

ITEM NO. 6**COMMITTEE DATE:** 20/03/2017

APPLICATION NO: 16/1576/01 **OUTLINE PLANNING PERMISSION**
APPLICANT: c/o agent
Waddeton Park Ltd & The R B Nelder Trust
PROPOSAL: Outline application for the phased development of up to 120 dwellings (C3) with associated infrastructure and open space (all matters reserved for future consideration apart from access)
LOCATION: Land at Home Farm, Church Hill, Pinhoe, Exeter, EX4
REGISTRATION DATE: 14/12/2016
EXPIRY DATE: 15/03/2017

HISTORY OF SITE

10/1973/16	Excavation works to form flood alleviation scheme and gated access	PER	20/01/2011
13/3961/31 - 13/4802/01 -	Screening opinion for proposed housing development 120 dwellings with associated infrastructure and open space (all matters reserved for future consideration apart from access)	REF	24/01/2014
	<u>This application was subsequently allowed on appeal by Inspector's decision letter dated 29/10/2014 following a Public Inquiry in September 2014.</u>		
14/0789/01 -	120 dwellings with associated infrastructure and open space (all matters reserved for future consideration apart from access)	WDN	03/09/2015
15/1176/03 -	Deletion of Condition 12 and replacement with alternative conditions to reflect changes in the Government's position with regard to the Code for Sustainable Homes. (Minor material amendment to Planning Permission Ref No. 13/4802/01.	PER	23/02/2016

DESCRIPTION OF SITE/PROPOSAL

The application site adjoins the existing residential area of Pinhoe. It comprises two parcels of agricultural land; the smaller parcel extends to approximately 1.1 hectares and is located to the west of Church Hill; the larger parcel extends to 6.6 hectares, and is located to the east of Church Hill. The site therefore totals approximately 7.7 hectares, of which 4.7 hectares is proposed for residential development with the remainder comprising open space/sustainable drainage infrastructure.

The land generally slopes up away from the city, from the south-east to the north-west across the site, with gradients between 1:5 and 1:12. There is a network of hedgerows across the site comprising a variety of indigenous plant species. There are a number of mature oak and ash trees in the hedgerows. There is also a line of poplars.

The smaller parcel of land is surrounded by residential development on all sides, with Bickleigh Close to the west, Harrington Court Road and Harrington Drive to the south and properties along Church Hill to the north and east.

The larger parcel of land is surrounded by residential development on three sides including Broadparks Avenue and Bindon Road to the east and north east, Danesway to the south and properties along Church Hill to the west. To the north lies agricultural land. The larger parcel wraps around the Home Farm complex which is Grade II Listed. Jones Pyne, which lies adjacent to the site and fronts onto Church Hill, is also Grade II listed. The site is currently accessed via Home Farm's existing Priority T-Junction onto Church Hill.

Outline planning permission is sought for 120 dwellings with associated infrastructure and open space. Means of access is to be determined at this stage, with all other matters reserved for future consideration. Access would be gained via a new priority junction off Church Hill and via access through Bickleigh Close/Harrington Road.

Around 39% of the site is designated as public open space including two equipped children's play areas.

SUPPORTING INFORMATION SUPPLIED BY THE APPLICANT

The application is accompanied by the following supporting information -

- Illustrative masterplan
- Design and Access Statement
- Arboricultural Impact Assessment
- Archaeological and Cultural Heritage Report
- Preliminary Ecological Appraisal and Extended Phase 1 Habitat Survey (Jan 2013)
- Home Fam Pinhoe - Ecological Re-assessment (Sept 2016)
- Flood Risk Assessment
- Landscape and Visual Assessment
- Land contamination reports
- Transport Assessment
- Transport Assessment Addendum
- Travel Plan
- Access Scheme
- Statement of Community involvement

REPRESENTATIONS

41 letters of objection and 1 of comment have been received raising the following main issues :-

Objections

- Impact on local property values
- Potential loss of light
- Loss of privacy
- Loss of view
- Noise/dust levels during construction
- Light pollution
- Increased traffic noise
- Adverse highway impacts, specifically in respect of Church Hill and the wider network including the B3181. Adverse impacts highlighted can be summarised as safety and congestion which in respect of Church Hill arise due to the width/capacity of the highway.
- Contrary to development plan - impact on Landscape setting of the City
- Air pollution (traffic related)
- lack of publicity
- Impact on local services e.g. schools, doctors - in terms of capacity to cope

- Inadequate access
- Highway drainage concerns
- Drainage - surface water run-off issues, flooding, adequacy of proposed SUDs measures and future maintenance issues
- Loss of green space
- Previously submitted supporting information now out-of-date in terms of being suitable basis for decision on this application
- Question demand for additional housing
- Lack of employment opportunities for future residents
- Not a sustainable location for pedestrian/cycle access due to distance, gradient and nature of road linking proposed site to surrounding amenities, general inadequacy of pedestrian and cycle network in vicinity
- lack of suitable public transport options in the locality
- Area subject to significant recent developments - 'enough is enough'
- Ecological impact, quality of ecological information/assessment and loss of wildlife habitat
- Overdevelopment of site
- Fails to provide safe/convenient access for cyclists/pedestrians
- Need for highway improvements in Church Hill
- Need to ensure adequate parking provision is provided to serve new properties
- Lack of mitigation in respect of impact of new housing on designated habitat areas
- Impact on setting of listed buildings

Comments

- Brings recreational opportunities for walking etc
- Helps alleviate existing flooding problems
- Meets a need for more housing even though it brings about visual/landscape change in the locality
- What are Community Infrastructure Levy collected from developments spent on.

