

PLANNING COMMITTEE

Monday 25 July 2016

Present:

Councillor Sutton (Chair)
Councillors Lyons, Bialyk, Denham, Edwards, Foale, Harvey, Mrs Henson, Morse, Newby and Spackman

Apologies:

Councillor Prowse

Also Present:

Assistant Director City Development, Area Planner (PJ), Project Manager (Planning), Project Manager and Democratic Services Officer (Committees) (HB)

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DECLARATIONS OF INTEREST

Members declared the following interests and left the meeting:-

COUNCILLOR	MINUTE
Councillor Spackman	54 (disclosable pecuniary interest as a Trustee of the Feoffees of St Sidwell)
Councillor Morse	57 (lives in neighbourhood)

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PLANNING APPLICATION NO. 15/0436/01 - LAND ADJOINING THE WEST OF ENGLAND SCHOOL, TOPSHAM ROAD, EXETER

The Assistant Director City Development presented the application for outline consent for up to 123 houses and associated infrastructure, with all matters reserved except for access. He set out the planning history to the site, the implications on the natural habitat, the implications of the inability of the Devon County Council Development Management Committee to provide guidance relating to highways and how this should affect the decision process.

He reported in detail on the implications of planning law, the absence of a five year housing supply and the need to consider the presumption in favour of sustainable development which for decision making meant approving development proposals that were in accord with the development plan without delay. Further, where the development plan was out of date granting permission unless any adverse impact of doing so would significantly and demonstrably outweigh the benefits when assessed against the policies in this National Planning Policy Framework taken as a whole or unless specific policies in the Framework indicated development would be restricted.

Councillor Robson, having given notice under Standing Order No.44, spoke on the item. She raised the following points:-

- the development will lead to an increase in traffic on Topsham Road which is already busy and therefore to an associated increase in pollution which will

- be exacerbated by additional cars idling at the traffic lights. Many of the proposed new properties are likely to have at least two cars per household;
- the pollution problem will be further exacerbated when other developments along the Topsham Road are brought forward;
- the Special School and the West of England School for Children with Little or No Sight will be affected by construction traffic and also passing cars if the development is completed.

Councillor Wardle, having given notice under Standing Order No.44, spoke on the item. He raised the following points:-

- the views regarding the Cirl Bunting requires clarification by means of a formal survey by the RSPB not just a consultant engaged by the applicant using RSPB guidelines;
- need to protect the sky line to retain views of green fields; and
- failure to protect this area will set a precedent and lead to encroachment into other Valley Parks.

Councillor Leadbetter, having given notice under Standing Order No.44, spoke on the item. He raised the following points:-

- this area is one of the most extensively developed parts of the City with new developments in the Newcourt area and with the imminent arrival of IKEA and the loss of the Topsham Gap and will not be able to accommodate this further development;
- the proposal will impinge on the Ludwell Valley Park, adversely impacting on an important resource of the City;
- the adjoining estate is unique in the City with only one access in and one out and served by one set of traffic lights;
- the two special schools will be affected, many of the pupils of both being delivered to and from the schools by taxis;
- also made presentation to the County Council's Development Management Committee and disagreed with the view that there would be no highway issues;
- previous applications have also been refused when traffic was deemed too severe;
- an area of open green land will be lost for ever;
- development will impact adversely on wildlife
- agree with previous view expressed regarding pollution.
- the acknowledged need for housing can be addressed elsewhere in the City

Ms Keatt spoke against the application. She made the following points:-

- understand need to balance the requirement to build 12,000 homes in Exeter against the need to retain green outdoor facilities;
- speaking on behalf of people who live near the field in question and others who enjoy the Park, to urge rejection of the the planning application for this site and keep it from becoming a blot on the landscape;
- Ludwell Valley Park is 80 hectares of Devonshire farmland, rolling hills and hedgerows. It is unique as its undulating hills offer significant views of the city and the sea at Exmouth. Such views are an asset to the site and, if the proposed houses are built, then these views will be affected forever;
- if the field is built on then it will leave an isolated tongue of Park land between the proposed site and Woodwater Park offices to the north, reducing the impact of the Park and altering the skyline;
- the prominence and importance of the Ludwell Valley Park is clear from the 'Riverside and Ludwell Valley Parks Master Plan 2016 – 2026' which looks

to increase the use of the Park, whilst protecting biodiversity and enhancing natural wildlife habitats;

- as the population grows it is so important to ensure that Exeter's future development will protect its wildlife and give it space to thrive. It is vital to protect Ludwell Valley Park at a time of continued growth of the City;
- places like Ludwell Valley Park improve the quality of life for people in Exeter and help to attract visitors to our City;
- Ludwell Valley Park is a wildlife haven, which is very important at a time when wildlife is under threat. A wildflower meadow is planted in the field next to the proposed site attracting many types of wildlife. One of these is the rare Cirl Bunting, they, and other protected wildlife, need to be encouraged to remain and thrive in the Park – allowing this development will not help this to happen;
- through the 'Wild City' partnership with Devon Wildlife Trust, the council is creating new habitats to encourage birds like the swift to increase in number. That seems at odds with allowing this application to go ahead as it would destroy a field that is part of Ludwell Valley Park – a field that can continue to offer a natural habitat for wildlife and that has the potential to attract more;
- if Wendover Way is opened up to allow traffic through onto Southbrook estate, the safety of cyclists and pedestrians who use the roads may be at risk. Many of those are young people travelling to and from school as the cycle/ footpath is offering them a safer route than the very busy main roads. Traffic through from the proposed new site will increase the risk of a serious accident or worse;
- poor air quality from pollution has already been identified in this area and a further increase of traffic fumes will have an adverse effect on health and wellbeing; and
- do not allow this to go ahead as there is a need to protect and preserve this field so that future generations can continue to enjoy the beauty and wildlife within Ludwell Valley Park.

Mr McMurdo spoke in support of the application. He raised the following points:-

- a Director at Jones Lang LaSalle in Exeter and represent ADP&E Farmers, the landowners and applicants. The report is a culmination of more than two years of negotiation and consultation with officers, local residents and key stakeholders;
- the principle of development is not in doubt;
- there are no technical reasons to withhold planning permission;
- the report confirms that the development proposed is a sustainable development when viewed in the context of its location and the characteristics of the site - the City's landscape policies are out of date as confirmed by the Planning Inspectorate and the High Court;
- the application must be judged in light of recent Appeal and High Court decisions that confirmed that the City does not have a five year supply of deliverable housing sites;
- crucially, this site proposes a higher number of dwellings than the allowed Exeter Road appeal meaning that its delivery is of greater importance than that site in addressing the serious housing shortfall in the City. The principle therefore cannot be in doubt because the site is sustainable and significant in addressing the identified housing supply deficit;
- there are no highways grounds to refuse the application as confirmed by Devon County Council Highway Engineers;
- there are no ecological grounds on which to refuse the application. A consultant ecologist has been surveying the site continuously since 2010 and their detailed surveys confirm that the site is not used by Cirl Buntings.

