

**APPEAL**  
**BY**  
**SALTER PROPERTY INVESTMENTS LTD**

**LAND NORTH OF SPRUCE CLOSE AND EAST OF CELIA  
CRESCENT, EXETER**

**PROOF OF EVIDENCE**

**OF**

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## Executive Summary

1. The Appeal application is for outline planning permission for up to 93 homes. All matters of detail are reserved for subsequent approval, with the exception of means of access from Spruce Close (to the south) and Celia Crescent (to the west). The Appeal submission is accompanied by a series of parameter plans that will be secured to the outline planning permission, if granted, through conditions, and which will ensure that the development principles are carried through to the detailed scheme at reserved matters stage.
2. The Appeal site is contained by existing urban development to the west and south, and to the east and north by strong landscape features which have established the limits for existing urban growth in the locality. The proposals will therefore round off development in this part of the city (Beacon Heath), and will not be perceived as an incursion of development into open countryside beyond the existing city limits.
3. The statutory Development Plan framework comprises the Exeter Core Strategy (ECS), which was adopted over ten years ago but has yet to be subject to review, and the saved policies of the time-expired Exeter Local Plan First Review (ELPFR) that is 17 years beyond its adoption date. The Development Delivery DPD, which was intended to supersede the ELPFR and allocate non-strategic sites to meet the ECS requirement, has not progressed beyond publication stage, and further work on it has been discontinued. The ECS and ELPFR will both be replaced by the new Exeter Local Plan, which has yet to be published in draft and adoption of which is currently programmed for June 2024.
4. There is no objection in principle to development on the Appeal site. ECS Policy CP1 guides development to the most sustainable locations, and acknowledges the contribution to be made to growth by the Exeter urban area. There is a shortage of land at the city to meet all of its housing needs, reflected in the direction of a significant quantum away from the city to locations in neighboring districts. The site is in a sustainable location adjacent to the existing urban area and with good accessibility to a range of facilities and sustainable transport modes, which will be enhanced through the Appeal proposals.
5. To the extent that there is *prima facie* conflict with ELPFR Policy LS1 since, whilst not restricting development which would not harm the landscape setting of the city, it does not

include residential development within the limited categories that are acceptable in the designation, the policy is inconsistent with current national policy and out-of-date, and has been confirmed to be so through a number of Appeals decisions. The Council does not rely on Policy LS1 in its refusal reason, has confirmed through its Statement of Case that compliance of the Appeal proposals with it is not contested, and which is endorsed through the Statement of Common Ground.

6. As has again been confirmed through a number of Appeals decisions, ECS Policy CP16 does not seek to prevent all development within the landscape setting areas shown on the Key Diagram, but strives to ensure that development protects the character and distinctiveness of these areas. It follows that, as a matter of principle, it does not restrict residential development.
7. The only conflict with the housing policies of the Development Plan alleged by the Council is with ELPFR Policy H1, and in particular in relation to the sequential search that affords priority to previously developed land. However, the focus of the guidance in (the now superseded) PPG3, in the context of which policy H1 was conceived, is on the allocation of land in development plans. As is evident from the housing allocations in both the ELPFR and ECS, there is a need for housing development on greenfield sites.
8. The evidence of recent cases does not support the Council's contention that Policy H1 has been consistently applied. Moreover, had this been the case, then at the very least, it would be reasonable to expect an assessment of the Appeal proposals against the terms of the policy to have been undertaken by their professional advisors, which is demonstrably absent.
9. Policy H1 is a high level strategic policy, rather than a development management policy that provides a basis for approving or refusing planning applications. It does not preclude development on greenfield sites, and the evidence of the Council's decisions relating to both the allocation of land and determination of planning applications, confirms an acceptance of the need for greenfield sites in order to meet housing needs.
10. The Council's decision was premised on their being able to demonstrate a five year supply of deliverable housing land, and therefore being able to afford 'greater weight' to their adopted policies, a position which it is now accepted is not the case. However, even if Policy H1 is considered to be up-to-date, construed on its face, the Appeal proposals do not conflict with

it since the policy does not preclude housing development on greenfield land adjacent to the existing urban area.

11. For all of the foregoing reasons there is not considered to be any conflict with the provisions of the Development Plan relating to housing.
12. It is common ground that the Appeal proposals will not give rise to highway safety concerns or severe impacts on the network. On the contrary, it is common ground that they will deliver benefits in terms of the safety and functionality of the existing residential road network, not least through enhancements to sustainable transport, and that the site is in a sustainable location in terms of accessibility to employment, shops, education establishments and community facilities, as well as rail transport.
13. The enhancements to sustainable transport have received the strong support of the service operator, Stagecoach South West, who say that the bus loop through the suite will result in 'substantial' enhancements to both the convenience of access to the bus network for the immediate vicinity and the operating conditions for the existing route serving the area. The consequences will be a rare opportunity for development on this scale to benefit from such a regular bus service, and which will provide both the existing and future communities with a 'real choice' of travel modes.
14. The professional advice to members was that the proposals would enhance the sustainability of the proposed development significantly and support the aims of reducing carbon emissions. Moreover, the associated improvements to the surrounding road network have been designed to ensure no net loss of on-street parking and also improve the functionality of the road for existing users.
15. The evidence confirms that there are existing primary and secondary schools, a convenience foodstore and leisure centre, all within a 10-15 minute walk of the site. Other facilities, including a large supermarket, GP Surgery and Railway Station, are within 20-25 minutes walking distance.
16. For the foregoing reasons the Appeal proposals do not conflict with the highways and transportation policies of the Development Plan, a position with which the Council is understood to be in agreement.

17. The proposals will deliver a net gain in biodiversity in excess of ten per cent. This exceeds the requirements of both the Development Plan and national planning policy. It is common ground that there are no objections to the Appeal proposals on grounds of harm to biodiversity.
18. It is common ground that there is no evidence that the Appeal proposals will cause actual harm to the landscape. That is a consistent finding of the evidence commissioned by both the Council and the Appellants. Moreover, it is understood that the Council's case to the Inquiry does not seek to depart from this position.
19. The consistent findings of recent Appeals decisions is that ELPFR Policy LS1 is inconsistent with national planning policy, and out-of-date. That is common ground for the purposes of the current Appeal.
20. If it is accepted that Policy LS1 is out of date since it imposes a blanket restraint on development and is not a criteria based policy in accordance with the NPPF, which has been endorsed through numerous Appeals decisions in the city, then it follows that ECS Policy CP16 must take a different approach, failing which it would be out-of-date for the same reasons. The alternative approach taken by Policy CP16 is as confirmed through the previous Appeals decisions, and is that it does not seek to prevent all development, but only that which fails to protect the character and distinctiveness of the landscape setting areas. It follows that, if there is no evidence of harm, there is no conflict with Policy CP16, and it does not support refusal of planning permission as a matter of strategic approach, and therefore in principle.
21. Given the above circumstances, the Council's application of ECS Policy CP16 as a blanket restraint policy, and therefore following the approach foreshadowed in ELPFR Policy LS1 which it has accepted is inconsistent with the NPPF and, in consequence, out of date, would appear to be untenable. If this is the case, then the balance of the evidence provided by both of the principal parties, including the expert, independent advice taken by the Council prior to determination of the application, is unequivocally that there is no harm to the character and local distinctiveness of either the site or its surroundings that gives rise to a conflict with policy.
22. With regard to open space, following amendments to the proposals to compensate for the small loss of existing space where traversed by the access road from Spruce Close with

more than equivalent area to the land that will be lost, and to incorporate a LEAP and a LAP, as well as the enhancement of the on-site provisions adjacent to the north-west boundary following containment of built development to the 115.5 metre contour, the Council's requirements are met. No issue is taken with the proposals in this respect in either the refusal reason or the Council's Statement of Case.

23. The inclusion of the New Valley Park as substantial additional multi-functional green infrastructure that will provide public access to an additional 9.13 hectares of land to which there is currently no public right of access, and will enhance both recreational and biodiversity assets, is considered to be a positive and significant response to the aspirations of the community. For the foregoing reasons, the proposals are considered to be fully compliant with the provisions of the Development Plan relating to open space, and to derive support from the provisions of ECS Policy CP16 since recreational, biodiversity and landscape enhancements are all integral to the objectives for the landscape setting of the city that the policy seeks to achieve.
24. There is no conflict with any other provisions of the Development Plan. On the contrary, through regulating surface water runoff through the on-site detention measures, the proposals will reduce existing off-site localised flooding, and therefore result in betterment.
25. The professional advice to Members of the Planning Committee was clear and unequivocal, that the application accords with relevant Development Plan policies and will deliver a number of sustainability benefits. The proposals are therefore in accordance with the provisions of the Development Plan construed as a whole. In accordance with planning law and policy, they should be determined in accordance with the Development Plan, and therefore approved, unless material considerations indicate otherwise.
26. The NPPF is a very material consideration that must be considered alongside the provisions of the Development Plan. Given that the Council is unable to demonstrate a five year supply of deliverable housing land, the 'tilted balance' is engaged in accordance with paragraph 11(d) and Footnote 8 of the NPPF, and the presumption in favour of sustainable development applies. The application of policies in the Framework that protect assets of particular importance do not provide clear reason for refusing the proposals. Therefore planning permission should be granted absent any adverse impacts of doing so 'significantly

and demonstrably' outweighing the benefits when assessed against the policies in the Framework taken as a whole.