CONSULTATIONS

South West Water - No response received.

Environment Agency - Responded highlighting that they should not have been consulted as they are no longer a statutory consultee on such a proposal.

Network Rail - No response received.

Devon and Cornwall Police Architectural Liaison Officer - None received.

Devon and Somerset Fire and Rescue - Re-iterate comments made on previous application regarding narrowness of Church Hill being less than ideal and stating that it would be preferable if the road could be widened for a greater length so that two vehicles could pass thus causing no problems for emergency vehicle access.

Exeter International Airport - no objection provided that all standard safeguarding criteria are met.

County Head of Planning, Transportation and Environment (Highways) - raises no objection subject to the imposition of suitable conditions and S106 contributions. Detailed comments are set out below:-

Background

The application follows on from a previous application for 120 dwellings at the site in 2013 for which a highways response of no objection subject to appropriate conditions and contributions was provided. That application was approved at appeal with the Inspector stating that

“The Highway Authority is satisfied that the proposal would not have an adverse effect on the highway network subject to the implementation of the measures specified within the Unilateral Undertaking. No persuasive evidence has been submitted to convince me that this would not be the case.”

From a highway view, the main element that has changed since the previous submission is that the Exhibition Way Link Road is no longer deliverable and how this impacts the road network in Pinhoe and, in particular, the double mini roundabouts junction.

Double Mini Roundabouts

The performance of the double minis is considered fundamental to the acceptability of applications in the Pinhoe area and, in particular, that any queuing on the B3181 approach does not reach a point considered being severe.

Following further discussions additional analysis, set out *Transport Note of 25th June 2014*, in which a number of scenarios were modelled to understand the impact on the double minis in the future AM Peak was provided by the applicant. This analysis included a number of scenarios in which Exhibition Way is not included, which are set out in Table 1 below. Note: Scenarios 4 -6 (shaded in grey in Table 1) includes the provision of the double mini-roundabout improvements which are currently on site. These assessments are accepted as a reasonable reflection of the likely future performance of the junction.

Scenario Number	Planning Assumptions	Queues (PCU's)
S1	2010 Base	50
S2	2010 Base + Brick + Quarry + OPF1	95
S3	S2 + Home Farm	104
S4	S2 + OPF2	70
S5	S4 + Pinn Court with Langaton Lane	51
S6	S5 + Home Farm (with Langaton Lane)	60

Table 1: AM Peak Modelled Queues on B3181 approach to Double Minis

In this location, the highway authority interpretation of a severe impact was a queue of such length that it impacts on the safety and operation of another significant junction, in this instance the Old Park Farm signalised access junction. The exact point at which this is achieved has been identified as 800 metres, or 133 Passenger Car Units (PCUs). However, daily variations in traffic flows and that traffic flows on the B3181 were frequently higher than on the date of the February 2010 traffic count, a modelled threshold of 95 PCU's was considered to be classed as severe.

The analysis in Scenario 6 shows that the provision of Langaton Lane Link is sufficient to ensure that the additional traffic from both Pinn Court Farm and Home Farm does not lead to a severe highway impact.

Off Site Mitigation

Since the last response, the decision of the Town and Village Green application for Eastern Fields prevents the delivery of the Exhibition Way Link Road. As described earlier, OPF Phase 2 has fully funded the enlarged double mini roundabouts.

Pinn Court has now been granted consent and whilst no assessments of a scenario where the Pinn Court and Home Farm developments occur without provision of the Langaton Lane Link are included, given it is in part linked to the Pinn Court Farm consent, it is considered reasonable to assume its inclusion. Nevertheless, the analysis clearly shows that the Langaton Link provides a significant reduction in queue lengths and, given that Exhibition Way Link cannot be delivered **the provision of Langaton Lane Link is required to mitigate the highway impact from Home Farm.**

Revised cost estimates for the Langaton Lane link works undertaken in 2017 put the cost of providing the off-site section of this link at £1,190,000. With (including indexation) approximately £800,000 of S106 secured from the Pinn Court Farm, the shortfall of £390,000 is sought from this development.

Access

As per the previous response, suitable access can be provided to the plot of 24 dwellings from Bickleigh Close. Access for the 96 dwellings onto Church Hill was a concern due to its insufficient width for two vehicles to pass on part of its length and whether there is suitable provision for vulnerable road users.

To address this Church Hill will be widened over a 75 metre length to a 5.5m width, allowing two vehicles to pass. Footway links are to be provided to the site to the west, into Bickleigh Close, and south east, to Broadparks Avenue. These links are felt to provide safe and suitable route for pedestrians and cyclists to the primary school, public transport facilities, village centre and beyond. A satisfactory Stage 1 Road Safety Audit of the access arrangements has been provided and the detailed design of the junction will be agreed with the highway authority through the S278 process.

Therefore, to ensure that safe and suitable routes are provided for all users at all times, it is recommended that these are in place for public use prior to any occupation of the eastern portion of the site. Subject to this, and a condition relating to provision of the access on Church Hill, DCC are satisfied that a safe and suitable access to the site can be achieved.