The RSPB acknowledges in a letter to the Council, that the habitat at the site is not suitable for them;

- site will deliver 43 new affordable homes at 35% of the total;
- the application will deliver greater public access within and to the adjacent Valley Park and improved green infrastructure and ecological enhancement measures within the application site; and
- the principle of development cannot be in doubt and there are no technical reasons to withhold planning permission.

He responded as follows to Members' queries:-

- both Southbrook School and the West of England School had been consulted and were supportive of the proposal;
- given that highways safety was a concern in respect of the children attending the special schools a number of risk assessments had been undertaken which had concluded that the safety of the children would not be compromised by the additional traffic associated with the development; and
- not able to predict if, at the detailed stage, additional properties to the 123 proposed would be brought forward. The 2015 Strategic Housing Land Availability Assessment had allowed for up to 220 dwellings but this had not been considered an option because of the adverse impact on the skyline.

The recommendation was for approval, subject to the conditions as set out in the report.

RESOLVED that the application for up to 123 houses and associated infrastructure with all matters reserved except for access, be refused as the proposal was contrary to the National Planning Policy Framework 2012, Exeter City Council Core Strategy 2012 CP16, Exeter Local Plan First Review 1995-2011 Policies L1 and LS1 because:-

- (a) it would prevent the potential opportunity for informal recreation of the site in association with the Ludwell Valley Park designation; and
- (b) the proposal would harm the landscape setting of the City through development of Valley Park land.

**PLANNING APPLICATION NO. 15/0878/01 - PLAYING FIELD OFF WEAR
BARTON ROAD, EXETER**

The Principal Project Manager (Development) (PJ) presented the application for outline consent for up to 101 homes, a new sports pitch and changing facility, public open space including children's play areas and associated highways and drainage infrastructure with all matters reserved except for means of access.

He referred to legal advice set out in the update sheet clarifying how the application should be determined following confirmation that the Council's policies for the delivery of housing were deemed out of date as a result of the Council not having a five year housing supply as concluded by the Exeter Road Inspector. The legal view was that the application should be determined in accordance with the Development Plan unless material considerations indicate otherwise and this would depend on assessing whether the proposal was in accordance with the Development Plan as a whole and, if it was not, on the weight afforded to the relevant Development Plan policies under consideration both in themselves and relative to the other material considerations.

He also advised of minor amendments to the reason for refusal. He explained that, as the applicant had appealed against non-determination because the application had not been determined within 13 weeks, the decision on the application would be made by the Inspector at a Public Inquiry to be held on 6 December 2016. The Council is required to indicate what its decision would have been if it had determined the application.

Councillor Leadbetter, having given notice under Standing Order No.44, spoke on the item. He raised the following points:-

- 150 letters of objection had been received setting out 31 reasons;
- this development would add to existing pressures following other developments in the Newcourt area and the Topsham Gap and the imminent arrival of IKEA;
- pressure on public open space and need to retain playing field for both young people and adults, a number of football teams struggle to find suitable playing fields as others in the City are fully booked;
- will be an adverse impact on the Countess Wear 100 Club, the only remaining youth centre in the City; and
- need to resist pressure on green spaces.

The recommendation was that the application would have been refused for the reason set out in the update sheet.

RESOLVED that the application for outline planning permission for up to 101 homes, a new sports pitch and changing facility, public open space including children's play areas and associated highways and drainage infrastructure with all matters reserved except for means of access would have been **REFUSED** as the proposal is contrary to the National Planning Policy Framework 2012 (paragraph 74), Exeter City Council Core Strategy 2012 CP10, Exeter Local Plan First Review 1995-2011 Policy L3 and L5 and Sport England's Playing Field Policy because the development would result:-

- (a) in the loss of the openness of the site detrimental to the amenity value of the area; and
- (b) in the loss of a playing pitch site identified for retention and provides the opportunity for future recreational need and these losses are not being replaced by provision of equivalent value.

54 **PLANNING APPLICATION NO. 16/0076/03 - LAND BETWEEN 39-41 TORONTO ROAD, EXETER**

Councillor Spackman declared a disclosable pecuniary interest as a Trustee of the Feoffees of St Sidwell, the applicant, and left the meeting during consideration of this item.

The Project Manager (Planning) (GM) presented the application for the demolition of 11 garages to be replaced by a two storey development of six apartments.

He clarified that the level of the green space should be approximately 1,5 to 2,5 meter higher than the road, correcting what was described in the Committee Report.

He updated Members on revised plans submitted by the applicant on 22 July, three days before the meeting, the applicant stating that the changes would address one of the reasons of refusal, that is, nationally described space standards not being met. The changes had not led to the required improvements in space standards.

The new drawings had decreased the space for the area for entrance and stairwell together making apartment 1. smaller to be able to make the other apartments larger within the same foot print for the development. As described in the Committee Report the plans did not show the outer wall thick enough to contain both the existing retaining wall as well as the proposed structural wall, shown on the submitted section. This had not been amended on the new drawings.

Before the submission of the new drawings the apartments had been below nationally describe space standards even without the necessary changes needed to include the structural wall shown in the section. Now the apartments on the ground floor with the layout in the new drawings would be approximately 2-3 m² below nationally described space standards if the plans show the full width of the outer walls.

As described in the Committee Report considerations of not building in the root zone of the protected Lime tree or incorporate highway land as private footpath, to enable the development to sit closer to the street, would have further impact on apartment sizes. His conclusion was therefore that the applicant was not showing that they could comply to the nationally described space standards even with the new drawings.

He clarified that the communal open space, as described in the Residential Design SPD, was approximately 130 m², not including areas for private sitting out space, correcting what was described in the report. The communal open space was not 150 m² as shown in the new drawings. If including the private sitting out space, three metres out from the apartments facing and levelled with the green space, only approximately 58 m² remains of the communal open space. Approximately 18 m² of these 58 m² was directly under the protected Lime tree, as shown on the drawings.

Councillor Vizard, having given notice under Standing Order No.44, spoke on the item. She raised the following points:-

- the lateness of the submission puts the residents at a distinct disadvantage, as they have had no time to properly assess the plans;
- applicant has known about the minimum standards failure since 31 March, 2016, and failed to do anything;
- the measurements and living space figures don't add up - the developer appears to have created 7m² out of thin air on the ground floor;
- on the revised application, the height of the building has been slightly lowered by reducing the number of floors from three to two, however, the actual footprint has been increased from 204.5 metres to 211.7 metres;
- the design is still out of keeping with the neighbouring houses and streetscape, which is composed of Victorian terraced houses;
- the issue of scale and mass is central to the residents' objections;
- a challenging application for the planning officer and local residents which, to an extent, has been made even more difficult by the lack of clarity in the applicant's planning statement relating to lack of detail;
- there are a number of errors and omissions;
- the applicant states that the provision of good access amenities for all the tenant age groups and abilities is a fundamental convention of the design. However, there is no direct access to the amenity area from the ground floor flats. The proposed balcony to the apartment 4 is too small when measured against the Council's Residential Design Guide and, critically, it overlooks a number of adjacent properties in Toronto Road.
- one of the most contentious issues is the impact on residents' privacy;
- ecology and biodiversity reports have not been carried out;