27. When the latter assessment is undertaken, there are no adverse impacts that outweigh the benefits, let alone significantly and demonstrably so.
28. Mr Pycroft's evidence indicates that the situation as regards the five year supply of deliverable housing land is considerably worse than suggested in the Council's most recent position statement. It therefore indicates a significant risk that homes will not be available to meet housing needs when they arise. The Appeal proposals can be brought forward quickly, and make an early contribution to alleviating any such shortfall in the supply of deliverable housing land.
29. Whilst this case is not reliant on the Council's inability to demonstrate a shortfall in the housing land supply, as is clearly reflected in the professional advice and recommendation to Members, it is a material consideration that automatically tips the planning balance in favour of the proposals, and necessitates a correspondingly greater weight of countervailing considerations to tip it back towards refusal.
30. Given the housing land supply situation, including the long legacy of failure to be able to demonstrate a five year deliverable supply, the contribution that the Appeal proposals can, and will, make to boosting market housing delivery, is a material consideration that is properly afforded substantial weight in the decision.
31. The evidence of Mr Stacey indicates a very substantial affordable housing need. This leads Mr Stacey to conclude that the 32 affordable homes that the Appeal proposals will provide should carry substantial weight in the decision. It is common ground that such weight should be afforded to the benefit of affordable housing in the overall planning balance.
32. The delivery of substantial multifunctional green infrastructure that will secure access for the community to the fields to the north and north east of the Appeal site, and the enhancement of sustainable transport through the extension of the bus route, are benefits which contribute additional significant weight in the overall planning balance. The delivery of ten per cent biodiversity net gain considerably in excess of current policy requirements, and the economic benefits in terms of construction jobs, CIL contribution and additional Council Tax receipts, each contribute further moderate weight in favour of the proposals. The reduction in

localised off-site flooding and improved highway functionality are additional benefits of the proposals, albeit contributing limited additional weight in the overall balance.

33. It is common ground that the appeal proposals will not occasion actual harm to the landscape setting of the city. However, there will be localised impact arising from the change of a greenfield site into urban development. Whilst the existing mature landscape framework will be retained and assimilate the development into its context, such change could be deemed to be a disbenefit of the proposals. To the extent that it is, it is considered that it contributes, at worst, moderate weight on the negative side of the planning balance.
34. There are no other material considerations that contribute significant weight on the negative side of the planning balance.
35. The overall conclusion is therefore that the benefits of the proposals substantially and demonstrably outweigh the disbenefits. Even if there is adduced to be some conflict with the Development Plan, it is outweighed by the substantial benefits of the proposals. Therefore, from a 'flat balance' starting point, the weight of benefits substantially and demonstrably exceeds that of any disbenefits.
36. If the 'tilted balance' is engaged, and the assessment is against the policies in the Framework taken as a whole, there are no adverse impacts that would be sufficient to 'significantly and demonstrably' outweigh the benefits.
37. In the circumstances of this case the situation is not finely balanced. Whether the starting point is a 'flat' or a 'tilted' balance, the end point is the same, and is one of a substantial weight of benefits that is not counterbalanced by any significant disbenefits arising from harm. The proposals will deliver net gains across the three overarching objectives of the planning system to the end of achieving sustainable development.
38. The Inspector is therefore, respectfully, requested to allow the Appeal.

## 1. Qualifications and Experience

- 1.1 This evidence has been prepared by Thomas Sebastian Rocke on behalf of the Appellants.
- 1.2 I have a Bachelor of Arts honours degree in Geography from the University of Wales, and a PhD, also from the University of Wales, for research into planning policy implementation. I also have a Bachelor of Town Planning Degree, with distinction, from Bristol Polytechnic (now the University of the West of England), and am a Member of the Royal Town Planning Institute.
- 1.3 I am currently a Director with Rocke Associates, a planning consultancy that I founded in June 2014. Previous consultancy positions include that of director with consultancy Turley Associates for 14 years where I was a founder member of the Bristol office of that practice. My career history also includes public sector experience, having held various positions in both planning policy and development management with a number of local planning authorities over a period of 12 years, and latterly as Development Control Manager with Mendip District Council.
- 1.4 In my consultancy role I have been involved in promoting a wide range of proposals for development (commercial and residential) through both Development Plans and planning applications/Appeals. I have appeared on behalf of both landowners and developers at a large number of Examinations into the soundness of Development Plans, and Public Inquiries in connection with Planning Appeals.
- 1.5 I have visited the appeal site and its surroundings, and am familiar with them.

## 2. The Main Issues and Scope of Evidence

2.1 The main issues in this case are likely to be as follows<sup>1</sup>:

- I. Whether the appeal site offers an appropriate location for the proposed development having regard to the Council's 'spatial approach' and access to services and facilities by sustainable modes;
- II. The effect of the proposed development on the character and distinctiveness of the area, including the landscape setting of Exeter.

2.2 This evidence considers the main issues within the context of national and local planning policies. The necessity to adopt this approach is based on the requirement of Section 38(6) of the Planning and Compulsory Purchase Act which states:

*If regard is to be had to the development plan for the purpose of any determination to be made under the planning Acts, the determination must be made in accordance with the plan unless material considerations indicate otherwise.*

2.3 The focus of this evidence will be on the overall context within which the specific matters raised in the refusal reasons must be considered, and to provide an overview of the planning balance in this case. It will draw on the evidence provided with the appeal application, the Officer's report to the Planning Committee, the Statements of Case submitted in connection with the Appeal, and the Proofs of Evidence of the other expert witnesses to be called on behalf of the Appellants, namely:

- Ben Pycroft: Five Year Housing Land Supply
- James Stacey: Affordable Housing Need
- Nick Bunn: Landscape and Visual Impacts

<sup>1</sup> Inspector's Summary Note of Case Management Conference held on 4<sup>th</sup> May 2022, para. 5

- 2.4 This evidence will conclude with an assessment of the overall planning balance in the circumstances of this case having regard to the evidence adduced on behalf of the Appellants in response to the reasons for refusal.

### 3. Appeal Proposals and Application

- 3.1 The Appeal Application is for outline planning permission for up to 93 homes on approximately 3.9 hectares of land north of Spruce Close and east of Celia Crescent, Exeter. All matters of detail are reserved for subsequent approval, with the exception of means of access.
- 3.2 The detailed highway drawings that are submitted for approval show the following arrangements:
- A means of access from Spruce Close via an existing gap between residential properties on the west side which affords agricultural access to the southern boundary of the Appeal site across an intervening area of open space. As originally proposed the access road was to traverse the open space to the existing access point on the southern boundary of the Appeal site. However, it was subsequently amended to deflect to the north-east to reduce the impact on the existing space at its widest part. Spruce Close is to be realigned to improve curvature and forward visibility when approaching from the west, and which will enable the provision of on-street parking bays that will facilitate the free flow of two-way traffic that is currently hampered by on-street parking on the inside of a bend.
  - A second means of access via an existing short access road from Celia Crescent that currently serves a block of garages and provides direct agricultural access to the northern land parcel comprised within the Appeal site.
- 3.3 The Appeal application is also accompanied by a series of parameter plans that are intended to be secured to the outline planning permission, if granted, and which will serve to define and proscribe the future detailed proposals to ensure that they respect the constraints and opportunities on the basis of which the outline application was premised. Each of the parameter plans is discussed briefly below.

## Parameter Plan – Land Use<sup>2</sup>

- 3.4 This plan shows the extent of the developable area, which extends to circa 2.58 hectares, together with the on-site provisions for green space, that extend to circa 1.34 hectares in total, buffering the south-east, north-east and north-west site boundaries. The parameter plan was amended post-submission of the application to reduce the extent of the developable area to the north-west to ensure that the building line does not exceed that of the existing development in Celia Crescent and extend onto land higher up the slope. As is annotated on the parameter plan, this means that no dwelling will be positioned above the 115.5 metre contour line. Adjacent to the south-east boundary, the green buffer was increased to compensate for any loss in utility of the open space where it is traversed by the proposed access road from Spruce Close, and it considerably exceeds the area of land that will be lost to the access road. The green edge buffers defined on the parameter plan incorporate all of the significant existing vegetation that provide a strong landscaped context within which the proposed built development will be contained, and into which built development will not encroach. The adjustments to the depth of the green buffers adjacent to the north-western and south-eastern boundaries of the Appeal site contributed to the reduction in the overall quantum of development for which planning permission is sought from up to 105 dwellings as originally submitted, to up to 93 homes as is now sought.
- 3.5 The parameter plan also shows land to be designated as New Valley Park. As will be explained in later evidence, whilst there are no formal or legal rights of public access to either the Appeal site itself or the land outlined in blue, if planning permission is granted for the Appeal proposals, an agreement has been reached with the landowners to dedicate the land outlined in blue for the benefit of the community for informal recreation which will formalise rights of access and enable it to be managed in a manner commensurate with the community's enjoyment and aspirations, including biodiversity enhancement. This proposal was included as a positive response to public consultation and the expressed value of land in this location for informal recreation notwithstanding there being no current legal rights to access or use it.