Travel Planning

In accordance with paragraph 36 of the NPPF the development will be required to have a Travel Plan.

Major developments in Exeter, have been required to provide travel welcome packs, travel vouchers, personalised travel planning, monitoring of the Travel Plan and a summary report of the work undertaken and impacts of this. The specific approach needs to be set out and agreed prior to commencement of any part of the development.

Alternatively, as part of the area wide approach to travel planning identified in the Local Transport Plan DCC are, subject to a contribution of £250 per dwelling, willing to undertake this on behalf of the developer. Unless an alternative approach is agreed, it is recommended that this is secured as part of the Section 106 Agreement.

Internal Roads

Well-designed residential streets are central to sustainable development and therefore the design of the internal road layout must accord with the principles of Manual for Streets. To assist in achieving this it is recommended that the applicant liaises with the Highway Authority **prior** to commencing design works in advance of any application for reserved matters approval.

The proposed residential roads of the site fall within an existing 20mph zone. Consequently, the applicant is advised that the existing Traffic Regulation Order will need to be amended to incorporate the new roads. The cost of any changes will need to be met by the developer and a contribution towards this is therefore sought.

Transport Contributions

In summary, the following site specific contributions are sought:

- £390,000 towards Langaton lane Link is required.
- Traffic Order Contribution.
- Unless otherwise agreed a contribution of £250 per dwelling towards implementing a residential travel plan.

Conclusion

The impact of additional traffic on the double mini roundabouts junction has been fundamental to the acceptability of development in Pinhoe. Without Exhibition Way Link Road, the submitted analysis has shown the provision of Langaton Lane Link is essential to mitigate the impact of development in the Pinhoe area and a fair and reasonable contribution towards Langaton Lane Link is sought.

The access arrangements proposed by the developer are considered acceptable. Consequently, and subject to contributions towards off site infrastructure, traffic orders and, unless otherwise agreed, travel planning being secured through an appropriate legal agreement and conditions, the highway authority raises no objection to the proposed development.

County Head of Planning, Transportation and Environment (Children's Services)

Respond as follows: -

Devon County Council would need to request an education contribution to mitigate its impact. 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. Exeter City have set out that they intend school facilities to be funded through CIL. It should be noted that this development will create the need for funding of new school places and it is anticipated that these will require funding equivalent to £271,265 for primary school facilities and £394,578 for secondary school facilities, equivalent 19.87 and 18.00 children respectively. This figure has been calculated in accordance with the County Council's education infrastructure plan and S106 approach and takes into account existing capacity in the surrounding schools. It is anticipated that these contributions would be provided for through CIL.

A contribution towards Early Years provision is needed to ensure delivery of provision for 2, 3 and 4 year olds. This would cost approximately £30,000 (based on £250 per dwelling). This will be used to provide early years provision for pupils likely to be generated by the proposed development.

If the application is approved we will deem the houses to be built and the number of school spaces considered to be available in Exeter will be reduced accordingly - this will be taken

into account when calculating contributions from future applications. I trust the above provides information that will be helpful in the determination of the application.

DCC (Lead Local Flood Authority) - Comment as follows and recommend conditions regarding detailed design and maintenance of the proposed surface water drainage management system - An acceptable surface water management strategy is presented with the submitted Flood Risk Assessment (Report Ref. 386/FRA, Rev. 2, dated 21/11/2016) which is consistent with the previously approved strategy within application 13/4802/01. The Flood Risk Assessment has been updated to reflect changes following the publication of the Flood Risk Assessments: Climate Change Allowances document (dated 19th February 2016) by central government, in which a climate change uplift value of 40% when sizing the proposed surface water drainage management system for this development. The scheme also includes the ECC promoted flood alleviation scheme to alleviate flooding downstream within Harringcourt Road and Harrington Lane as a result of surface water runoff.

An outline exceedance routing has been provided however further detail will be required at the detailed design stage particularly where the proposed Lower pond and the protection to the properties at Harringcourt Road.

It should be noted that regarding paragraph 3.6 of the Flood Risk Assessment that DCC as the LLFA could manage the proposed FAS ponds, it is likely that these would be designated a flood risk asset but DCC is unlikely to take on the future management of these ponds.

East Devon District Council - No response received.

RSPB - Re-iterate previous comments that scheme should comply with biodiversity requirements of ECC Residential Design SPD.

Natural England - No specific comments, refer to standing advice.

Exeter and East Devon Growth Point Green Infrastructure Project Manager - None received.

Assistant Director Public Realm - No comments received.

Assistant Director Housing & Contracts - Based on the planning history relating to this site, and the abnormal costs associated with the development, accept a level of affordable housing provision of 30% (70/30% split between social rent and intermediate) with a dwelling mix based on need (predominantly 2 and 3 bed units) rather than the previously agreed representative mix.

Environmental Health Officer - Recommends conditions relating to contaminated land assessment, CEMP and Air Quality Assessment.

PLANNING POLICIES/POLICY GUIDANCE

Central Government Guidance

National Planning Policy Framework (NPPF):-

4. Promoting sustainable transport
5. Supporting high quality communication infrastructure
6. Delivering a wide choice of high quality homes
7. Requiring good design
8. Promoting healthy communities
10. Meeting the challenge of climate change, flooding and coastal change

11. Conserving and enhancing the natural environment
12. Conserving and enhancing the historic environment

Paragraph 11 - Planning law requires that applications for planning permission must be determined in accordance with the development plan unless material considerations indicate otherwise.