- the site is listed by Natural England as a traditional orchard and Devon County Council lists these orchards as a key feature for conservation in its Devon Biodiversity Plan. The impact that this development will have and already has on the overall biodiversity in the adjacent gardens has been extremely controversial. A pond, built by the residents has been already filled in by the applicant. In addition, this garden contains several mature fruit trees, which have been there for at least 30 years and which do not appear on the applicant's plan;
- impact on amenity space - children are currently able to play in the area adjacent to this development and adults also use this area for street parties. If this application is granted this amenity space will be lost;
- when Toronto Road was built, there was an orchard, which the residents were able to enjoy as a communal space. Subsequently, the owners built the garages on this land and abandoned an area, which they rented out to the residents who levelled the land, built supporting walls, created a vegetable garden and lawn area;
- impact the development will have on the lime tree referred to in the Council's Belmont Conservation Document. The tree report submitted by Aspect Tree Consultancy on behalf of the local residents states that the tree is a high value specimen and is protected by virtue of its location in a Conservation area and contributes to the character of the area;
- the rear elevation of the building is a retaining structure and, as such, will require the bank to the rear wall of the proposed building to be excavated to provide appropriate retaining. This will take place within the tree roots, which is contrary to the Council's Supplementary Planning Design policy and would lead to an unacceptable level of root disturbance and impact on the drainage and health and life of the tree;
- cycle and bin store is combined contrary to the Council's sustainable transport strategy which sets out the same space cannot be counted for both
- Devon County Council state that, due to the number of families and children expected to move into this development, it is anticipated that this application will put pressure on local schools, where there is limited capacity to accommodate them;
- the loss of amenity space is contrary to the Local Plan relating to high density development within city areas;
- Article 4 Directions state the quality of the conservation area is threatened by the cumulative impact of numerous changes and that new developments will be required to preserve and/or enhance the character and appearance of the conservation area by ensuring the scale and massing reflects and respects the existing Conservation Area;
- by reason of the design, volume, massing, increased footprint and materials the development does not relate to the existing street scene and character of the area;
- critically, the loss of privacy for residents living adjacent to the development only 11 metres away, which is a distance of just half the National Minimum Requirement;
- previous and present planning officers have both recommended a refusal on the grounds of poor standard of amenity for neighbours, poor quality of amenity for future occupiers, potential impact on the health of a protected tree within a conservation area and failure to protect and enhance biodiversity on the site;
- the objections from 77 local residents were credible, detailed and comprehensive and based on Government Guidelines, Devon County Council Biodiversity Plan, Exeter City Council Core Strategy and the Belmont Conservation Management Plan; and

- all the objections are compelling and contribute in supporting the officers' recommendation that this application should be refused on the grounds of overdevelopment within this Neighbourhood Community.

Mr Jenner spoke against the application. He made the following points:-

- our Community is overwhelmingly opposed to the application;
- the application itself is incomplete, inaccurate and the proposed development is unsuitable for the site;
- application fails to meet at least ten national and local standards, policies and guidelines, and the development is too large for the land it's on;
- no consideration to the requirement that special attention is paid to the desirability of preserving or enhancing the character or appearance of a Conservation Area;
- overlooking and loss of privacy to the surrounding properties is considerable;
- the poor spatial relationship between the Lime Tree and the development, creates problems for the new residents;
- sections of the application form relating to biodiversity are not completed and there is no biodiversity impact assessment. The applicant has removed wildlife and destroyed an existing habitat already. There is also a failure to mention the existence of trees both on the site itself, and the enormous Lime Tree that is endangered by the proposal;
- almost no consultation by the applicant with the community;
- support the recommendation and request the following additional refusal reasons:-
 - the failure to assess how the proposed development of the site affects the setting of the Conservation Area, or of the design to latch onto any architectural features in the locality and, in particular, the conservation area it borders, or to take account of the significant view identified in the Council's own conservation area appraisal;
 - the failure to provide an assessment of the impact on the site's biodiversity;
 - failure to meet additional standards that caused the previous application to be refused;
- the above refusal reasons as well as those in the report, are each sufficient on their own to refuse the application. Together, they provide compelling grounds to refuse;
- the applicant may say they have duty to the community to provide affordable housing but this community is adversely affected. Providing affordable housing is a worthy ambition, but not where it so negatively impacts on the existing community, while providing sub-standard accommodation to the intended residents. The benefit, if any, of this application, is far outweighed by the detriments of it; and
- the residents have to live with the consequences of this development if the application is granted.

Responding to a Member, he confirmed that the improvements to the garden area to rear of the garages had been undertaken by the local residents, having obtained permission from the applicant

The recommendation was for refusal for the reasons set out in the report.

RESOLVED that the application for the demolition of 11 garages to be replaced by a two storey development of six apartments be **REFUSED** as the proposal is

contrary to paragraph 56 of the National Planning Policy Framework 2012, the requirements in Technical housing standards – nationally described space standard 2015, Policies CP4 and CP17 of the Exeter Core Strategy, Policies C1, DG1 and DG4 of the Exeter Local Plan First Review 1995-2011, Residential Design SPD 2010, Sustainable Transport SPD 2013 and Trees and Development SPD 2009 because, by reason of its size and the surrounding constraints, the site is not large enough to accommodate the proposed development. As a consequence the development would result in:-

- poor standard of amenity for neighbours;
- poor quality of amenity for future occupiers;
- potential impact on the health of a protected tree within a conservation area; and
- failure to protect and enhance biodiversity on the site.

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PLANNING APPLICATION NO 16/0662/03 - LAND AT 23-26 MARY ARCHES STREET AND BARTHOLOMEW STREET WEST, QUINTANA GATE, EXETER

The Project Manager (Planning) (KW) presented the application for the demolition of 23-27 Mary Arches Street and Quintana Gate, Bartholomew Street West, and the construction of 127 student flats and studios (sui generis use), communal facilities and associated infrastructure.

She clarified that the 127 units would consist of six cluster flats (two bedrooms each), 115 studio bedrooms, not 114 as set out in the report and that the 127 units could house between 127 and 134 students. She also advised that an extra condition would be added regarding compliance with BREEAM.

Responding to a Member, she advised of the position of three fire escapes.

Members noted that a Management Plan for the day to day operation of the Student Accommodation was required to be implemented by way of a legal agreement.

The recommendation was for approval, subject to the conditions as set out in the report.