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<sup>2</sup> CD-PA22

### **Parameter Plan - Density<sup>3</sup>**

- 3.6 This plan commits any future detailed proposals to delivering a lower density of development on the north-west land parcel comprised within the Appeal site which occupies a higher level than the land parcel to the south. This reflects the existing pattern of development comprised within Celia Crescent to the west, in which the character is predominantly detached dwellings on more spacious plots to the north of the access spur into the Appeal site, and higher density, semi-detached / terraced units to the south.
- 3.7 The density mood boards that also form part of the application illustrate the design principles for the higher and lower density areas.

### **Parameter Plan - Scale<sup>4</sup>**

- 3.8 This plan again seeks to moderate the scale of development on the more elevated, north-western land parcel, compared with the lower, south-east parcel.

### **Parameter Plan – Access and Movement<sup>5</sup>**

- 3.9 This parameter plan establishes the access and movement principles that will inform any future detailed proposals, which includes a hierarchy of streets together with green pedestrian-only routes. The principles include a primary street between the two access points from Spruce Close and Celia Crescent that will enable a bus to route through the site, and by so-doing, facilitate enhanced bus permeability and accessibility to the existing communities. This is confirmed by the detailed drawing showing the proposed bus stop locations.
- 3.10 The movement principles also include a walking loop incorporating the green buffers around the south-east, north-east and north-west margins of the site.

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<sup>3</sup> CD-PA23

<sup>4</sup> CD-PA24

<sup>5</sup> CD-PA25

## Parameter Plan – Open Space<sup>6</sup>

- 3.11 This parameter plan defines the on- and off-site provisions for open space that are associated with the Appeal proposals. They include on-site habitat corridors and informal open spaces which incorporate the principal areas of established vegetation that will provide a strong existing landscape framework into which the built development will be inserted, together with provision for a LAP and a LEAP. The dedication of the land to the north-east and north-west of the Appeal site for the New Valley Park is also committed through the parameter plan.
- 3.12 In total, the parameter plan establishes open space provision extending to 10.47 hectares, of which 1.34 hectares is provided as formal open space within the Appeal site, and 9.13 hectares for informal recreation comprised within the adjacent land to be dedicated as New Valley Park. The overall provisions are proposed to be secured through the Unilateral Undertaking that is offered by the Appellants in conjunction with the Appeal.
- 3.13 Whilst only indicative, the masterplan accompanying the Appeal proposals illustrates how the parameters that will be secured against the outline planning permission, if granted, will translate into a detailed scheme. They clearly demonstrate how the built development will drop into, and be contained within, an existing mature landscape framework, with strong green buffers to those edges that do not immediately abut existing development (in Celia Crescent). They also demonstrate how the existing green space to the north of Spruce Close will become more expansive, and how the reduced density of development on the upper parcel will complement existing development to the west. It also illustrates how, by limiting development to the 115.5 metre contour (which is shown on the topographical survey), it will be contained below the building line of the adjacent development, providing a stronger buffer to the open countryside to the north, and an enhanced area of on-site formal open space that can accommodate a LEAP.
- 3.14 The indicative plan of New Valley Park illustrates the opportunity to formalise a network of recreational routes through and around the 9.13 hectares of land, which is of sufficient size to deliver multi-functional green infrastructure that will both enhance public accessibility to the

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<sup>6</sup> CD-PA26

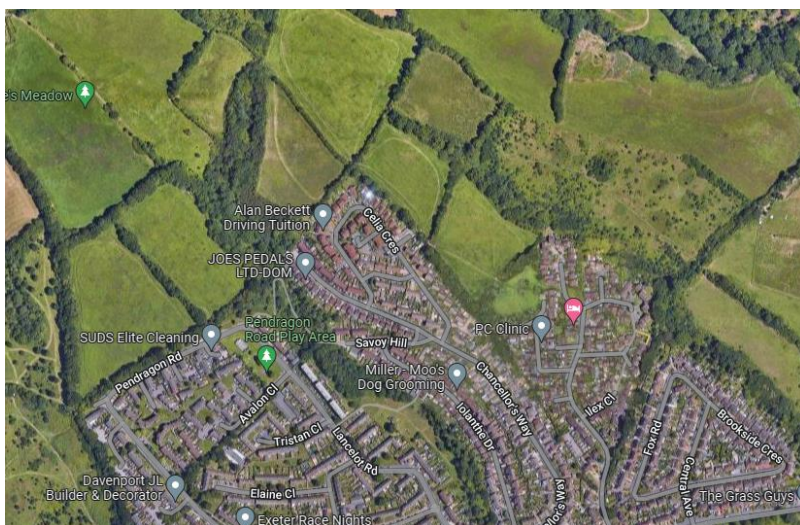
countryside simultaneously with delivering significant biodiversity net gain, and without conflict between the two objectives given the generous land area available.

- 3.15 It is significant that the New Valley Park land is elevated above the Appeal site, and will promote opportunities for spectacular southerly views towards the English Channel, as well as over the Devon countryside to the east and west, and which is reflected in the suggested viewpoint seating which could be combined with interpretation facilities. The illustrative plan also demonstrates the potential for this new parkland to connect into the existing Mincinglake Valley Park to the south-west, creating a much more expansive recreational resource for both existing and future communities in Exeter. Discussions have been held with Devon Wildlife Trust to assume joint management of the New Valley Park and to develop a coherent community and biodiversity management strategy.

## 4. Appeal Site and Surroundings

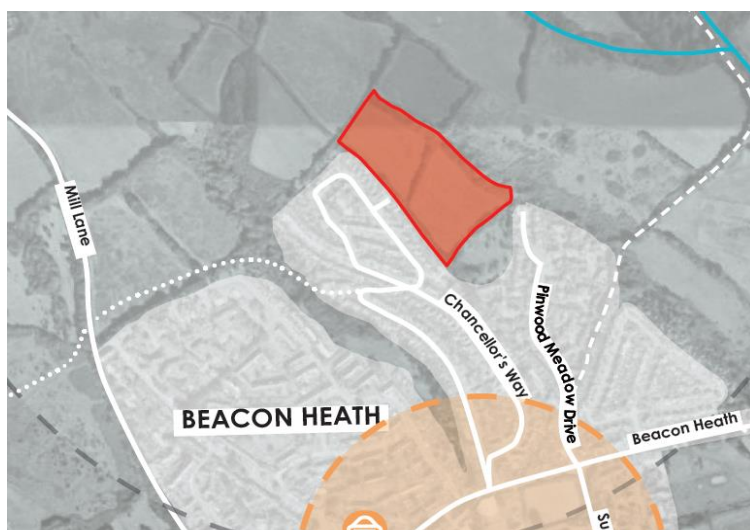
4.1 The Appeal site is as described in the Statement of Common Ground.

4.2 There is a clear northern limit to development in this part of Exeter (Beacon Heath) which is defined by the line of an established hedge to the north of Pendragon Road and which continues north-eastwards to contain the northern limit of Celia Crescent. This is illustrated on the aerial photograph (right). That same hedge line that defines the northern limit of existing development



to the south-west of the Appeal site continues north-eastwards beyond Celia Crescent to define the northern boundary of the Appeal site itself.

4.3 As is also clear from the aerial photograph, to the south of the Appeal site the eastern edge of development in this part of Exeter is defined by a vegetated corridor associated with small watercourse, and which is reflected in the street naming of development (Brookside Crescent) further south. That well vegetated corridor that defines the current eastern limits of development continues northwards beyond Spruce Close and defines the eastern limits of the Appeal site.



- 4.4 As is clear from the extract diagram from the Design and Access Statement (above), the Appeal site is therefore effectively rounding off the development of the Beacon Heath area of Exeter in which it is situated, through extending the existing urban development northwards and eastwards within, and to, the natural limits provided by the same hedge line and vegetated corridors based on the watercourse as have defined the limits of existing development to the west and south.

## **5. Planning History**

- 5.1 There is no significant history of planning applications relating to the Appeal site.

## 6. Development Plan Context

6.1 The statutory development plan framework that contains the most important policies for the determination of this Appeal is provided by the following documents:

- Exeter Core Strategy (Adopted February 2012) (ECS)<sup>7</sup>
- Exeter Local Plan First Review (Adopted March 2005) (ELPFR)<sup>8</sup>

6.2 The most important policies for the determination of the current Appeal have been defined having regard to the matters raised in the refusal reasons, the Statements of Case, and the provisional main issues identified in the Inspector's post CMC summary note. They are as set out in Schedule 5.1 of the Statement of Common Ground.

6.3 By way of background, although it is time-expired since it covered the period to 2011, the majority of policies of the ELPFR were saved by direction of the Secretary of State dated 14<sup>th</sup> March 2008<sup>9</sup>. That included the two ELPFR policies considered to be most important to the determination of the current Appeal. However, the direction letter was clear in the following matters:

*The exercise of extending saved policies is not an opportunity to delay DPD preparation. LPAs should make good progress with local development frameworks according to the timetables in their local development schemes. **Policies have been extended in the expectation that they will be replaced promptly** and by fewer policies in DPDs. Maximum use should be made of national and regional policy especially given the advanced position of many regional spatial strategies and the development plan status of the Regional Spatial Strategy/Spatial Development Strategy.*

*Following 31 March 2008 **the extended policies should be read in context. Where policies were adopted some time ago, it is likely that material considerations, in particular the emergence of new national and regional policy and also new***

<sup>7</sup> CD-DP4

<sup>8</sup> CD-DP5

<sup>9</sup> CD-DP7\_Letter from Government Office for the South West dated 14 March 2008

*evidence, will be afforded considerable weight in decisions. In particular, we would draw your attention to the importance of reflecting policy in Planning Policy Statement 3 Housing and Strategic Housing Land Availability Assessments in relevant decisions.<sup>10</sup>*

6.4 Only two of the saved policies of the ELPFR were superseded by the ECS (relating to affordable housing (H6) and Gypsies and Travelling Show People (CS9))<sup>11</sup>. However as is explained in Section 1, the ECS was the first document to be prepared as part of the Local Development Framework, the second main element of which was intended to be the Site Allocations and Development Management DPD<sup>12</sup>.

