predict when planning applications will be made, they cannot effectively plan for future population growth, and this scheme would grow the population of the area. The Trust's position is that monies would only be required to fund approximately one year of service

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<sup>27</sup> Paragraph 174 b)

<sup>28</sup> And limited conflict with paragraph 130 c)

<sup>29</sup> Having regard to appellant's accompanying letter to the S106 agreement ref- DGR/GDP/308821-00005

provision, as funding would thereafter be reviewed based on the circumstances of the previous year. Therefore, the NHS Trust's request is to bridge a potential funding shortfall in the short-term.

58. Nevertheless, I do not accept that this request is justified. Whilst NHS funding appears to be inherently complex, in its most basic form it appears to include an element of future forecasting based on predicted population increases over a number of years<sup>30</sup>. This ONS data is also the basis on which local plans are formulated in order to identify sufficient housing for the future<sup>31</sup>. As I concluded earlier in my decision, there is no substantive evidence before me to suggest that the Council's housing target will be met over the plan period. Furthermore, even though mid-term population estimates for 2019 have been provided, I do not know whether these figures are comparable with previous population forecasts. It seems more likely to me that population increases in Exeter have fallen below projections due to insufficient housing provision. Whilst I accept that the NHS Trust catchment area is much wider than Exeter, neither do I have information assessing actual and likely future growth against earlier future forecasting, to cover the wider geography.
59. Furthermore, whilst I do not dispute the Trust's assertion that its facilities are operating at maximum capacity, there is an absence of specific details as to where any monies provided would be spent. This is important because funding is only sought to 'plug the gap', yet I am not clear how such a contribution would alleviate pressure on the NHS Trust over such a short period, and the details lack clarity in this regard. Finally, I also agree with the Council that there does not appear to be a policy basis for such a contribution. As such, it has not been demonstrated that it would be necessary or fairly and reasonably related in scale and kind to the development.
60. Having regard to the above, I take a different view when it comes to the impact on Topsham GP surgery. Given that a number of developments and planning permissions have been granted in the Topsham area, including phase 1, this indicates to me that the population locally has increased. The appellant has not provided any substantive evidence to the contrary. Moreover, the Council also consider a contribution to increase the capacity of Topsham GP surgery would be necessary. Taking into account this and the consultation response on the planning application from NHS Devon CCG<sup>32</sup>, I am satisfied that the proposal would give rise to additional local demand on the GP surgery which would otherwise not exist, and this impact should be mitigated to make the development acceptable in planning terms.
61. The provision of 10% public open space would be secured, along with play areas, in accordance with policy DG5 of the Local Plan and the Public Open Space Supplementary Planning Document 2005. A contribution towards a Traffic Regulation Order is required so that parking bays within the proposed site can be restricted for an electric car club vehicle, charging spaces of other vehicles and for cycle and electric bicycle parking. Measures including vouchers towards the use of sustainable travel modes and methods to promote non-car travel are also included.

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<sup>30</sup> CD23(H) – NHS technical guidance to allocation formulae and pace of change

<sup>31</sup> See appellant CIL Compliance Proof

<sup>32</sup> Clinical Commissioning Group

62. Having dealt with this earlier in my decision, the Agreement also contains necessary habitats mitigation. Overall, apart from the NHS Trust contribution, I find that the planning obligations would be directly related to the development proposed, are fairly and reasonably related in scale and kind, and are necessary to make the development acceptable. The proposal would therefore comply with the requirements of Regulation 122 of the CIL Regulations and the tests set out in paragraph 57 of the Framework.

### **Conditions**

63. I discussed the main parties' agreed list of planning conditions during the Inquiry. I have assessed them against relevant guidance contained within Planning Practice Guidance (PPG) and the Framework which requires that planning conditions should be kept to a minimum and only imposed where they are necessary, relevant to planning and to the development to be permitted, enforceable, precise and reasonable in all other respects. I have amended some of them and consolidated several of them in the interests of clarity and in order to meet PPG, and to avoid repetition.
64. I have applied the standard time limit conditions relating to the submission of reserved matters and implementation of the permission. A condition is also necessary securing the location plan which is the subject of approval as part of this permission, in order to provide certainty.
65. A parameters and phasing plan is required as part of the first reserved matters submission so that infrastructure requirements such as highways and drainage can be properly considered in subsequent reserved matters details, so that each phase delivers satisfactory elements of the proposal, including infrastructure.
66. A construction environmental management plan is necessary in the interests of the environment and the living conditions of nearby residents. It also includes measures to protect badgers during construction, in the interests of biodiversity. In terms of surface water drainage, conditions relating to the testing of ground conditions for soakaways, drainage details during construction, and a full surface water drainage management scheme and subsequent details regarding adoption and maintenance arrangements are necessary to ensure no unacceptable flood risk, and adequate surface water drainage measures are in place.
67. A condition relating to archaeology is necessary based on the findings of the submitted archaeology desk-based assessment, which shows potential for remains of local importance. Ground contamination requires further assessment, incorporating mitigation/remediation as necessary, in the interests of the environment.
68. Details of acoustic mitigation are necessary in order to safeguard the living conditions of the scheme's future occupiers. I do not agree with the Council that this should be provided pre-commencement given the nature of the works involved, so I have amended the wording of the condition accordingly. Similarly, whilst a condition relating to CO2 reduction is required to ensure energy efficiency in new homes, I have also re-worded the suggested condition so it is not pre-commencement.