RESOLVED that, subject to a CIL Contribution amounting to £133,694.96 and the completion of a Section 106 Agreement under the Town and Country Planning Act 1990, to secure a management plan for the day to day operation of the student accommodation, planning permission for the demolition of 23-27 Mary Arches Street and Quintana Gate, Bartholomew Street West, and the construction of 127 student flats and studios (sui generis use), communal facilities and associated infrastructure be **APPROVED**, subject also to the following conditions:-

- 1) C05 - Time Limit – Commencement
- 2) The development hereby permitted shall not be carried out otherwise than in strict accordance with the submitted details received by the Local Planning Authority on 4th July 2016 (1435_P2.01_B; 1435_P2.02_B; 1435_P2.03_D; 1435_P2.04_H) and 8th July 2016 (Dwg. No(s). 1435_P2.14_G; 1435_P2.24_F; 1435_P2.34_F; 1435_P2.51_E; 1435_P2.50_D; 1435_P2.52_D; 1435_P2.53_C; 1435_P2.54_C; 1435_D.01_A) as modified by other conditions of this consent.
Reason: In order to ensure compliance with the approved drawings.
- 3) Samples of the materials it is intended to use externally in the construction of the development shall be submitted to the Local Planning Authority. No

external finishing material shall be used until the Local Planning Authority has confirmed in writing that its use is acceptable. Thereafter the materials used in the construction of the development shall correspond with the approved samples in all respects.

Reason: To ensure that the materials conform with the visual amenity requirements of the area.

- 4) No part of the development hereby approved shall be brought into its intended use until secure cycle parking facilities have been provided and maintained in accordance with details that shall have been submitted to, and approved in writing by, the Local Planning Authority and retained for that purpose at all times.

Reason: To provide for sustainable transport and ensure that adequate facilities are available for the traffic attracted to the site.

- 5) Travel Plan measures including the provision of sustainable transport welcome packs and details of the arrangements of how student pick up/drop off will be managed, shall be provided in accordance with details agreed in writing by the Local Planning Authority and Local Highway Authority in advance of occupation of the development.

Reason: To promote the use of sustainable transport modes and in the interest of highway safety, in accordance with paragraphs 32 and 36 of the NPPF.

- 6) No development shall take place on site 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 agreed 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.

Reason: In the interests of the amenity of the occupants of the building(s) hereby approved.

- 7) No development shall take place until a Construction and Environment Management Plan (CEMP) has been submitted to, and approved in writing by, the Local Planning Authority. Notwithstanding the details and wording of the CEMP the following restrictions shall be adhered to:

- a) There shall be no burning on site during demolition, construction or site preparation works;
- b) Unless otherwise agreed in writing, no construction or demolition works shall be carried out, or deliveries received, outside of the following hours: 0800 to 1800 hours Monday to Friday, 0800 to 1300 on Saturdays, and not at all on Sundays and Public Holidays;
- c) Dust suppression measures shall be employed as required during construction in order to prevent off-site dust nuisance;
- d) details of access arrangements and timings and management of arrivals and departures of vehicles.

The approved CEMP shall be adhered to throughout the construction period.

Reason: In the interests of the occupants of nearby buildings.

- 8) In the event of failure of any trees planted in accordance with any scheme approved by the Local Planning Authority, to become established and to

prosper for a period of five years from the date of the completion of implementation of that scheme, such trees shall be replaced with such live specimens of such species of such size and in such number as may be approved by the Local Planning Authority.

Reason: To safeguard the rights of control by the Local Planning Authority in these respects and in the interests of amenity.

- 9) Prior to commencement of the development, the developer shall submit for the approval in writing by the LPA a Scheme for sound insulation and ventilation of the approved residential units. The scheme shall achieve at least the levels of acoustic performance specified in Section 4.1 of the Noise Assessment (Waterman Infrastructure and Environment Ltd May 2016) submitted with the application. The approved insulation and ventilation works shall be implemented in full prior to occupation of the development and maintained thereafter.
Reason: In the interests of the amenity of the occupants of the building(s) hereby approved.
- 10) No development related works shall take place within the site 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, unless otherwise agreed in writing by the Local Planning Authority.
Reason: To ensure the appropriate identification, recording and publication of archaeological and historic remains affected by the development.
- 11) Prior to occupation of any dwelling hereby approved details of provision for bats and nesting swifts shall be submitted to and approved in writing by the Local Planning Authority in consultation with the RSPB and DBRC. Upon written approval of the details, the scheme shall be fully implemented as part of the development and retained thereafter.
Reason: In the interests of preservation and enhancement of biodiversity in the locality.
- 12) The rating noise level (measured in accordance with BS4142:2014) from all mechanical building services plant shall not exceed 40 dB (07:00-23:00) and 35 dB (23:00-07:00) at any noise sensitive receptor.
Reason: In the interests of the amenity of the occupants of the building(s) hereby approved.
- 13) No part of the development hereby approved shall be brought into its intended use until the onsite loading bay on Bartholomew Street West, as indicated on Drawing Proposed Site Plan 1435_P2.04_H, has been provided in accordance with details and specifications that shall previously have been submitted to, agreed and approved in writing by the Local Planning Authority.
Reason: To provide suitable facilities for the traffic attracted to the site.
- 14) No development shall take place, including any works of demolition, until adequate areas shall have been made available within the site to accommodate operatives' vehicles, construction plant and materials and a Construction Method Statement has been submitted to, and approved in writing by, the Local Planning Authority.

The statement should include details of access arrangements, measures to minimise the impact on the adjacent footpath and timings of the proposed works. The approved Statement shall be adhered to throughout the construction period.

Reason: In the interests of highway safety and public amenity.

- 15 the buildings hereby approved shall achieve a BREEAM 'excellent' standard as a minimum, and shall achieve 'zero carbon' if commenced on or after 1st January 2019. Prior to commencement of such a building the developer shall submit to the Local Planning Authority a BREEAM design stage assessment report, the score expected to be achieved and which standard this relates to. Where this does not meet the minimum required standard the developer must provide details of what changes will be made to the development to achieve the minimum standard, and thereafter implement those changes. A post completion BREEAM report shall be submitted to the Local Planning Authority within 3 months of the substantial completion of any such building hereby approved. The required BREEAM assessments shall be prepared, and any proposed design changes approved prior to commencement of the development, by a licensed BREEAM assessor.

Reason: To ensure that the proposal complies with Policy CP15 of Council's Adopted Core Strategy and in the interests of delivering sustainable development.

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PLANNING APPLICATION NO. 16/0559/03 - LAND TO SOUTH OF EXETER ROAD (ALDI), EXETER ROAD, TOPSHAM, EXETER

The Assistant Director City Development presented a Section 73 application to remove condition 14 (limitation on delivery hours) of planning permission ref 14/2083/03 granted on 30th June 2015. A condition of the planning permission granted for the Aldi store had been delivery hours of 7:00am to 11:00pm Mondays to Saturdays and 9:00am to 6:00pm Sundays and Bank Holidays, the applicant having submitted this application to permit 24 hour delivery. A compromise had been proposed by the applicant for delivery to be between 6:00am to 12 midnight Mondays to Saturdays and 8:00am to 8:00pm Sundays.