6.5 As is explained in the Planning Statement accompanying the Appeal application, the Site Allocations and Development Management DPD (latterly rebadged as the 'Development Delivery' DPD), which together with the ECS was intended to provide the statutory development plan framework for the area, has not progressed beyond the Publication Version, on which consultation was undertaken in August 2015. This has particular consequences for the identification of land to meet housing needs since, as is acknowledged in the ECS:

*Other than the urban extensions to the east and south west (for which strategic allocations are made in Section 12), **the Core Strategy does not allocate sites. Site allocations will be brought forward through the Site Allocations DPD.***<sup>13</sup>

6.6 The Development Delivery DPD is not included in the latest iteration of the Council's Local Development Scheme, which confirms as follows:

*Going forward, the new Exeter Local plan will be the only Development Plan Document produced by the City Council. It will replace the (Core) Strategy and the Local Plan First Review and will include a vision and objectives for Exeter, a development strategy, sites for development (allocations) and a series of planning policies. ...*<sup>14</sup>

<sup>10</sup> Ibid\_emphasis added

<sup>11</sup> CD-DP4\_ECS, Appendix 3

<sup>12</sup> Ibid\_para. 1.8

<sup>13</sup> Ibid\_para. 6.6, emphasis added

<sup>14</sup> Exeter City Council, Local Development Scheme, June 2021, para. 3.1

*The timetable for preparing the new Exeter Local Plan is set out below:*

- *Issues consultation: September 2021*
- *Draft plan consultation: September 2022*
- *Publication: February 2023*
- *Submission to Planning Inspectorate: June 2023*
- *Examination hearings: October 2023*
- *Adoption: June 2024<sup>15</sup>*

6.7 Therefore, the vehicle for allocating non-strategic sites, to contribute to meeting the overall housing needs identified in the ECS and which are critical to maintaining continuity in the deliverable supply of housing land as well as meeting the overall housing requirement, has not progressed, and now been abandoned. The new Local Plan that will identify new housing sites, is not scheduled for adoption until June 2024, and therefore more than 12 years following adoption of the ECS and 19 years after the adoption of the ELPFR.

6.8 There are a number of important considerations that follow from the foregoing circumstances.

6.9 First, more than ten years have now elapsed since adoption of the ECS, and it has not been reviewed contrary to the clear statutory and national policy requirements that such reviews should be undertaken ‘at least’ once every five years<sup>16</sup>. Moreover, it is now 17 years since the provisions policies of the ELPFR were adopted and they have yet to be subject to review. An essential purpose of the review process is to take into account ‘any relevant changes in national policy’<sup>17</sup>.

6.10 The failure to conduct a timely review of the ECS is particularly relevant to the housing provisions of the Plan given the circumstances surrounding its examination and adoption. As is set out in some detail in the Planning Statement accompanying the Appeal application<sup>18</sup>, at the time of adoption of the ECS, the Council was unable to demonstrate a five year supply of deliverable housing land. Whilst this was acknowledged by the Examination Inspector, she allowed the Plan to proceed having regard to a Development Management Policy Statement committing the Council to a number of actions to be proactive

<sup>15</sup> Ibid para. 3.3

<sup>16</sup> NPPF, para 33 and Footnote 20

<sup>17</sup> Ibid para. 33

<sup>18</sup> CD-PA3, Planning Statement, paras. 6.10 – 6.11

and boost the five year housing land supply, including a commitment to an early review of the Local Plan if a five year supply could not be demonstrated within two years following its adoption.

- 6.11 The trigger for an early review is set out as follows in Section 1 of the ECS:

*There may be circumstances under which it would be necessary to revise the Core Strategy before 2026. In particular, **the Core Strategy should be reviewed if the Strategic Housing Land Assessments (SHLAAs) in 2011 and 2012 show a continuing shortfall of deliverable housing sites for the next five years**, with any additional allowance to ensure choice and competition in the market for land, if up-to-date national planning policy requires it.<sup>19</sup>*

- 6.12 As is also set out in the Planning Statement and will be cited further in later evidence, in connection with an Appeal decided in January 2019, the Council accepted that it had not been able to demonstrate a five year supply of deliverable housing land since at least 2010. Notwithstanding this situation, the requisite review of the ECS in accordance with the commitment given in paragraph 1.7 was not actioned, and is still some years from being completed. Together with the failure to progress the Development Delivery DPD, through which non-strategic sites were to be allocated, this accounts significantly for the precariousness of the supply of deliverable housing land in the city over a protracted period which has been acknowledged by the Council in connection with previous Appeals decisions, and remains unresolved given the Council's acceptance in connection with the current Appeal that it is unable to demonstrate a five year supply.

- 6.13 Given the failure of the plan-led vehicle for alleviating the housing land supply deficit to come forward, and that it will be some years before the new vehicle is in place, the only mechanism for delivering additional housing land to accommodate unmet needs, continues to be through granting planning permissions for windfall sites brought forward through the Development Management process.

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<sup>19</sup> CD-DP4\_ECS, para. 1.7

## 7. Planning Analysis – Development Plan Compliance

- 7.1 The purpose of the evidence in this section is to consider whether to allow the Appeal and grant planning permission for the Appeal proposals would accord with the provisions of the Development Plan construed as a whole.
- 7.2 The focus is on a number of matters which relate to the principal of the proposed development and the main matters to be considered in the Appeal that have been identified by the Inspector. Under these matters, the issues raised in the refusal reasons are subjected to scrutiny, and conclusions drawn on whether they cause conflict with the salient provisions of the Development Plan.
- 7.3 The analysis concludes with a summary assessment of the alignment of the proposals with the provisions of the Development Plan that are most important to the main issues, alongside other relevant policies to enable a balanced view to be reached on whether the proposals are in accordance with the provisions of the Development Plan construed as a whole.

### **Matter (i)**

#### **Whether the principle of developing the site for residential purposes is in accordance with the Development Plan?**

- 7.4 ECS Policy CP1 guides development to the most sustainable locations, recognising the contribution to made to growth by the existing urban area. The ECS identifies strategic sites to contribute to the growth requirements, but does not allocate non-strategic sites. As set out in Section 6 above, the allocation of non-strategic sites was intended to be made through the Development Delivery DPD, but that document has failed to progress and now been abandoned.
- 7.5 The evidence contained in the supporting documents accompanying the application<sup>20</sup> confirms that the site is in a sustainable location. It is immediately adjacent to existing urban

<sup>20</sup> CD-PA4\_Design and Access Statement, Figures 4-6; CD-PA18\_Transport Statement, Figures 2.1-2.4

development and will integrate well with it. It is within walking distance of a range of local facilities, including a local centre that incorporates a Co-op foodstore and a pharmacy, a day nursery, a Primary School, a sports centre, a public house, and a range of bus stops giving widespread access to other parts of the city and beyond by public transport. Polsloe Bridge Railway Station is also easily accessible from which there are local services to the city centre, other destinations in east Exeter and beyond, and wider destinations from Exeter Central and St David's Stations. This is further evidenced in the Statement of Common Ground (Transport)<sup>21</sup>.

- 7.6 The site is therefore in a sustainable location in relation to the existing urban area. As such, there is no conflict with ECS Policy CP1.
- 7.7 As is explained in Section 6 above, whilst the ELPFR is time expired, and is not aimed at meeting the housing requirement of the ECS, it remains part of the Development Plan since the Development Delivery DPD has failed to progress beyond draft stage. However, the application proposals are in accordance with the strategy of that plan which seeks to locate development where safe and convenient access by public transport, walking and cycling is available or can be provided. There is no specific policy that confines development to within the existing urban limits.
- 7.8 Although the site is within the landscape setting of the city as defined on the Proposals Map, Policy LS1 of the ELPFR only restricts development which would cause harm to the designation. It therefore does not, as a matter of principle, restrict development within the landscape setting where no harm would be caused.
- 7.9 It is also germane that, through a number of Appeal decisions elsewhere in the city, it has been established that Policy LS1 is out of date and inconsistent with current national policy. Those Appeal decisions were cited in the Briefing Note to Members prepared by Roche Associates<sup>22</sup> which was submitted with the Appeal documentation, and the relevant decisions are included in the Core Documents<sup>23</sup>.