Paragraph 14 - At the heart of the National Planning Policy Framework is a presumption in favour of sustainable development, which should be seen as a golden thread running through plan-making and decision-taking...For decision taking this means: approving development proposals that accord with the development plan without delay; and where the development plan is absent, silent or relevant policies are out of date, granting permission unless: any adverse impacts of doing so would significantly and demonstrably outweigh the benefits, when assessed against the policies in this Framework taken as a whole; or specific policies in this Framework indicate development should be restricted.

Paragraph 49 - Housing applications should be considered in the context of the presumption in favour of sustainable development. Relevant policies for the supply of housing should not be considered up to date if the local planning authority cannot demonstrate a five year supply of deliverable housing sites.

Exeter Local Development Framework Core Strategy 2012

- CP1 – Spatial approach
- CP3 – Housing development
- CP4 – Housing density
- CP5 – Meeting housing needs
- CP7 – Affordable housing
- CP9 – Strategic transport measures to accommodate development
- CP10 – Community facilities
- CP11 – Pollution and air quality
- CP12 – Flood risk
- CP13 – Decentralised energy networks
- CP14 – Renewable and low carbon energy
- CP15 – Sustainable design and construction
- CP16 – Strategic green infrastructure
- CP17 – Design and local distinctiveness
- CP18 – Infrastructure requirements and developer contributions

Exeter Local Plan First Review 1995-2011 Saved Policies

- AP1 – Design and location of development
- AP2 – Sequential approach
- H1 – Housing land search sequence
- H2 – Housing location priorities
- H3 – Housing sites
- H6 – Affordable housing
- H7 – Housing for disabled people
- L4 – Provision of playing pitches
- T1 – Hierarchy of modes of transport
- T2 – Accessibility criteria
- T3 – Encouraging use of sustainable modes of transport
- T10 – Car parking standards
- C2 – Listed buildings
- C5 – Archaeology
- LS1 – Landscape setting

EN2 – Contaminated land
EN3 – Air and water quality
EN4 – Flood risk
EN5 – Noise
DG1 – Objectives of urban design
DG2 – Energy conservation
DG4 – Residential layout and amenity
DG5 – Provision of open space and children’s play areas
DG6 – Vehicle circulation and car parking in residential developments
DG7 – Crime prevention and safety

Development Delivery Development Plan Document (Publication Version):-

This document represents a material consideration but has not been adopted and does not form part of the Development Plan.

DD1 - Sustainable Development
DD8 - Housing on Unallocated Sites
DD9 - Accessibility, Adoptable and Wheelchair User Dwellings
DD13 - Residential Amenity
DD20 - Sustainable Movement
DD21 - Parking
DD22 - Open Space
DD25 - Design Principles
DD26 - Designing Out Crime
DD28 - Heritage Assets
DD29 - Landscape Setting Areas
DD30 - Green Infrastructure
DD31 - Biodiversity
DD33 - Flood Risk
DD34 - Pollution

Exeter City Council Supplementary Planning Documents

Affordable Housing SPD 2013
Archaeology and Development SPG 2004
Planning Obligations SPD 2009
Public Open Space SPD 2005
Residential Design SPD 2010
Sustainable Transport SPD 2013
Trees and Development SPD 2009

Devon County Council Pinhoe Area Access Strategy July 2013

OBSERVATIONS

Background

Outline planning application 13/4802/01 for the same development was refused on 24th January 2014 for following reasons -

1) The proposal is contrary to the National Planning Policy Framework 2012, Policies CP1, CP4 and CP16 of the Exeter Local Development Framework Core Strategy 2012, Saved Policies H1, H2 and LS1 of the Exeter Local Plan First Review 1995- 2011, and policies DD9, DD21 and DD30 of the emerging Exeter Draft Development Delivery Development Plan Document 2013, because:

- i) the proposal would harm the landscape setting of the city through development of protected land of particular importance to the setting of the city and of intrinsic landscape value in itself;
- ii) adequate information has not been submitted to demonstrate that the proposal is acceptable in terms of access and impact on the highway network; and,
- iii) it would set an undesirable precedent for other nearby residential development proposals that individually, or collectively, would harm the character of the area.

2) In the absence of a planning obligation in terms that are satisfactory to the Local Planning Authority, and which makes provision for a contribution towards affordable housing, the proposal is contrary to Exeter Local Development Framework Core Strategy 2012 policy CP7, Exeter Local Plan First Review 1995-2011 Saved Policy H6 and Exeter City Council Affordable Housing Supplementary Planning Document 2013.

The applicant appealed against this refusal and a Public Inquiry was held in September 2014. Subsequently the Inspector allowed the appeal and granted permission for the development by a decision letter dated 29th October 2014 subject to conditions and S106 Agreements. At the same time an application for award of costs by the appellant was allowed. In the Inspector's decision letter (copy attached as Appendix A) the main issues were identified as -

- The effect of the proposal on the landscaped setting of Exeter;
- The effect of the proposal on highway safety and traffic;
- Whether in the light of the development plan, national guidance and other material considerations, including the housing land supply position, the appeal proposal would be a sustainable form of development; and
- Whether the proposal would set a precedent for other development which could harm the character of Exeter City.