Mr Williams spoke in support of the application. He raised the following points:-

- original planning application granted in 2016 in respect of a new neighbourhood district food store, with construction having commenced and with an opening planned for Autumn 2016;
- requesting change to delivery hours to provide greater flexibility in the replenishment of the store to minimise disruption to the operation of the store and help the customer experience. It will also reduce vehicles on the road during peak times and therefore reduce congestion. There will be no change in the number of lorries delivering;
- the lorries will reverse directly into the store dock which will be sealed acoustically to provide a sound barrier and engines and refrigerator units will be switched off wherever possible;
- pallets rather than cages will be used to further reduce noise during unloading;
- an acoustic screen of 2.4 metres will prevent disturbance to residents and a noise assessment confirms that there will be no significant harm;
- have listened to concerns of neighbours and have agreed to reduce the original request for 24 hour delivery to 6:00am to 12 midnight Mondays to Fridays and 8:00am to 8:00pm Sundays and Bank Holidays;

- will agree to provision of a delivery noise management plan and to one year trial period and can operate efficiently within these amended hours.

He responded as follows to a Members' queries:-

- banksmen will be utilised to assist in unloading and vehicles will have beepers;
- delivery hours for other Aldi stores in Exeter vary;
- change in hours necessary to increase flexibility and help increase efficiency of distribution centre in Swindon;
- in respect of overall deliveries to other Aldi stores, the Operations Team are responsible for timetabling deliveries to all stores
- the delivery noise management plan can include a requirement relating to banksmen.

The recommendation was for approval, subject to the conditions as set out in the report.

RESOLVED that, subject to the Assistant Director City Development being authorised, following prior consultation with the Chair of this Committee, a delivery noise management plan to include measures to negate potential nuisance from vehicle reversing alarms, such as the use of a banksman, a Section 73 application to remove condition 14 (limitation on delivery hours) of planning permission ref 14/2083/03 granted on 30th June 2015 be **APPROVED**, subject also to the following conditions:-

- 1) The development to which this permission relates must be begun not later than 30th June 2018.
Reason: To ensure compliance with sections 91-92 of the Town and Country Planning Act 1990.
- 2) The development hereby permitted shall not be carried out otherwise than in strict accordance with the submitted details received by the Local Planning Authority on 16th September 2014, 7th October 2014 and 27th March 2015 (*dwg. nos. 130447 P(1)01, 130447 P(1)02, 130447 P(1)03 Rev A, 130447 P(0)05, 130447 P(1)06, 130447 P(1)08, and 130447 P(1)09*), as modified by other conditions of this consent and Non-material Minor Amendment applications reference nos 15/0960/37 and 15/1094/37 .
Reason: In order to ensure compliance with the approved drawings.
- 3) Samples of the materials it is intended to use externally in the construction of the development shall be submitted to the Local Planning Authority and the development shall not be started before their approval is obtained in writing and the materials used in the construction of the development shall correspond with the approved samples in all respects.
Reason: To ensure that the materials conform with the visual amenity requirements of the area.
- 4) A detailed scheme for landscaping, including the planting of trees and/or shrubs, the use of surface materials and boundary screen walls and fences shall be submitted to the Local Planning Authority and no development shall take place until the Local Planning Authority have approved a scheme; such scheme shall specify materials, species, tree and plant sizes, numbers and planting densities, and any earthworks required together with the timing of the implementation of the scheme. The landscaping shall thereafter be implemented in accordance with the approved scheme in accordance with the agreed programme.
Reason: To safeguard the rights of control by the Local Planning Authority in these

respects and in the interests of amenity.

- 5) In the event of failure of any trees or shrubs, planted in accordance with any scheme approved by the Local Planning Authority, to become established and to prosper for a period of five years from the date of the completion of implementation of that scheme, such trees or shrubs shall be replaced with such live specimens of such species of such size and in such number as may be approved by the Local Planning Authority.
Reason: To safeguard the rights of control by the Local Planning Authority in these respects and in the interests of amenity.
- 6) No materials shall be brought onto the site or any development commenced, until the developer has erected tree protective fencing around all trees or shrubs to be retained, in accordance with a plan that shall previously have been submitted to and approved in writing by the Local Planning Authority. This plan shall be produced in accordance with BS 5837:2005 - 'Trees in Relation to Construction'. The developer shall maintain such fences to the satisfaction of the Local Planning Authority until all development the subject of this permission is completed. The level of the land within the fenced areas shall not be altered without the prior written consent of the Local Planning Authority. No materials shall be stored within the fenced area, nor shall trenches for service runs or any other excavations take place within the fenced area except by written permission of the Local Planning Authority. Where such permission is granted, soil shall be removed manually, without powered equipment.
Reason: To ensure the protection of the trees during the carrying out of the development.
- 7) No part of the development hereby approved shall be brought into its intended use until footways on the south side of Exeter Road connecting the site vehicular access to the nearest bus stops to the west and east of the site, as indicated on Drawing No. 130447 P(1)03 Rev A, have been provided in accordance with details that shall previously have been submitted to, agreed and approved in writing by the Local Planning Authority.
Reason: To provide a safe and suitable access for pedestrian and cyclists, in accordance with Paragraph 32 of the NPPF.
- 8) No part of the development hereby approved shall be brought into its intended use until the vehicular access, including provision of a feature to provide pedestrian/cycle priority across the access, and internal footpath along the eastern boundary to the store entrance have been provided, surfaced and marked out in accordance with details that shall previously have been submitted to, agreed and approved in writing by the Local Planning Authority and retained for those purposes at all times.
Reason: To provide a safe and suitable access to the site, in accordance with Paragraph 32 of the NPPF.
- 9) No part of the development hereby approved shall be occupied until the onsite cycle parking facilities, car parking facilities, footways and car park layout shall be provided in accordance Drawing No. 130447 P(1)03 Rev A and retained for those purposes at all times.
Reason: To ensure that adequate facilities are available for the traffic attracted to the site.
- 10) C57 - Archaeological Recording
- 11) A detailed site Travel Plan shall be submitted to and agreed in writing by the Local Planning Authority in advance of occupation of the development and a review of travel patterns for the site shall be undertaken within 6 months of occupation of the

development and on an annual basis thereafter, unless otherwise agreed with the Local Planning Authority.

Reason: To ensure that the development promotes all travel modes to reduce reliance on the private car, in accordance with paragraph 36 of the NPPF.

- 12) Prior to the commencement of the development a Sustainable Urban Drainage Scheme (SUDS) to deal with surface water associated with the development shall be submitted to and approved in writing by the Local Planning Authority (in consultation with Devon County Council as the Lead Local Flood Authority). The said scheme shall include details of the on-going maintenance arrangements associated with any drainage system to be installed. The development shall be implemented strictly in accordance with the approved scheme.

Reason: To ensure the satisfactory drainage of the development.
- 13) Air conditioning plant associated with the development shall only run between the hours of 07.00 to 23.00 and noise from refrigeration and air conditioning plant shall not exceed a rating noise level (measured in accordance with BS4142:2014) of 29 dB (23.00 to 07.00) and 41 dB (07.00 to 23.00) when measured at any noise sensitive receptor.