<sup>21</sup> CD-ID5\_SoCG (Transport), Table 3.1 and Appendix A

<sup>22</sup> CD-MB3\_Roche Associates, Briefing Note, September 2021

<sup>23</sup> CD-A27\_Appeal ref. 2215771; CD-A13\_Appeal ref. 3202635; CD-A14\_Appeal ref. 3265253

7.10 In the first decision, relating to Home Farm, Pinhoe<sup>24</sup>, the key findings of the Inspector can be summarised as follows:

- Policy LS1 is inconsistent with national policy in that it is tightly drawn around the northern edge of the existing urban area.
- The revised approach established through the NPPF is to set criteria based policies against which proposals for any development on or affecting any landscape areas will be judged. Policy LS1 is not a criteria based policy and effectively limits development to the existing urban areas.
- The evidence base underpinning Policy LS1 is not up-to-date.
- For the foregoing reasons, Policy LS1 can be afforded 'little weight'.<sup>25</sup>

7.11 The Inspector therefore considered ECS Policy CP16 to be the appropriate policy against which to consider the Appeal proposals at Home Farm. That policy seeks to protect the character and distinctiveness of a number of defined areas, including the hills to the north and west of the city in which the site the subject of that Appeal was located. The Council agreed that the ECS Key Diagram showed 'broad areas rather than boundaries', and accordingly:

*Core Strategy policy CP16 **does not seek to prevent all development within the areas shown on the Key Diagram**, but strives to ensure that development protects the character and distinctiveness of these areas<sup>26</sup>.*

7.12 In a later Appeal relating to land west of Clyst Road, Topsham the Inspector noted that, although the proposals would not satisfy the specific requirements of Policy LS1, and as such would conflict with that policy:

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<sup>24</sup> CD-A27\_Appeal ref. 2215771

<sup>25</sup> Ibid\_para. 13

<sup>26</sup> Ibid\_para. 14, emphasis added

... it was **common ground** that the policy is out of date in the light of the National Planning Policy Framework (the Framework), as well as being based upon outdated information and superseded national policy. I agree with this assessment and, as such, I afford this policy conflict limited weight.<sup>27</sup>

7.13 The Inspector also recorded the Council's concession in that case that:

... to meet the CS housing requirement and to achieve a five year housing land supply, **permissions would need to be granted on land that is subject to policies LS1 and CP16**. I have no reason to doubt that assessment.<sup>28</sup>

7.14 In a more recent Appeal decision that post-dates the determination of the current Appeal application, relating to land at Pennsylvania Road, Exeter, the Inspector endorsed the position as regards Policy LS1:

*Policy LS1 seeks to protect the landscape setting of the city by restricting development within that setting. This is one of the most important policies. However, as this policy constrains housing delivery in a manner inconsistent with the approach advocated in the Framework it is out of date. This is consistent with the view taken by the Inspector in the appeal at Land to the west of Clyst Road, Topsham and, in view of this decision, not disputed by the Council.*<sup>29</sup>

7.15 The professional advice to Members in respect of the current Appeal application was that:

*Following assessment of the application, it's considered that the proposed development accords with the relevant policies of the development plan, except for the second part of saved Policy LS1, which prohibits housing in the Landscape Setting areas. However, this policy can be given little weight following the Home Farm appeal decision.*<sup>30</sup>

7.16 Therefore, insofar as the Council's professional advisors were concerned, the only conflict with the Development Plan was in relation to Policy LS1. However, given the consistent

<sup>27</sup> CD-A13\_Appeal ref. 3202635, para. 7, emphasis added

<sup>28</sup> Ibid para. 43, emphasis added

<sup>29</sup> CD-A14\_Appeal ref. 3265253, para. 22

<sup>30</sup> CD-DD4\_Committee Report, p.59

findings that that policy is out of date, it can be afforded little, if any, weight in the decision. This endorses the caution accompanying the direction issued by the Secretary of State continuing to save the policies of the ELPFR, that the extended policies should be read in context, and it is likely that new material considerations, in particular national policy, will be afforded considerable weight in decisions<sup>31</sup>.

- 7.17 In the light of the foregoing, there is no objection in principle to the development of the Appeal site for housing. Policy LS1 is out of date, and ECS Policy CP16 only restricts development where it would fail to protect the character and local distinctiveness of, *inter alia*, the hills to the north and west of the city. There is no actual harm to the character and distinctiveness of the hills to the north and west of the city alleged in the Council's refusal reason. Moreover, it is not part of the Council's case in this Appeal that there is actual harm, and, indeed, is common ground that there is no evidence that the proposals will occasion such harm<sup>32</sup>.
- 7.18 The need for housing development on land that is subject to Policies LS1 and CP16 is reflected in the strategic urban extensions in the ECS<sup>33</sup>, all of which incorporate land designated as landscape setting under ELPFR Policy LS1. It is noted, and considered to be significant, that the Council does not rely on Policy LS1 in its refusal reason. Moreover, it has been confirmed through the Council's Statement of Case that compliance of the proposals with Policy LS1 is not contested by the Council<sup>34</sup>. That is endorsed in the Statement of Common Ground<sup>35</sup>.
- 7.19 Given the findings of the Inspector in the Clyst Road Appeal, that in order to meet the ECS housing requirement and achieve a five year housing land supply, permissions will need to be granted on land that is subject to policies LS1 and CP16, it is likely that further allocations would have been made incorporating such land had the Development Delivery DPD progressed and non-strategic allocations been made. The fact that the latter has failed to progress means that sites must be brought forward through the Development Management process and considered against ECS Policy CP16 on a case by case basis. The compliance of the Appeal proposals with Policy CP16 is considered further in later evidence.

<sup>31</sup> See para. 6,3 above

<sup>32</sup> CD-ID4\_SoCG, para. 6.7

<sup>33</sup> CD\_DP4\_ECS, Policy CP19

<sup>34</sup> CD-ID3\_ECC Statement of Case, para. 4.1.1

<sup>35</sup> CD-ID4\_SoCG, para. 6.8

## **Matter (ii)**

### **The compliance of the Appeal proposals with the housing policies of the Development Plan?**

7.20 Through its refusal reason ECC alleges conflict with a single housing policy of the Development Plan, comprising Policy E1 of the ELPFR. It therefore follows that ECC accepts that the proposals are compliant with the following ECS policies:

- CP4: requiring residential development to achieve the highest appropriate density compatible with the protection of heritage assets, local amenities, the character and quality of the local environment and the safety and convenience of the local and trunk road network.
- CP5: requiring the supply of housing to meet the needs of all members of the community.
- CP7: requiring the delivery of 35% affordable housing on sites capable of providing 3 or more additional dwellings, and of which at least 70% should be provided as social rented.

7.21 It also follows that ECC accepts that the proposals are compliant with the following relevant ELPFR policy:

- H2: which affords priority to meeting housing needs on previously-developed land by applying the search sequence set out in Policy H1, and by permitting residential development at the highest density that can be achieved without detriment to local amenity, the character and quality of the local environment and the safety of local roads, whilst having regard to the need to provide a variety of housing provision which is accessible to a range of employment, shopping, education, health and social care, leisure and community facilities.

7.22 Concerning the alleged conflict with ELPFR Policy E1, two preliminary considerations arise.

7.23 First, as is expressly stated in the Council's refusal reason, the alleged conflict was in the context of the Council's position that it could demonstrate a five year housing land supply and as a result of which 'greater' weight should be afforded to its adopted policies. Given

that the Council has now conceded that, once again, it is unable to demonstrate a five year deliverable supply, it is unclear what weight, if any, the Council considers should now be afforded to Policy H1. For reasons that will be substantiated in later evidence, given that the Council considers that Policy H1 is one of the most important policies for determining the Appeal application<sup>36</sup>, then in circumstances that the tilted balance is engaged in accordance with paragraph 11(d) and Footnote 8 of the NPPF by dint of the Council being unable to identify a five year supply of deliverable housing land, Policy ELPFR Policy E1 is out of date.

7.24 Second, in the Council's Statement of Case it is alleged that Policies H1 and CP16 have been 'consistently applied'<sup>37</sup>. The application of Policy CP16 is considered elsewhere in this evidence. However, in relation to ELPFR Policy H1, it is the Appellants' view that evidence does not support the contention that there has been consistency in its application.

7.25 As an example, with reference to the earlier cited Appeal applications relating to Land at Home Farm, Pinhoe<sup>38</sup> and Land to the West of Clyst Road, Topsham<sup>39</sup>, both related to greenfield sites peripheral to the Exeter urban area. However, in neither of those cases was there alleged to be any conflict with ELPFR Policy H1 in terms of a failure to follow the search sequence set out in Policy H1, as is reflected in the main issues identified by the respective Inspectors in determining those Appeals<sup>40</sup>. Another example can be found in an Appeal decision relating to a greenfield site North of Exeter Road, Topsham<sup>41</sup> where again no issue was taken in terms of conflict with the search sequence. Even in the more recent case relating to Pennsylvania Road in which the Inspector had regard to Policy H1<sup>42</sup>, no conflict with Policy H1 and the associated spatial approach was cited in the Council's refusal reasons.

7.26 It is also germane that nowhere within the very comprehensive report of the Council's professional advisors is there any conflict alleged with Policy H1. There is no reference to the alignment of the proposals with the sequential approach in the 'key issues' identified under the Planning Assessment<sup>43</sup>, nor is there any reference to it under Section 17(13) (Development Plan and Material Considerations)<sup>44</sup>. If, as alleged in the Council's Statement

<sup>36</sup> CD-ID3\_ECC Statement of Case, para. 2.4.2

<sup>37</sup> Ibid para. 3.2.3

<sup>38</sup> CD-A27\_Appeal ref. 2215771

<sup>39</sup> CD-A13\_Appeal ref. 3202635

<sup>40</sup> CD-A27\_Appeal ref. 2215771, para. 8 and CD-A13\_Appeal ref. 3202635, para. 5 respectively

<sup>41</sup> CD-A15\_Appeal ref. 3005030

<sup>42</sup> CD-A14\_Appeal ref. 3265253

<sup>43</sup> CD-DD4\_pp. 45-46

<sup>44</sup> Ibid\_p.59

of Case, Policy H1 has been consistently applied, then it is reasonable to expect to find some analysis of the alignment of the proposals with that policy in the Officer's report. On the contrary, the Officer's advice to Members was that the proposed development accorded with the 'relevant policies' of the development plan, except for the second part of saved Policy LS1, and which could be afforded little weight following the Home Farm Appeal decision<sup>45</sup>. This is notwithstanding that Policy H1 was identified as a 'relevant policy' under Section 13 of the Officer's report<sup>46</sup>.