In addition to the above the Inspector's decision letter also considered the following other matters - Biodiversity & Ecology, Flooding, and Setting of listed buildings.

One of the conditions imposed by the Inspector required the application for approval of reserved matters to be made not later than 3 years from the date of the permission, i.e. by 29th October 2017. The applicant has indicated that there was a significant delay in the marketing of this site due to having to await the outcome of the Council's legal challenge of the Inspector's decision. Consequently, to provide a comfortable period for the preparation and submission of reserved matters for any potential developer/purchaser of the site it has been necessary to submit this fresh application for outline planning permission.

There are 3 separate completed legal agreements in respect of Affordable Housing provision, Open Space and Highway Matters each covering the following -

Affordable Housing - 35% of units of which 70% social rented, financial payment in respect of part any unit generated by the 35% calculation, proportion mix of open market provision, cluster size, wheelchair accessible units, phasing/delivery.

Open Space - Provide equipped play area and agree equipped play area maintenance scheme and specification, provide informal open space and agree informal open space maintenance scheme and specification, set up Management Company for both.

Highway Matters - Implement one of two options for highway improvement schemes to current double roundabouts in Pinhoe in conjunction with highway improvement works to lower part of Church Hill or pay a Highway Financial Contribution in lieu of those works, pay Travel Plan Contribution.

Since the original outline planning permission was granted on appeal by the Planning Inspector the Council's housing land supply situation, and hence weight to be attached to development plan policies, has been further considered in connection with a number of other applications for residential development and the current position is set out below.

Development Plan and NPPF Policy Context

Initially it is necessary to consider the proposed residential use against relevant national and development plan policies, particularly in light of the appeal decision at Exeter Road, Topsham. The principal finding of this Inspector's decision letter was to conclude that the Council could not demonstrate that it has a five year supply of deliverable housing sites. This conclusion is important as NPPF paragraph 49 states that relevant policies for the supply of housing should not be considered up to date.

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. 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.

i) Assessment of relevant Local Plan Policies

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 judgement depending on the facts of the case. For this application the most relevant policies are Core Strategy CP16 'Green Infrastructure' and Local Plan LS1 'Landscape Setting' and it is against these policies which the application is primarily assessed.

ii) Planning weight afforded to out of date Development Plan Policies

NPPF paragraph 49 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 CP16 and Local Plan Policy LS1. The Council currently has an approximately 2 year 4 month supply of housing and the intention to address this matter will rely on co-operation 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 landscape setting 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.

That said, the Council's current housing land supply of 2 years and 4 months is significantly worse than the 3.6 year supply concluded by the Planning Inspector and upon which the decision to allow the appeal was based. This shows that since the original appeal decision the situation has worsened rather than improved and this is important when considering the merits of this re-submitted duplicate application.

In paragraph 73 of the decision letter the Planning Inspector draws attention to Paragraph 49 of the NPPF regarding housing supply policies not being considered up-to-date where a 5 year housing supply cannot be demonstrated and the presumption in favour of sustainable development. In paragraph 76 the Planning Inspector concluded that the development constituted sustainable development -

"The appeal site occupies an accessible location within walking distance of bus services to and from Exeter City centre, and some local services. The proposal would not harm the landscaped setting of the city. Through the proposed links with the surrounding area it would encourage walking and cycling. It would also contribute to the green infrastructure sought by Core Strategy policy CP16 through the provision of the linear park and open space. Overall I conclude that the proposal would be socially, environmentally and economically sustainable."

Having considered all matters the overall conclusion of the Planning Inspector was as follows:-

"I have found above that the proposal would not harm the landscaped setting of Exeter and subject to the provisions of the Unilateral Undertaking would be acceptable in terms of its effect on highway safety and traffic. The proposal would deliver much needed housing within Exeter and would represent sustainable development. For the reason given above I conclude that the appeal should be allowed."

Representations

The representations received in respect of the current application have generally raised the same issues that were highlighted at the time of the previous application and during the associated Public Inquiry. The main issues relate to visual impact on landscaped setting of Exeter, highway safety and traffic, drainage, sustainability, impact on surrounding properties and ecological impact. All of these were considered by the Planning Inspector during the Public Inquiry in connection with the previous application.

The adequacy of the assessment of the ecological impact of the scheme has been the subject of particular criticism with regard to the extent, duration and methodology of the surveys undertaken, and the further ecological information submitted with the current application regarding the degree to which the original information can be relied on, and its relevance to the assessment of the ecological impact of this re-submitted scheme given the passage of time since the Planning Inspector's original decision.

Notwithstanding this, the issue of the extent and adequacy of the submitted ecological surveys was raised at the time of the Public Inquiry into the previous application, so this is not an entirely new issue. This issue was raised with the applicant's agent who has pointed out that the representations raise the same concerns that were raised in respect of the appeal scheme and provide no new information. The Inspector specifically addressed the issue in the decision letter commenting as follows with specific regard to the issues raised relating to dormice (paragraphs 80 & 81) and bats (paragraphs 82 & 83)...