Reason: In the interests of the residential amenity of the occupants of nearby properties.
- 14) For a period of 12 months from the opening of the store deliveries associated with the development hereby approved shall only take place between 06.00hrs - 00.00hrs Monday to Saturday, and 08.00hrs - 20.00hrs on Sundays. During this period the store operator should maintain a log of the dates and times of deliveries to the store to assist in the subsequent appraisal of the impact upon residential amenity in the locality. Thereafter, unless otherwise agreed in writing by the Local Planning Authority following the expiry of the 12 month period, deliveries associated with the development should revert to the previously approved hours under condition 14 of planning approval reference 14/2083/03, namely between 07.00hrs - 23.00hrs Monday to Saturday, and 09.00hrs - 18.00hrs on Sundays and bank holidays.

Reason: To allow the impact of extended delivery hours on residential amenity in the locality of the store to be assessed over a 12 month with a view to permanent approval of the extended delivery hours in the event that no significant adverse amenity impact is established over the trial period.
- 15) No development shall take place on site 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 agreed in writing by the Local Planning Authority. The building 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.

Reason: In the interests of the amenity of the occupants of the building hereby approved.
- 16) A Construction Environmental Management Plans (CEMP) shall be submitted to and agreed in writing by the Local Planning Authority prior to the commencement of development on site and adhered to during the construction period. This should include details of monitoring and mitigation measures to control the environmental impact of the development during the construction and demolition phases, including site traffic, the effects of piling, and emissions of noise and dust. The CEMPs should contain a procedure for handling and investigating complaints as well as provision for regular meetings with appropriate representatives from the Local Authorities

during the development works, in order to discuss forthcoming work and its environmental impact.

Reason: In the interest of the environment of the site and surrounding areas.

- 17) Unless it is demonstrated in writing prior to the commencement of the development, to the satisfaction of the Local Planning Authority, that it is unviable or impracticable to do so the buildings hereby approved shall achieve a BREEAM 'excellent' standard as a minimum, and shall achieve 'zero carbon' if commenced on or after 1st January 2019. Prior to commencement of such a building the developer shall submit to the Local Planning Authority a BREEAM design stage assessment report, the score expected to be achieved and which standard this relates to. Where this does not meet the minimum required standard the developer must provide details of what changes will be made to the development to achieve the minimum standard, and thereafter implement those changes. A post completion BREEAM report shall be submitted to the Local Planning Authority within 3 months of the substantial completion of any such building hereby approved. The required BREEAM assessments shall be prepared, and any proposed design changes approved prior to commencement of the development, by a licensed BREEAM assessor.
Reason: To ensure that the proposal complies with Policy CP15 of Council's Adopted Core Strategy and in the interests of delivering sustainable development.
- 18) Prior to the commencement of the development hereby approved a Wildlife Plan which demonstrates how the proposed development has been designed to enhance the ecological interest of the site, and how it will be managed in perpetuity to enhance wildlife, has been submitted to and approved by the Local Planning Authority. Thereafter the development shall be carried out and managed strictly in accordance with the approved measures and provisions of the Wildlife Plan.
Reason: In the interests of protecting and improving existing, and creating new wildlife habitats in the area.
- 19) The net retail floor space of the store hereby approved shall be limited to 1140m². No more than 20% of the net retail floor space of the store hereby approved shall be devoted to the sale and display of comparison goods.
Reason: In the interests of protecting the vitality and viability of the existing city centre, district and local centres.
- 20) Prior to the commencement of the development hereby approved a detailed scheme of mitigation in relation to the slow worm population identified as present on the site shall be submitted to, and be approved in writing by, the Local Planning Authority. Thereafter the development shall be carried out strictly in accordance with the approved scheme of mitigation.
Reason: To ensure that the impact of the development on the protected species present on the site is appropriately mitigated.
- 21) Unless otherwise agreed in writing by the Local Planning Authority the store hereby approved shall be operated in accordance with the provisions and recommendations set out in the submitted Noise Impact Assessment prepared by KR Associates (UK) Ltd dated December 2014 and subsequent version dated 12th July 2016.
Reason: In the interests of the residential amenity of the occupants of properties in the local vicinity.
- 22) Prior to the store hereby approved being brought into use a Noise/Delivery Management Plan relating to delivery operations associated with the store (including the use of vehicle reversing warning alarms) shall be submitted to and be approved in writing by the Local Planning Authority. Thereafter deliveries to the store shall be carried out in accordance with the approved delivery hours and the

provisions of the approved Noise/Delivery Management Plan.

Reason: To ensure that deliveries in the store are carried out in accordance with agreed management practices aimed at minimising the potential for adverse impacts on the residential amenities of the occupants of surrounding dwellings.

- 23) Prior to the store hereby approved being brought into use a 2.4 metre high acoustic barrier with a minimum surface density of 8Kgm-2 shall be erected along the length of the service bay to the south west of the store. Thereafter the said acoustic barrier shall be retained in situ at all times.

Reason: To mitigate the potential for noise disturbance associated with deliveries to the store in the interests of protecting the residential amenity of the occupants of surrounding properties.

57

PLANNING APPLICATION NO. 16/0656/03 - 39 BEACON HEATH, EXETER

Councillor Morse declared an interest as she lived in the neighbourhood and left the meeting during consideration of this item.

The Project Manager (Planning) (KW) presented the application for the erection of conservatory to front elevation.

Mr Beales spoke against the application. He made the following points:-

- measurements on the submitted sketch drawings are incorrect - the distance between my un-fenced boundary and the proposed extension would be less than 1m;
- would cast a shadow over my main window reducing light in my living room;
- the proposed extension, because of its size and character is out of keeping with the character of a pair of semi-detached houses and would have a detrimental effect on the character of the building;
- all other extensions and conservatories attached to properties in the immediate area are located at the rear of the buildings;
- the proposed extension is out of keeping with other porches on houses of a similar style within the immediate area;
- all porches in the immediate area project less than 1.5 m This proposal extends for almost 3 m;
- the extension cannot be described as a porch;
- extension does not cover the front door - the proposed extension has a door on the side thus creating a separate entrance into the house;
- Beacon Heath is not a street in the conventional sense of the word but a road with a continuous number of houses on one side facing the sports facilities at Arena Park .Saracens rugby pitches and Eastern Fields;
- Beacon Heath comprises of approximately 50 houses - numbers 1--25 were built in the 1930s with French Windows at the front. Some have erected porches across the front of the house. Some still have the original windows and patio doors in place;
- houses from no 25 onwards were built in the 1940s and 50s;
- some have small porches and others have canopies over their front doors;
- none have porches which extend across the front or are in close proximity to neighbouring windows;
- that from 25 to the end of the road should be treated separately from the first 25 built in the 1930s; and
- to allow such a large extension would have a detrimental visual effect on houses which are of a totally different style from those numbered 1-25.