7.27 As a precursor to determining whether the proposals conflict with Policy H1, it is pertinent to consider the national planning policy context within which it was conceived. As is set out in the Appellants' Statement of Case, Policy H1 is grounded in national planning policy guidance (in Planning Policy Guidance Note 3 (PPG3): Housing)<sup>47</sup> that was superseded first by Planning Policy Statement 3 (PPS3) first published in 2006, and which itself has been superseded by the NPPF in its first iteration published in March 2012, and the latest update of which was in July 2021. As was made clear in the direction by which the policies of the ELPFR were saved, the extended policies must be read in context, and it is likely that new material considerations, in particular new national and regional policy, will be afforded considerable weight in decisions<sup>48</sup>.

7.28 Given that Policy H1 is predicated on national policy as set out PPG3<sup>49</sup>, it is important to construe its provisions within the context of paragraph 31 of the PPG, and which is set out in full below:

*In deciding which sites to allocate for housing in local plans and UDPs, local planning authorities should assess their potential and suitability for development against each of the following criteria:*

- **availability of previously-developed sites** and empty or under-used buildings and their suitability for housing use;

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<sup>45</sup> Ibid\_p.59

<sup>46</sup> Ibid\_p.41

<sup>47</sup> CD-DP5\_ELPFR paras. 4.5-4.6

<sup>48</sup> See para. 6.3 above

- the **location and accessibility** of potential development sites to jobs, shops and services by modes other than the car, and the potential for improving such accessibility;
- the **capacity of existing and potential infrastructure**, including public transport, water and sewerage, other utilities and social infrastructure (such as schools and hospitals) to absorb further development and the cost of adding further infrastructure;
- the **ability to build communities** to support new physical and social infrastructure and to provide sufficient demand to sustain appropriate local services and facilities; and
- the **physical and environmental constraints on development of land**, including, for example, the level of contamination, stability and flood risk, taking into account that such risk may increase as a result of climate change.<sup>50</sup>

The above criteria are reflected in those set out in paragraph 4.6 of the ELPFR. However, what is missing from paragraph 4.6 is the text that precedes the bullet point criteria, and in particular the words “... *in deciding which sites to allocate for housing in Local Plans and UDPs* ...”. When construed in full and in its proper context, it would therefore appear that the focus of the search sequence set out in PPG3 was on the allocation of land in Development Plans. The provisions of PPG3 do not suggest an extension of the search sequence to the assessment of individual planning applications.

7.29 It is evident from reading the provisions of Section 4 (Housing) of the ELPFR as a whole that Policies H1 and H2 provided a strategic context for the assessment of housing sites in the subsections that followed, culminating in Policy H3 that identified the portfolio of sites that were allocated for residential development. It is also relevant that the portfolio of sites identified in Policy H3 included greenfield urban extensions, confirming an insufficiency of sequentially-preferable, previously-developed alternatives to meet the housing needs prevailing at that time. There was also an acknowledgement of the possibility of further greenfield sites being necessary if previously-developed sites did not come forward as anticipated, and which would be allocated following Local Plan review<sup>51</sup>.

7.30 The continuing need for greenfield sites is also evidenced through the ECS:

<sup>50</sup> DETR, Planning Policy Guidance Note No. 3: Housing, March 2000, para. 31 (underlining added)

<sup>51</sup> CD-DP5\_ELPFR, para. 4.32

*To meet the demand for housing, whilst protecting Exeter's character, it has been a priority to maximise the use of previously-developed land. However, **greenfield development has also been necessary**, within the city at Digby and beyond the city through a new community in East Devon at Cranbrook.<sup>52</sup>*

- 7.31 The three strategic urban extensions allocated in the ECS (at Monkerton and Hill Barton, Newcourt and South of Alphington<sup>53</sup>) are predominantly greenfield sites, and which also incorporate land designated as landscape setting under ELPFR Policy LS1. Furthermore, the lack of objection by the Council on grounds of Policy H1 to the Appeal cases relating to greenfield sites at Pinhoe (Home Farm)<sup>54</sup>, Topsham (West of Clyst Road<sup>55</sup> and North of Exeter Road<sup>56</sup>), and even at Pennsylvania Road<sup>57</sup>, indicates that they did not construe there to be reasonable and/or sufficient alternatives such as to cause conflict with the strategic approach underpinning the policy.
- 7.32 It is also germane that, in Planning Policy Statement 3 (PPS3), that superseded PPG3 in 2006, the specific reference to a search sequence was omitted, and replaced with more generic guidance on identifying suitable locations for housing as follows:

*In support of its objective of creating mixed and sustainable communities, the Government's policy is to ensure that housing is developed in suitable locations which offer a range of community facilities and with good access to jobs, key services and infrastructure. This should be achieved by making effective use of land, existing infrastructure and available public and private investment, and include consideration of the opportunity for housing provision on surplus public sector land (including land owned by Central Government and its bodies or Local Authorities) to create mixed use developments. The priority for development should be previously developed land, in particular vacant and derelict sites and buildings.<sup>58</sup>*

<sup>52</sup> CD-DP4\_ECS, para. 2.14, emphasis added

<sup>53</sup> Ibid\_Policy CP17

<sup>54</sup> CD-A27\_ Appeal ref. 2215771

<sup>55</sup> CD-A13\_ Appeal ref. 3202635

<sup>56</sup> CD-A15\_ Appeal ref. 3005030

<sup>57</sup> CD-A14\_ Appeal ref. 3265253

<sup>58</sup> DCLG, Planning Policy Statement 3 (PPS3) Housing, June 2011, para. 36

- 7.33 The Government's current position as set out in the NPPF requires planning policies and decisions to promote an effective use of land in meeting the needs for homes and other uses, and requires strategic policies to set out a clear strategy for accommodating objectively assessed needs in a way that makes as much use as possible of previously-developed or 'brownfield' land<sup>59</sup>. To this end it requires planning policies and decisions to give substantial weight to the value of using suitable brownfield land within settlements for homes and other identified needs, and to promote and support the development of under-utilised land and buildings, especially if this would help meet identified needs for housing where land supply is constrained and available sites could be used more effectively<sup>60</sup>.
- 7.34 Therefore, in terms of deciding planning applications, if a site is previously-developed land is a material consideration that potentially contributes substantial weight on the benefits side of the planning balance. However, the NPPF does not preclude granting planning permission for housing development on greenfield sites, and allows for significant extensions to existing villages and towns to accommodate the supply of large numbers of new homes<sup>61</sup>. In a 'plan-led' system, where the Development Plan is doing its job in identifying sufficient land to meet housing needs on previously-developed land, and therefore the plan is properly afforded primacy in the determination of planning applications, the priority afforded to previously-developed land would be met.
- 7.35 Drawing on all of the foregoing considerations, the following conclusions are drawn in relation to ELPFR Policy H1:
- i). It reflects the guidance contained in (now superseded) PPG3 with its focus on allocation of housing land in Development Plans;
  - ii). It sets a high level strategy and is not a development management policy that provides a basis for approval or refusal of planning applications;
  - iii). It does not preclude development on greenfield sites;
  - iv). Both the ELPFR and the ECS include housing allocations on greenfield sites indicating that there is insufficient previously developed land to meet Exeter's needs;

<sup>59</sup> NPPF, para. 119

<sup>60</sup> Ibid\_ para. 120 (c) and (d)

<sup>61</sup> Ibid\_para. 73

v). Even assuming the policy is up-to-date and can be afforded full weight, the Appeal proposals do not conflict with it construed on its face. The policy does not preclude housing development on greenfield sites adjacent to the existing urban area.

7.36 Whilst acknowledging that the Inspector in the recent Appeal decision relating to Pennsylvania Road<sup>62</sup> took her own view on the consistency of Policy H1 with the NPPF and the compliance of the proposals before her with Policy H1, as cited earlier, it was not a policy on which the Council relied in refusing planning permission, and no written evidence on the matter was put to her by the Council<sup>63</sup>. For the reasons outlined above based on the evidence to this Inquiry there is no conflict of the current Appeal proposals with Policy H1 even assuming it is considered to be up-to-date..

#### **Matter (iv)**

#### **Whether the proposals are in accordance with the transportation policies of the plan?**

7.37 It is common ground that the proposals will not give rise to highway safety concerns or severe impacts on the network. On the contrary, they will deliver benefits in terms of the safety and functionality of the existing residential road network, not least through the enhancements to sustainable transport, and the site is in a sustainable location in terms of accessibility to employment, shops, education establishments, social and community facilities, as well as rail transport<sup>64</sup>. This is endorsed in the agreed Statement of Common Ground between the Appellants and Devon County Council in relation to transportation and highway matters<sup>65</sup>.