Dormice - *"Some local residents were critical of the survey in that it did not include a dormouse survey, despite the fact that dormice have been noted within an area 1-1.5km to*

the south of the appeal site. Paragraph 99 of Circular 06/2005: Biodiversity and Geological Conservation - Statutory Obligations and Their Impact Within The Planning System advises that the presence or otherwise of protected species on a site should be established before planning permission is granted. It also states that bearing in mind the cost and delay that might be involved, developers should not be required to undertake surveys unless there is a reasonable likelihood of species being present and affected by the proposed development. The Phase 1 Habitat Survey found an absence of records in relation to dormice within the Devon Biodiversity Record Centre. The Appellant's ecologist also undertook recent surveys at Pinhoe Quarry to the west and Old Park Farm to the north, two sites both of which are situated close to the appeal site. Neither of these surveys found any evidence of dormice. Therefore the likelihood that dormice are present on the appeal site is low. The majority of the appeal site is grazed by cattle, therefore the most likely location for any dormice would be within the hedgerows, which it is intended to retain. Therefore there would be minimal potential for disturbance and should there be any dormice present on the site, they would be unlikely to be affected by the development. In these circumstances I do not consider that a survey is necessary. Nevertheless I consider that a condition requiring the retention of the hedgerows would safeguard any potential dormouse habitat."

Bats - *"It is also suggested that the bat surveys were inadequate due to their duration. The bat surveys were carried out by licensed bat workers and noted at least eight bat species including common pipistrelle, noctule, Myotis spp., serotine, long-eared (Plecotus spp.) barbastelle and lesser horseshoe. Whilst the walked transect surveys lasted for about two hours, the survey included automated static detector surveys which were of longer duration. I am therefore satisfied that the surveys provide a reasonable indication as to the extent of bat activity on the appeal site.*

In the light of the survey results the Appellant proposes a Biodiversity Mitigation and Enhancement Plan. This will include a method statement in relation to the removal of the buildings; the retention of mature oak trees within hedgerow boundaries to retain features for potential roosting sites and foraging habitat; the retention of hedgerows within the site (or compensation where impacts are unavoidable); a lighting plan designed to minimise disturbance to bat species which avoid areas of artificial illumination; the creation of areas of new habitat for foraging bats and a management plan which includes appropriate long-term management of retained and created ecological features such as hedgerows. Subject to these measures the proposal would be likely to have minimal effect on the bats on the appeal site."

The Inspector concluded as follows in respect of ecological matters -

"The provision of substantial areas of landscaping, including the proposed park would be likely to provide an enhanced habitat for wildlife over that which exists at present. I am therefore satisfied that subject to a Biodiversity Mitigation and Enhancement Plan the proposal would not significantly harm wildlife in the vicinity of the appeal site."

The applicant's agent has highlighted that the current application is accompanied by an Ecological Reassessment Memorandum which concludes that there are no significant changes to the site in terms of ecology and therefore the principle of development remains acceptable in this respect with no reason to suggest that the conclusions of the Inspector are no longer valid. It is considered that appropriate regard has been had to conserving biodiversity subject to the imposition of the same condition as originally imposed by the Inspector. On that basis it is not considered that there is any justification based on the information available to reach a different conclusion to the Inspector on ecological matters.

The fact that there are extant consents in existence for an identical form of development to that for which permission is now sought (save for the proposed reduction in level of affordable housing provision and alteration to the affordable housing mix) is also a material consideration to be taken into account in considering the current application in respect of all matters, including ecological impact.

Transportation Matters

Given that the Inspector concluded, subject to implementation of measures set out in the Unilateral Undertaking and provision of a priority traffic scheme, that the proposal would not have an adverse effect on highway safety or traffic and was therefore acceptable, there would need to have been a significant change in circumstances in order for the Council to reach an alternative conclusion that could be substantiated in the event of any appeal against a refusal based on highway grounds.

As highlighted in the County Council's consultation response the only significant change in circumstances in highway terms since the appeal has been the outcome of the Eastern Fields Village Green decision with effect that the Exhibition Way Link Road is no longer deliverable. Notwithstanding this the Highway Authority have advised that with improvements that are under way to the double roundabouts in Pinhoe, the provision of the Langaton Lane link road (to which a contribution is sought), improvements to Church Hill proposed as part of the development and a contribution to Travel Plans, the highway impacts of the scheme would be acceptable. Whilst the applicant does not fully agree with the Highway Authority's analysis/justification for seeking a contribution to the Langaton Lane link (citing the fact that the Inspector had before them at the time of the appeal a Transport Assessment that found the development acceptable with and without the Exhibition Way) they are for expediency prepared to accept the revised requested contribution for the Langaton Lane link so long as a decision to grant permission can be reached at the March Committee. These matters can be secured through an appropriate S106 agreement and conditions.

In these circumstances there is not considered to be valid and sustainable grounds on which to refuse the current application on based on concerns relating to transportation matters.

Affordable Housing

This applicant's Agent does advocate a reduced level of affordable housing provision for the development (25% as opposed to the policy requirement of 35%) on viability grounds, along with a change in the mix of affordable housing set out in the current legal agreement.

Stating the following in their submission letter:-

"The marketing of the site that has now taken place has demonstrated that there are abnormal development costs associated with the development caused by the site's topography and that these costs militate towards the provision of a lower level of affordable housing provision if a competitive return to the landowner is to be available in accordance with Government policy set out at paragraph 173 (Ensuring Viability and Accessibility) of the Framework. Having regard to these abnormal costs then a level of 25% affordable housing is realistic and deliverable.