69. I am aware of the potential for a pedestrian/cycle link nearby which would involve a new pedestrian and cycle bridge crossing the railway, partly outside the red-line boundary of the appeal site. The Highway Authority request that land within the appeal site is safeguarded to ensure this can be secured. However, there are limited details at this stage as to the likelihood of this being delivered given that it appears to involve land outside the appellant's control. In any event this could be addressed as part of the reserved matters 'layout' and therefore, it is not necessary to impose a condition on this permission.
70. A condition requiring the submission of a travel plan is necessary in order to promote sustainable transport as per the Framework. In accordance with the Framework's requirement to enhance biodiversity, a condition is required in order to secure a biodiversity management and enhancement plan. Finally, the illustrative framework plan shows that an acoustic screen or bund would be provided along the appeal site's boundary with the railway. In the interests of visual amenity, a condition is necessary to ensure that full details are provided as part of the reserved matters submission(s).
71. The appellant agreed to a number of 'pre-commencement' conditions. Given that these conditions relate to issues which need addressing before the main building works commence, including drainage, archaeology, contaminated land investigation, and construction management; this approach is justified in relation to the affected conditions.

### **Conclusion**

72. For the reasons given above, and subject to the following conditions, the appeal is allowed.

*Matthew Woodward*

INSPECTOR

## **APPEARANCES**

FOR THE LOCAL PLANNING AUTHORITY:

Tim Leader of St John's Chambers

He called:

Robin Upton BSc (Hons) MRTPI

Carney Sweeney Planning

Anne Priscott BA (Hons) CMLI

Anne Priscott Associates

FOR THE APPELLANT:

Charlie Banner KC – *assisted by Isobel Kamber*

He called:

David Seaton MRTPI

PCL Planning

Andrew Cook BA (Hons) MLD CMLI  
MIEMA CEnv

Pegasus Group

INTERESTED PERSONS:

Simon Curran  
Neil Thorne  
Gerry Keay  
Andrew Kitchener  
Will Ridalls  
David Richardson  
Paul Collenette

Essex City Council  
Stantec UK Ltd  
Waddeton Park Ltd  
KLP  
PCL Planning Ltd  
Ashfords LLP  
Local resident

### **DOCUMENTS SUBMITTED DURING THE INQUIRY**

- ID1 Access note by Neil Thorne (Stantec) – 21/09/2022
- ID2 Plan showing recent consented development, green wedge, flood zones and strategic allocations
- ID3 Plan showing combined viewpoints of Andrew Cook and Anne Priscott
- ID4 Topsham Gap – Plan showing planning history
- ID5 Distances Plan
- ID6 Appellant Opening Submission
- ID7 Council Opening Submission
- ID8 Closing submission of the Council
- ID9 Closing submission of the appellant

### **DOCUMENTS SUBMITTED AFTER THE INQUIRY**

- 1 S106 letter ref - DGR/GDP/308821-00005
- 2 S106 Unilateral Undertaking – Habitats
- 3 E-mail from Council to appellant dated 6<sup>th</sup> October 2022
- 4 S106 Agreement
- 5 Joint Addendum Statement: Exeter City Council and Waddeton Park Ltd