7.38 In relation to the enhancements to sustainable transport, Stagecoach South West, the bus service provider, strongly supported the application in a letter that has been forwarded with the Appeal Questionnaire<sup>66</sup>. The operator's position in relation to the measures proposed, is summarised in the following extracts from their response:

<sup>62</sup> CD-A14\_ Appeal ref. 3265253

<sup>63</sup> CD-JS3\_ECC Statement of Case in respect of Appeal ref. APP/Y1110/W/20/3265253, Land at Pennsylvania Road, Exeter

<sup>64</sup> CD-ID4\_SoCG, paras. 6.12-6.14

<sup>65</sup> CD-ID5\_SoCG (Transport)

<sup>66</sup> Consultation response from Commercial Manager, Stagecoach South West, dated 14<sup>th</sup> July 2021

*... it increases substantially both the convenience of access to the bus network for the immediate vicinity, and also substantially improves operating conditions for the existing route F1 serving the area. In particular, a reversing manoeuvre that currently must be performed at the existing terminus at Savoy Hill will be obviated. ...*

*The proposals submitted for bus circulation through the site and the adjoining areas have been collaboratively prepared, with very thorough and detailed consideration by all stakeholders.*

***They will permit the F1 service to operate around a terminal loop through the site, always in forward gear. This allows us to directly serve not only the site, but Pinwood Meadow Drive, and existing development to the west of the site further uphill than the current terminus. As such, convenient access to the service is assured for many more people.*** Chancellors Drive, no longer being served in two directions, also sees the number of bus movements each way halved.

*The eastern site access from Pinwood Meadow Drive involves the comprehensive realignment of what is currently a part of Spruce Close to effect a seamless continuation of the existing road, without a change in priority, into the site. The location of the new bus stops has been very carefully considered to mitigate potential adverse impacts.*

*Within the new development, a simple link through the site purpose-engineered for buses has been provided, incorporating two appropriately spaced bus stops, one within the development and one on the western boundary. The site access road links directly into the existing highway stump at Celia Crescent, which will be widened to 5.5m wide. Here the bus service makes a left turn into Celia Crescent, with route F1 then returning towards the city centre as today via Chancellors Way.*

*The route will continue to run every 30 minutes Monday-Sunday. We consider that this level of service is commensurate with the character of the area and the level of demand currently existing and likely to arise in the short term. Given the aspirations of national government through the national bus strategy, to greatly increase the attractiveness and use of public transport expressed in the National Bus Strategy for*

*England, it is nevertheless conceivable that this frequency might rise, to operate perhaps up to every 20 minutes. We would stress that there are no current plans to do so.*

*The tracking plans submitted with the application demonstrate robustly that the service can route effectively and safely through the site and on adjoining existing roads. In fact, Stagecoach and DCC as Highways Authority have been quite insistent on this being assessed prudently and robustly. Tracking has been performed for a 10.8m Enviro 200 bus, which is significantly larger than the 9.2m Solo SR buses we use on the route, and as such this amply demonstrates that the route can be operated safely without prejudice to other highway users, whether on the carriageway or footways.*

***It is very rare that a development on this scale can benefit from regular bus service being provided to it, seven days a week and into the evening. The service will provide existing and new residents with a “real choice” as to how they travel that for many is likely to be much more competitive with driving to key destinations in the city centre and on or near the line of the route.***

*As such, this proposal is highly compliant with the transport requirements set out at Chapter 9 of the National Planning Policy Framework (2019). It especially well complies with paragraph 110 a) which states: “(development proposals should: ) give priority first to pedestrian and cycle movements, both within the scheme and with neighbouring areas; and second – so far as possible – to facilitating access to high quality public transport, with layouts that maximise the catchment area for bus or other public transport services, and appropriate facilities that encourage public transport use;)* ***It is clear that the opportunities to facilitate public transport have been identified and fully taken up with a good deal of care and collaborative work. Such a situation is relatively unusual for residential developments at any scale.***

7.39 The professional advice to Committee endorsed the comments of Stagecoach South West:

*The extension of the bus route will not only provide a sustainable mode of transport to residents of the new development, but also residents of Pinwood Meadow Drive and the adjoining cul-de-sacs, and the higher part of Celia Crescent. It enhances the sustainability of the proposed development significantly and supports the aim of reducing carbon emissions.<sup>67</sup>*

7.40 It is clear from the foregoing that the benefits of the proposals in terms of enhancing sustainable transport modes are significant, not only for future but also existing residents, and in consequence of which the proposed development provides ‘real choices’ as to how to travel. This is common ground between the Appellants and the Highway Authority<sup>68</sup>. Enhancing public transport is a key factor in Exeter’s pledge to be carbon net zero by 2030, and integral to the vision “... to become a city where shared and active means of travel are cheaper, quicker and more convenient than private car ownership”<sup>69</sup>. There is little evidence that Members gave due weight to the alignment of the proposals with this vision in making their decision.

7.41 The physical measures to facilitate the extended bus route, in particular through restricting parking on the inside of the bend in Pinwood Meadow Drive and the realignment of Spruce Close, were also acknowledged as having wider benefits. As was correctly advised to Members:

*... the scheme has been designed to ensure no net loss of on-street parking. It will also improve the functionality of the road for existing users.<sup>70</sup>*

7.42 Given the location of the site adjacent to the main urban area of Exeter, the site is well-related to existing social community facilities. This is reflected in the walking and cycling isochrone plans that are contained in the Transport Assessment accompanying the Appeal application, and which have been updated to accompany the Highways SoCG, in particular to show the locations of bus stops<sup>71</sup>.

<sup>67</sup> CD-DD4\_Committee Report, p.51

<sup>68</sup> CD-ID5\_SoCG (Transport), para. 3.6.1

<sup>69</sup> CD-SPD16\_Net Zero Exeter 2030 Plan, Exeter City Futures, p.33

<sup>70</sup> CD-DD4\_Committee Report, pp.51-52

<sup>71</sup> CD-ID5\_SoCG (Transport), Appendix A

- 7.43 There are existing primary and secondary schools, a convenience foodstore and a leisure centre within a 10-15 minute walk of the site. Other facilities which are used less frequently, such as a large supermarket and GP surgery, are within approximately 20 minutes walking time, with Polsloe Bridge Station less than a 25 minute walk. From Polsloe Bridge Station there are regular train services to Exeter Central (in the city centre) and Exeter St Davids, from where there are regular services to London, the Midlands and other parts of the South West. From Polsloe Bridge Station there are regular services to other parts of the city, including Digby and Sowton (approximately five minutes journey time) where there is a large concentration of employment, including Sowton Industrial Estate and Exeter Business Park.
- 7.44 The site therefore has very good accessibility on foot, by bicycle, and by public transport to a range of facilities, and provides ‘real choices’ to travel by non-car modes. It must also be considered in the context of a significant quantum of the housing growth to meet Exeter’s needs identified in the ECS taking place away from the city, and in particular at the new settlement of Cranbrook in East Devon (around 7,500 dwellings), owing to environmental constraints on accommodating all growth at the city<sup>72</sup>. Considered in this context, accommodating Exeter’s needs on the Appeal site is a far more sustainable location in terms of accessibility to the city and its facilities, than at Cranbrook some distance away. It is common ground between the Appellants and the Highway Authority that the site is in a sustainable location within an acceptable walking / cycling distance of a range of services and facilities<sup>73</sup>.
- 7.45 For the foregoing reasons, and endorsed by the Council’s professional advisors<sup>74</sup>, there is considered to be no conflict with the highways and transportation policies of the Development Plan, and in particular ECS Policy CP9 and ELPFR Policies T1 and T3. On the contrary, the proposals derive strong support from them.

### **Matter (v)**

#### **Whether the proposals are in accordance with biodiversity policies?**

- 7.46 It is common ground that there are no objections to the Appeal proposals on grounds of harm to biodiversity and, on the contrary, they will deliver a net gain in biodiversity in excess

<sup>72</sup> CD-DP4\_ECS, paras. 4.5-4.6

<sup>73</sup> CD-ID5\_SoCG (Transport), para. 3.3.2

<sup>74</sup> CD-DD4\_Committee Report, p. 52

of ten per cent<sup>75</sup>. The latter has been confirmed through the Biodiversity Net Gain Assessment (BNGA) that was submitted prior to determination of the application.

- 7.47 The professional advice to Committee was that the proposals were compliant with ECS Policy CP16 and ELPFR Policy LS4<sup>76</sup>. Neither policy expressly requires development proposals to deliver a net gain in biodiversity. Moreover, more recent national policy simply refers to minimising impacts and providing net gains for biodiversity<sup>77</sup>, the scale of which is not quantified.
- 7.48 The BNGA<sup>78</sup> demonstrates the contribution that the proposed New Valley Park will make to enhancing biodiversity. Since, in accordance with Policy CP16, biodiversity enhancement is integral to the protection of the character and local distinctiveness of, *inter alia*, the hills to the north and west of the city, the proposals derive support from Policy CP16 in this respect.
- 7.49 In the light of the above, the proposals are in accordance with the provisions of the development plan relating to biodiversity.