It is also the case that the existing S106 agreement in relation to permission 13/4802/01 refers to the provision of a mix of affordable housing on site to be reflective of the mix of speculative housing that was proposed. The Council's Affordable Housing SPD (April 2014) is often cited as justification for this approach. The SPD (which is guidance) is contrary to the Council's adopted policy on this matter." I hope the following commentary provides the necessary to allow our clients to proceed with meeting identified affordable needs on site, as opposed to reflecting the market mix of dwellings proposed."

The material considerations and merits regarding the level of affordable housing provision and dwelling mix from an officer perspective are set out below -

- Level of provision

The applicant has identified that location of the water main running through the site sterilises more of the site due to the required easement width and that the proposed surface water attenuation scheme amounts to an abnormal cost in respect of the development of this site. This is largely as a result of the fact that it has been designed not only to address surface water drainage associated with the development but also to incorporate an element of 'betterment over and above the existing situation to help address existing surface water runoff problems in the area. The works incorporate additional resurfacing works to the highway in Church Hill and enlarged attenuation features and associated pipework. It has been identified that since the original outline was allowed on appeal the costing associated with providing the betterment element of the surface water attenuation/drainage scheme have been assessed as being significantly greater than previously estimated. Rather than remove the betterment element from the scheme (which could be done as it is not technically required to meet the drainage requirements of the development) it is advocated that this element of the scheme is retained to benefit the general locality with the level of affordable housing provision reduced accordingly to maintain scheme viability. The applicant's agent initially quantified that these issues justified a reduction in the level of affordable housing provision from 35% to 25%. Following examination of the position, and further negotiations with the applicant, it has been agreed that scheme viability can be maintained with just a 5% reduction in the level of affordable housing provision to 30%.

- Mix

The current S106 specifies that the affordable housing should comprise a mix of dwelling types that is representative of the mix of open market housing being delivered on the site. It is now proposed that the affordable housing provided should be of a mix of dwelling types that reflects local need. This is consistent with the supporting text of policy CP7 of the Core Strategy and is therefore considered acceptable. The dwelling types and proportion to comprise the affordable housing to be provided will be specified in the S106 Agreement.

When the recent Section 73 application (reference no. 15/1176/03) to vary condition 12 relating to sustainable construction was determined there was no legal agreement entered into tying the new consent to the planning obligations set out in the 3 legal agreements entered into in respect of the original outline planning permission granted on appeal. Section 73 applications result in brand new consent leaving the developer with a choice to implement either the original or amended consent. Consequently, in respect of this site the developer now has a consent for 120 dwelling on the site that is unfettered by any S106 obligations and could be implemented with no affordable housing provision at all, no highway improvements/contributions, and no obligations regarding the specification and maintenance of the open space/play areas. This is an important material consideration to be taken into account when considering the merits of the current application, particularly in respect of the reduced affordable housing provision now sought. Should consent for the current application be granted with a reduction in affordable housing provision to 30% it would be appropriate to include in any S106 Agreement an obligation precluding implementation of the unfettered consent (i.e. application ref 15/1176/03).

Whilst the unfettered consent could be implemented this would not be without some degree of difficulty for the applicant. It would require a 'reserved matters' application to be fully worked up and submitted prior to the 29th October this year without a specific developer on board. However, aside from the time constraint, and the costs in working up such an application, this is a feasible option, and one the applicant would be likely to pursue should the current application be unsuccessful. The applicant has indicated that if the current application is approved they would be prepared to agree to revocation of the unfettered planning consent ref 15/1176/03. This could be secured through a S106 Agreement.

Conclusions

In assessing the merits of the application it is essential to balance any adverse impacts of the development against the clear benefit of the scheme in providing additional dwellings to meet the identified housing needs of the City, with due regard to both the development plan and the presumption in favour of sustainable development set out in paragraph 14 of the National Planning Policy Framework. The position with regard to the Council's inability to demonstrate a 5 year housing supply, and the impact that this has in relation to the weight that can be attached to policies for the supply of housing (including restrictive policies), has been set out earlier in this report.

As well as the main issues identified by the Inspector the appeal decision letter also specifically addressed Biodiversity & Ecology, Flooding and the setting of listed buildings. It is considered that the issues identified constitute the main material considerations in respect of this application. Therefore, notwithstanding the submitted representations and the passage of time since the appeal decision, it is not considered that there has been any significant change in circumstances with regard to the material considerations relating to the principal of this development that would justify reaching a different conclusion to the Inspector with regard to the acceptability of the proposal in principal.

Indeed, the position with regard to the housing supply that the Council can currently demonstrate has actually worsened since the previous application was considered at the Public Inquiry in September 2014 and allowed by the Planning Inspector. In these circumstances, and having regard to the Inspector's decision and the fact that the previous permission is still valid, it is not considered possible to justify a conclusion that any adverse impacts of granting permission for this development would so significantly and demonstrably outweigh the benefits of the provision of additional housing.

It is accepted that there are some abnormal costs associated with the proposed surface water attenuation scheme proposed as part of this development (the benefits of which are recognised in helping to address prevailing drainage problems in the locality not directly associated with the application itself). In this context it is considered that a reduction in the level of affordable housing provision to 30% is acceptable. In reaching this conclusion the existence of a valid consent that could be implemented without any affordable housing being required is a material consideration.