## **SCHEDULE OF CONDITIONS**

- 1) Details of the appearance, landscaping, layout, scale and access (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 three years from the date of this permission.
- 3) The development hereby permitted shall take place not later than two years from the date of approval of the last of the reserved matters to be approved.
- 4) The development hereby permitted shall be carried out in accordance with the following approved plan: drawing no. 190604 L 01 01.
- 5) A parameter plan (including phasing) shall be submitted for approval together with the first submission of reserved matters made pursuant to condition 1 of this permission. It shall include details of the maximum number of dwellings and other development (including all infrastructure) to be implemented within each phase of the development. The development shall be implemented in accordance with the approved parameter plan.
- 6) The development hereby permitted shall not commence until a construction environmental management plan has been submitted to and approved in writing by the local planning authority. The plan shall include details of monitoring and mitigation measures to control the environmental impact of the development during the construction and demolition phases, including site traffic and traffic routing, the parking of site operator vehicles, the effects of piling, and emissions of noise and dust. The plan should also include measures to protect badgers from adverse effects during construction. No construction or demolition work shall take place outside the following times: 08:00 to 18:00 (Mondays to Fridays), 08:00 to 13:00 (Saturdays) nor at any time on Sundays, Bank or Public Holidays. The approved construction environmental management plan shall be adhered to throughout the construction period.
- 7) The development hereby permitted shall not commence until a programme of percolation tests has been carried out in accordance with BRE Digest 365 Soakaway Design (2016), and the results have been approved in writing by the local planning authority. A representative number of tests should be conducted to provide adequate coverage of the site, with particular focus placed on the locations and depths of the proposed infiltration devices.
- 8) The development hereby permitted shall not commence until the full results of a groundwater monitoring programme, undertaken over a



period of 12 months, has been submitted to, and approved in writing by the local planning authority. This monitoring should be conducted to provide adequate coverage of the site, with particular focus placed on the locations and depths of the proposed infiltration devices.

- 9) The development hereby permitted shall not commence until the detailed design of the proposed surface water drainage management system to serve the development site for the full period of its construction has been submitted to and approved in writing by the local planning authority. This shall be implemented in accordance with the approved details prior to the commencement of development.
- 10) The development hereby permitted shall not commence until the detailed design of the proposed permanent surface water drainage management system, and full details of its proposed adoption and maintenance arrangements, has been submitted to, and been approved in writing by the local planning authority. The design of this permanent surface water drainage management system should be informed by the programme of approved BRE Digest 365 Soakaway Design (2016) percolation tests (condition 7) and in accordance with the principles set out in the Flood Risk Assessment (Ref. 530/FRA3, Rev C) and should ensure that additional or increased flows of surface water do not discharge onto Network Rail land or into Network Rail's culvert or drains. Development shall be implemented in prior to the occupation of each respective phase in accordance with the approved details.
- 11) The development hereby permitted shall not commence until a written scheme of archaeological work has been submitted to and approved in writing by the local planning authority. This scheme shall include on-site work, and off-site work such as the analysis, publication, and archiving of the results, together with a timetable for completion of each element. All works shall be carried out and completed in accordance with the approved scheme.
- 12) The development hereby permitted shall not commence until a full investigation of the site has taken place to determine the extent of, and risk posed by, any contamination of the land and the results, together with any remedial works necessary, have been approved in writing by the local planning authority. The buildings shall not be occupied until the approved remedial works have been implemented and a remediation statement submitted to the local planning authority detailing what contamination has been found and how it has been dealt with together with confirmation that no unacceptable risks remain.
- 13) No building works above slab level shall take place until an Acoustic Design Statement, including details of mitigation and a timescale for implementation of each mitigation measure, have been submitted to and approved in writing by the local planning authority. The mitigation measures provided shall be in broad accordance with section 8 of the 'Environmental Noise Assessment' by Acoustic Associated SW Ltd. The Acoustic Design Statement shall be implemented in full in accordance with the approved timetable and details and shall be retained thereafter.
- 14) No building works above slab level shall take place until a Standard Assessment Procedure (SAP) calculation, which demonstrates that a 19% reduction in CO2 emissions over that necessary to meet the requirements

of the 2013 Building Regulations can be achieved, has been submitted to and approved by the local planning authority. The measures necessary to achieve this CO2 saving shall thereafter be implemented on site and within 3 months of completion of any dwelling a report from a suitably qualified consultant to demonstrate compliance with this condition will be submitted to and approved in writing by the local planning authority.

- 15) No above ground works shall take place in any phase of the development until a Landscape and Ecology Implementation and Management Plan (LEMP) for that phase has been submitted to and approved in writing by the local planning authority. The LEMP shall include biodiversity enhancement measures and a timetable for implementation of the landscaping and ecology work and details of the management regime. The LEMP shall be implemented in accordance with the approved details.
- 16) Full details of the 'acoustic screen/bund' as detailed on drawing no. 190614 L 02 01 shall be submitted for approval together with the first submission of reserved matters made pursuant to condition 1 of this permission.
- 17) Prior to the occupation of any dwelling, a travel plan, which shall include a timetable for the implementation of measures, shall be submitted to and approved in writing by the local planning authority. The travel plan shall be implemented in accordance with the approved details.

*End of Schedule*