Mr Berry spoke in support of the application. He raised the following points:-

- speaking on behalf of property owner;
- have spoken to five neighbours who advised of the dimensions of their extensions;
- proposal is smaller than a conservatory;
- Beacon Heath is classed as a street;
- other extensions in the street are polycarbonate lean-to's with dwarf walls;
- the objection of the neighbour are not supported by the site inspection party;
- two metre, four panel high fence to be provided so the extension will be screened;
- there will be insufficient harm on the street scene to justify refusal;
- a number of alterations to the front of properties had occurred along this road either porches or conservatories; and
- application submitted on basis of advice from planning officers.

It was noted that extensions to the rear of properties were more appropriate and that the design of the conservatory was unsuitable for the front.

The recommendation was for approval, subject to the conditions as set out in the report.

RESOLVED that planning permission for the erection of conservatory to front elevation be **REFUSED**, as:-

- (a) the proposal is contrary to Policy DG1 (b), (g), (h) and (i) of the Exeter Local Plan First Review 1995-2011 because the proposed development would not conform to the established urban grain of Beacon Heath, its massing and materials would not relate well to the adjoining building, the proposal would not promote local distinctiveness and would not contribute positively to townscape quality; and
- (b) the proposal is contrary to Principle 2 of the Council's adopted Householder's Guide to Extension Design Supplementary Planning Document because the proposed development would project forward of the front elevation, it would not respect existing building lines and the pattern of development in the immediate area, and this would adversely affect the character and appearance of the street scene.

58 **PLANNING APPLICATION NO 16/0739/03 - 17 STOKE VALLEY ROAD, EXETER**

The Assistant Director City Development presented the application for the removal of the conservatory and replacement with a two storey rear extension.

The recommendation was for approval, subject to the conditions as set out in the report.

RESOLVED that planning permission for the removal of a conservatory and the replacement of a two storey rear elevation be **APPROVED**, subject to the following conditions:-

- 1) C05 - Time Limit - Commencement
- 2) The development hereby permitted shall not be carried out otherwise than in strict accordance with the submitted details received by the Local Planning Authority on 14th June 2016 (*Dwg. No(s). 1, 2, 3 and 4*), as modified by other conditions of this consent.

Reason: In order to ensure compliance with the approved drawings.

59 **LIST OF DELEGATED DECISIONS MADE AND WITHDRAWN APPLICATIONS**

The report of the Assistant Director City Development was submitted.

RESOLVED that the report be noted.

60 **APPEALS REPORT**

The schedule of appeal decisions and appeals lodged was submitted.

RESOLVED that the report be noted.

61 **SITE INSPECTION PARTY**

RESOLVED that the next Site Inspection Party will be held on Tuesday 23 August 2016 at 9.30 a.m. The Councillors attending will be Foale, Lyons and Newby.

Additional Information Circulated after Agenda Dispatched - circulated as an appendix

(The meeting commenced at 5.30 pm and closed at 9.00 pm)

Chair

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**PLANNING COMMITTEE
25 JULY 2016**

ADDITIONAL INFORMATION

Correspondence received and matters arising following preparation of the Agenda

Item 4. Ref: 15/0436/01. Pages 5-34

Land adjoining the West of England School, Topsham Road, Exeter

A report was taken to the Devon County Council's Development Management Committee on 20 July to seek authorisation on the formal Highway response to this application. Members did not accept the Officer's technical recommendation of conditional approval (attached as an Appendix to the Committee report) and resolved that they were unable to reach a view. Consequently, following the receipt of legal advice, Members are advised that the Highway Officer's recommendation carries no weight and the Highway assessment for this application must rely on the criteria of the NPPF which requires safe and secure access to be achieved and should only be refused if the cumulative impacts of the development are severe.

One letter received requesting financial contribution towards Countess Wear Village Hall – This request would be considered as part of the allocation of CIL monies received rather than through a Section 106 Agreement.

Item 5. Ref: 15/0878/01. Pages 35-54

Playing Field off Wear Barton Road, Exeter

Two additional letters of objection have been received which reiterate the concerns raised in the original report.

Addendum to Committee report following recent legal advice received.

Recent legal advice has further clarified how this planning application should be determined following confirmation that the Council's policies for the delivery of housing are deemed out of date as a result of the Council not having a 5 year housing supply as concluded by the Exeter Road Inspector. The legal view is that the application should be determined in accordance with the Development Plan unless material considerations indicate otherwise and this will depend on assessing whether the proposal is in accordance with the Development Plan (as a whole) and if it is not, on the weight afforded to the relevant Development Plan policies under consideration both in themselves and relative to the other material considerations.

Notwithstanding NPPF paragraph 49 in respect of out of date planning policies (which it is accepted is applicable here because of the 5 year shortfall), recent case law has maintained that the starting point for considering planning applications is still the Development Plan as recognised in paragraph 11 of the NPPF, which states that planning permission must be determined in accordance with the Development Plan unless material consideration indicate otherwise. This maintains that the local planning authority must still continue to weigh up all the relevant Development Plan policies irrespective of whether they are now deemed out of date. The fact that a policy is out of date does not mean it is dis-applied and nor does it mean that the policy must carry only limited weight. Weight is a matter for planning judgment depending on the facts of

the case. For this application the most relevant policies are L3 'Development on Open Space' and L5 'Loss of a Playing Field' and it is against these policies which the application is primarily assessed. Core Strategy CP10 supports those policies but it is accepted that if policies L3 and L5 were satisfied, CP10 would also be satisfied. The text of both the saved Local Plan policies are reproduced within the Committee report. Given that the proposal results in the loss of approximately two thirds of the site to residential development it does conflict with Policy L3 d) and would reduce the site's recreational and amenity value in the area. The site currently provides an area of actively used recreational open space, which contributes to the areas spacious and green character particularly when viewed from alongside an existing public footpath and parts of the Wear Barton Road frontage. It is not considered that equivalent replacement provision for all of these attributes is being made within the area. The application is also in conflict with Policy L5 as the development of the site would harm recreational opportunity, with the loss of the existing open land potentially preventing future playing pitch creation, if required in the area. As a consequence there is also non-compliance with CP10 which seeks to protect recreational facilities. The proposal is therefore not in accordance with the Development Plan.

The Committee report states the importance of NPPF paragraph 49 which renders the Council's policies in respect of housing delivery out of date and consequently the weight attached to relevant policies requires reassessment. Recent legal judgements have clarified that it is still for the decision maker (ie the local planning authority) to make the planning assessment as to how much weight each policy is given. However what the Courts have made clear is that the lack of a 5 year housing supply may influence how much weight these out of date development policies are given. This is dependent on the specific scheme and will include for example the extent of the Council's 5 year supply shortfall, what the Council is doing to address this issue and the particular purpose of the restrictive policy, in this instance Core Strategy Policy CP10, Local Plan Policy L3 and Policy L5. The Council currently has an approximately 2.5 year supply of housing and the intention to address this matter will rely on cooperation with neighbouring authorities, although this is unlikely to occur in the short term. Given these circumstances it is considered that the restrictive policies would be afforded less weight given the limited progress made in respect of the housing shortfall. However, the protection of open space and recreational provision remains a strong theme of the NPPF and the Development Plan policies themselves are generally consistent with the approach in the NPPF and would ordinarily carry due weight in line with paragraph 215 of the NPPF. In the circumstances, it is considered that the Development Plan policies should still carry moderate weight.