Consequently, taking all the above into consideration, the officer recommendation is one of approval.

RECOMMENDATION

Subject to completion of an appropriate S106 Agreement to secure the provision of affordable housing, highway improvement/travel plan contributions and open space provision/maintenance **APPROVE** the application subject to the following conditions:-

- 1) Details of the appearance, landscaping, layout, and scale, (hereinafter called "the reserved matters") shall be submitted to and approved in writing by the local planning authority before any development begins and the development shall be carried out as approved.
Reason:- To safeguard the rights of control by the Local Planning Authority in respect of the reserved matters.
- 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.
Reason:- To ensure compliance with sections 91 - 93 of the Town and Country

Planning Act 1990.

- 3) The development hereby permitted shall begin not later than two years from the date of approval of the last of the reserved matters to be approved.
Reason:- To ensure compliance with sections 91 - 93 of the Town and Country Planning Act 1990.
- 4) In respect of those matters not reserved for later approval the development hereby permitted shall be carried out in accordance with the proposed access scheme shown on plan no. 3007/001 Rev C.
Reason:- To ensure that an appropriate vehicular access is provided to serve the development.
- 5) Any trees and hedges on or around the site shall not be felled, lopped, or removed without the prior written consent of 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) The erection of fencing for the protection of any retained tree shall be undertaken in accordance with the tree protection plans numbered 03893 TPP, appended to the Arboricultural Impact Assessment Report dated 18/06/2013, before any equipment, machinery or materials are brought on to the site for the purposes of the development, and shall be maintained until all equipment, machinery and surplus materials have been removed from the site. Nothing shall be stored or placed in any area fenced in accordance with this condition and the ground levels within those areas shall not be altered, nor shall any excavation be made, without the written approval of the Local Planning Authority.
Reason:- To ensure the protection of the trees during the carrying out of the development. This information is required before development commences to protect trees during all stages of the construction process.
- 7) Prior to the commencement of development a Biodiversity Mitigation and Enhancement Plan which demonstrates how the proposed development will be managed in perpetuity to enhance wildlife, together with a programme of implementation, shall be submitted to and approved in writing by the Local Planning Authority. The development shall be implemented and maintained in accordance with the approved Plan and programme of implementation.
Reason:- In the interests of protecting and improving existing, and creating new wildlife habitats in the area.
- 8) Demolition or construction works shall not take place outside 08:00 hours to 18:00 hours Mondays to Fridays and 09:00 hours to 13:00 hours on Saturdays nor at any time on Sundays or Bank Holidays.
Reason:- In the interests of the amenity of occupants of nearby buildings.
- 9) No development shall take place until a Construction Environmental Management Plan (CEMP) has been submitted to, and approved in writing by, the Local Planning Authority. The approved CEMP shall be adhered to throughout the construction period. The CEMP shall provide for:
 - i) Timing and management of arrivals and departures of vehicles and site traffic;
 - ii) measures to control the emission of dust, dirt and noise during construction;
 - iii) temporary measures to deal with surface water associated with the site during the construction process;

- iv) the phasing and timing of work;
- v) the parking of vehicles of site operatives and visitors;
- vi) wheel washing facilities;
- vii) a procedure for handling and investigating complaints.

Reason:- In the interest of the environment of the site and surrounding areas. This information is required before development commences to ensure that the impacts of the development works are properly considered and addressed at the earliest possible stage.

- 10) If during any works contamination is encountered which has not previously been identified then the additional contamination shall be fully assessed and an appropriate remediation scheme agreed with the Local Planning Authority. Any remediation details shall be implemented as approved.

Reason:- In the interests of the amenity of the occupants of the buildings hereby approved.

- 11) Prior to the commencement of development a detailed scheme for traffic calming works to Church Hill, shall be submitted to and approved in writing by the Local Planning Authority. The scheme shall be implemented in accordance with the approved details prior to the first occupation of the dwellings.

Reason:- In the interests of highway safety within the vicinity of the site.

- 12) Before commencement of development the applicant shall submit a 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. The measures necessary to achieve this CO2 saving shall thereafter be implemented on site and within 3 months of practical completion of any dwelling the developer will submit a report to the LPA from a suitably qualified consultant to demonstrate compliance with this condition.

Reason:- In the interests of sustainable development and to ensure that the development accords with Core Strategy Policy CP15.

- 13) The development shall not be carried out otherwise than in accordance with a surface water drainage scheme, which shall include details of the means of attenuation and disposal of surface water from the site, including through the use of sustainable drainage systems. Details of the scheme, a timetable for its implementation and details of its future management, shall be in general compliance with the principles within the Flood Risk Assessment (Report Ref. 386/FRA2 V2) dated 21/11/2016, and shall be submitted to and approved in writing by the LPA prior to the commencement of development. The scheme shall be implemented in accordance with the approved details and timetable for implementation.

Reason:- To ensure that surface water runoff from the development is managed in accordance with the principles of sustainable drainage systems.

- 14) C57 - Archaeological Recording

Local Government (Access to Information) 1985 (as amended).
Background papers used in compiling the report:

Files of planning applications available for inspection from the Customer Service Centre, Civic Centre, Paris Street, Exeter: Telephone 01392 265223