Legal advice has clarified the role of NPPF paragraph 14 in respect of the out of date policies for this application. The advice concludes that the correct interpretation of this paragraph needs to have regard to the concluding sentence of this paragraph which requires the decision taker (ie the local planning authority) to grant planning permission unless '*specific policies in this Framework indicate development should be restricted*'. Footnote 9 gives examples of such policies but these are examples rather than a complete list. Assessment of the application should therefore refer to any relevant restrictive policy in the NPPF in this instance paragraph 74, which states that existing open space should not be built on unless certain criteria are met. This is a specific policy of the NPPF which indicates that development should be restricted. Consequently an assessment is needed regarding the appropriateness of the scheme, both for on-site pitch provision and in respect of the replacement pitches proposed by the applicant, to satisfy the most relevant second element of paragraph 74 which states that '*the loss resulting from the proposed development would be replaced by equivalent or better provision in terms of quantity and quality in a suitable location*'. The applicant has sought to demonstrate that appropriate pitch replacement will occur in terms of quantity and quality, as outlined in the Committee report. Legal advice has clarified that the question of '*suitable location*' needs to have regard to the approach in terms of the Open Space SPD, which looks at pitch provision as a City-wide resource as well as considering the localised role of these particular pitches as stated within Committee report. The existing pitches do fulfil a local function for the adult and youth teams of the Countess Wear Dynamos and whilst matches and training could potentially take place elsewhere in the City this would be less convenient and less accessible than the continued use by the existing teams of the current facility. Whilst qualitatively better facilities are being provided elsewhere (and one pitch is being retained at the site) there is a net loss of recreational open space in quantity and the replacement facilities are not as conveniently located for local users. Consequently, on balance, it is concluded that the replacement does not represent equivalent or better provision so as to satisfy paragraph 74 of the NPPF and therefore it

cannot be relied on to justify planning permission. This is not, therefore, a case where the presumption in favour of sustainable development would operate to point to a grant of planning permission.

Legal advice has also clarified the scope of the Consultation Direction and the potential for the application being 'called in' by the Secretary of State. The requirement to refer the application to the Secretary of State relies on a set of criteria which are defined within planning legislation which only applies if; the site is owned by a local authority; is used by the College as a playing field and has been used by the College at any time in the last five years. The Wear Barton site does not fulfil any of these criteria and consequently the Council would not have been required to consult the Secretary of State prior to granting planning permission. However, this is no longer directly relevant because there is now an appeal and the matter will be considered by the Secretary of State (or his Inspector).

In conclusion, following recent legal advice it is considered that the final decision on this application is finely balanced. The assessment of the application shows the impact of development of the site in terms of loss of recreational facilities and in amenity terms on the character of the area against the requirements of Local Plan Policy L3. Clearly the development of two thirds of the site will undoubtedly have an impact on the currently spacious and green open area as seen from Wear Barton Road and in particular when viewed from alongside the public footpath to the south of the site. In addition, the scheme would be in conflict with Policy L5 which seeks to maintain the recreational opportunity in the area. The loss of the majority of the site to residential development will certainly restrict the ability of the site to provide additional playing pitches, if a shortfall was identified in the area. The full extent of this loss of opportunity will not be known until the conclusion reached in the Playing Pitch Strategy is published, which is anticipated to be in September. However this has to be balanced against the significant number of housing being proposed in a sustainable location, the provision of 35% affordable housing, the creation of an onsite playing pitch/changing facilities and funding of the new 3G pitch at Exwick, as outlined in the Committee report. The balancing of these competing priorities should be carried out having regard to the Development Plan and other material considerations. The presumption in favour of sustainable development does not operate in this case to tilt the balance because of the conflict with paragraph 74 of the NPPF, which is a specific policy restricting development involving the loss of open space. Consequently the decision is finely balanced and whilst the positive benefits being offered by the applicant are acknowledged and should carry weight, the protection of the open space is an important consideration as is recognised by the NPPF. Accordingly refusal of the application is still recommended, but it is considered that the conclusions of the Playing Pitch Strategy which will create a better understanding of the demand and supply for playing pitches in the area will be an important consideration in respect of the weight to be given to the conflicts with Policies L3 and L5 and CP10.

A revised refusal reason includes refer to Local Plan Policy L3 which was omitted from the published Committee reason. The refusal reason now reads as follows:

The proposal is contrary to the National Planning Policy Framework 2012 (paragraph 74), Exeter City Council Core Strategy 2012 CP10, Exeter Local Plan First Review 1995-2011 Policy L3 and L5 and Sport England's Playing Field Policy because the development will:-

- i) result in the loss of the openness of the site detrimental to the amenity value of the area and
- ii) it would result in the loss of a playing pitch site identified for retention and provides the opportunity for future recreational need and these losses are not being replaced by provision of equivalent value.

Item 6. Ref: 16/0076/03. Pages 55-62
Land between 39-41 Toronto Road, Exeter

The applicant has submitted revised drawings (Friday 22 July) which he considers will address one or the reasons for refusal i.e. minimal space standards not being met.

The plans will be reviewed and a verbal update given at Committee.

Item 7. Ref: 16/0662/03. Pages 63-76
Land at 23-26 Mary Arches Street, and Bartholomew Street West, Quintana Gate, Exeter

An additional condition is to be added regarding compliance with BREEAM:

The buildings hereby approved shall achieve a BREEAM 'excellent' standard as a minimum, and shall achieve 'zero carbon' if commenced on or after 1st January 2019. Prior to commencement of such a building the developer shall submit to the Local Planning Authority a BREEAM design stage assessment report, the score expected to be achieved and which standard this relates to. Where this does not meet the minimum required standard the developer must provide details of what changes will be made to the development to achieve the minimum standard, and thereafter implement those changes. A post completion BREEAM report shall be submitted to the Local Planning Authority within 3 months of the substantial completion of any such building hereby approved. The required BREEAM assessments shall be prepared, and any proposed design changes approved prior to commencement of the development, by a licensed BREEAM assessor.

Reason: To ensure that the proposal complies with Policy CP15 of Council's Adopted Core Strategy and in the interests of delivering sustainable development.

A point of clarification regarding the number of units. There are 127 units consisting of:

6 cluster flats (2 bedrooms each).

115 studio bedrooms (report previously stated 114).

The 127 units could house between 127 and 134 students.

Item 8. Ref: 16/0559/03. Pages 77-90
Land to South of Exeter Road (Aldi), Exeter Road, Topsham

No further update.

Item 9. Ref: 16/0656/03. Pages 91-96
39 Beacon Heath, Exeter

No further update.

Item 10. Ref: 16/0739/03. Pages 97-100
17 Stoke Valley Road, Exeter

No further update.