### **Matter (vi)**

#### **Whether there is conflict with policies that seek to protect the character and appearance of the area?**

- 7.50 It is common ground that there is no evidence that the Appeal proposals will cause actual harm to the landscape<sup>79</sup>. The CEC Study commissioned by the Council<sup>80</sup>, the Landscape and Visual Impact Assessment<sup>81</sup> accompanying the Appeal application, and the independent review of the Appeal proposals commissioned by the Council<sup>82</sup>, are all consistent in finding the Appeal site to be of no more than medium sensitivity, and capable of accommodating the proposed development without unacceptable harm to the landscape setting of the City and the Council's objective to protect it.

<sup>75</sup> CD-ID4\_SoCG, paras. 6.11-6.12

<sup>76</sup> CD-DD4\_Committee Report, p.56

<sup>77</sup> NPPF, para. 174(d)

<sup>78</sup> CD-PA17\_Biodiversity Net Gain Assessment, June 2021

<sup>79</sup> CD-ID4\_SoCG, para. 6.9

<sup>80</sup> CD-JS9\_CEC Visual Evaluation Report

<sup>81</sup> CD-PA9\_Redbay Design, Landscape and Visual Impact Assessment

<sup>82</sup> CD-DD7\_Report of Anne Priscott, September 2021

- 7.51 It is worth reflecting on the conclusions of the expert, independent advice commissioned by the Council on the landscape and visual impacts of the proposals that was taken prior to formal determination of the application:

*Therefore, having reviewed the LVA and policy objectives of the City Council, the development as proposed could, for the reasons set out here, accord with the objectives of Policy LS1 of the Exeter Local Plan First Review and Policy CP16 of the Exeter Core Strategy. **The development would not result in harm to the character and local distinctiveness of this rural area, and the addition of the three fields north and west of the development site for unhindered quiet recreation in perpetuity would contribute to the public enjoyment and access to the urban fringe.** This would be highly beneficial. This would prevent any land above the 115m AOD contour from ever contributing to the urbanisation of the area and detracting from the rural green hillside setting.*<sup>83</sup>

*In this regard, the development would accord with Policies LS1 & LS4 of the Exeter Local Plan First Review and CP16 of the Exeter Core Strategy. The creation of vehicular access on the south-western side of the site onto Celia Crescent would not create unacceptable adverse impacts and with the careful design and sympathetic consideration of pedestrian amenities highlighted in paragraphs 77-79 above, the highly valued spaces on and off site adjacent to Spruce Close could be enhanced through good landscape design.*<sup>84</sup>

*The development of the site for up to 93 residential units in this location would result in the loss of two sections of linear boundary feature fronting onto Celia Crescent and dividing the two fields. This would be only slightly detrimental to the visual landscape character and appearance of the area, partially mitigated by the presence of Dutch elm disease and ash die-back highlighting the need for remedial works at some point in the future in this part of the site. This landscape change will require both landscape mitigation and landscape enhancement through an appropriate landscaping scheme using native species, to provide long-term mitigation, and overarching landscape*

<sup>83</sup> Ibid\_para. 80, emphasis added

<sup>84</sup> Ibid\_para. 81, emphasis added

*maintenance and enhancement that would secure long-term landscape quality gains.<sup>85</sup>*

*Clearly there is a stated intention in Policy CP16 that the hills forming the setting of the city are to be protected. This is unequivocal. In addition, the Core Strategy Key Diagram clearly shows the combination of the landscape setting and valley parks as being fundamental elements in maintaining the objectives set out in para 4.11 of the Core Strategy: “The aim is to enable the city to grow without damaging those environmental assets that, to a large extent, generate the opportunities and pressures for growth. Accordingly, proposals for development are identified, based on giving priority to sustainable locations, by: (4th bullet point) steering development away from the hills to the north and north west that are strategically important to the landscape setting and character of the city”.<sup>86</sup>*

***All of the planning policies, development plan evidence base documents, the landscape character assessments and planning application advice has been consistent in showing graphically and documenting this strategy. However, careful detailed site analysis has shown that the parts of Fields 1 and 2 that form this application on the revised Illustrative Masterplan are so well related to the urban fringe that they can be developed without unacceptably impacting on the policy objectives of the Core Strategy. As part of this application the securing of public access to a further three fields to the north of the site will bring appreciable gains and will form a permanent upper development line at c 115m AOD that will not be breached.<sup>87</sup>***

*This in no way sets a precedent for any other part of the landscape in the LS1 area or the land referenced in paragraph 4.11 of the Core Strategy, and the conclusions drawn are specific to this site and the development area illustrated.<sup>88</sup>*

- 7.52 The independent, application-specific, advice commissioned by the Council was therefore clear and unequivocal, that the site can be developed without harm to the objective to protect

<sup>85</sup> Ibid\_para. 82

<sup>86</sup> Ibid\_para. 83

<sup>87</sup> Ibid\_para. 84, emphasis added

<sup>88</sup> Ibid\_para. 85

the hills that form the setting of the city, and *therefore* without conflict with the policies aimed at securing that objective by steering development away from the hills to the north and west. In this, the most recent, application-specific, assessment is consistent with the earlier findings in the CEC Study and the LVIA accompanying the application, that the land on which built development is proposed can accommodate development without harm to the landscape setting of the city. Moreover, it acknowledged the significant benefits accompanying the proposals in terms of contributing to the public enjoyment of, and access to, the urban fringe. The significance of those benefits in the overall planning balance is set out in later evidence.

- 7.53 Mr Bunn's evidence to this Inquiry provides further explanation and justification for his conclusions that the change that will inevitably be occasioned by the replacement of green fields by dwellings and associated infrastructure, can be accommodated without unacceptable harm. As is clear from his evidence, and as the Inspector will be able to ascertain from her inspection of the site, the site is well contained by mature hedgerows and trees which are peripheral to the site and to be retained, and the built development will therefore be assimilated within a mature landscape framework. Indeed, the proposals have been carefully conceived having regard to the latter, and which will be secured through the parameter plans to which any planning permission, if granted, would be bound.
- 7.54 It is understood from discussions with the Council, and confirmed through the Appeal Case Management Conference, that they do not intend to call landscape evidence since the conflict that they allege with the policies of the Development Plan that seek to protect the character and appearance of the area simply relates to one of the principle of development in the landscape setting of the city, rather than actual harm.
- 7.55 It is common ground that ELPFR Policy LS1, that imposed a blanket restriction on residential development in designated landscape areas, is inconsistent with current national policy set out in the NPPF, and for that reason, is out-of-date<sup>89</sup>. That Policy LS1 is out-of-date has been a consistent finding of the Appeals decisions to which attention has been drawn. The reasons for that finding were clearly set out by the Inspector in the decision relating to Home Farm, Pinhoe, as follows:

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<sup>89</sup> CD-ID4\_SoCG, para. 6.10

*Policy LS1 provides that development harmful to the landscape setting of the city will not be permitted. The accompanying text draws attention to the contribution of the hills to the north of the city to its landscaped setting. However, it is evident from the proposals plan that the boundary to the Landscape Setting Areas is tightly drawn around the northern edge of the existing urban area. Paragraph 113 of the National Planning Policy Framework (NPPF) advises that local planning authorities should set criteria based policies against which proposals for any development on or affecting any landscape areas will be judged. Policy LS1 effectively limits development to the existing urban areas, and is not a criteria based policy in accordance with the NPPF. Some areas safeguarded by policy LS1 have not been included within the landscape protection areas within the Core Strategy which was informed by the Exeter Fringes Landscape Sensitivity and Capacity Study (2007). As such the evidence base on which policy LS1 relies is not up-to-date. For these reasons I accord policy LS1 little weight.<sup>90</sup>*

*Amongst other matters, Core Strategy policy CP16 aims to protect the character and distinctiveness of a number of defined areas, including the hills to the north and north-west of the City. These areas are identified on the key diagram and include the area in which the appeal site is located. The parties agree that the Key Diagram shows broad areas rather than precise boundaries. Accordingly, Core Strategy policy CP16 does not seek to prevent all development within the areas shown on the Key Diagram, but strives to ensure that development protects the character and distinctiveness of these areas.<sup>91</sup>*

- 7.56 Therefore, ELPFR Policy LS1 was found to be inconsistent with the NPPF since its effect was to limit development to the existing urban areas and was not a criteria based policy. It was compared and contrasted with ECS Policy CP16 on the basis that the latter showed broad areas rather than precise boundaries, and accordingly “... **does not seek to prevent all development** within the areas shown on the Key Diagram, but strives to ensure that development protects the character and distinctiveness of these areas”, and with which the parties to the Home Farm Appeal seemed to be in agreement. Yet having accepted that interpretation for the purposes of the Home Farm Appeal, the Council’s position seems to be

<sup>90</sup> CD-A27\_Appeal ref. 2215771, para. 13

<sup>91</sup> Ibid para. 14

directly contradictory for the purposes of the current Appeal in relation to Policy CP16 whilst continuing to accept the findings in relation to Policy LS1.

- 7.57 If it is accepted that Policy LS1 is out of date since it effectively imposes a blanket restraint on development and is not a criteria based policy in accordance with the NPPF, then it follows that Policy CP16 must take a different approach failing which it would be out-of-date for the same reasons. The alternative approach taken by Policy CP16 is as set out by the Inspector in the Home Farm Appeal, and is that it does not seek to prevent all development, but only to resist that which fails to protect the character and distinctiveness of, *inter alia*, the hills to the north and north-west of the city. It follows that, if there is no evidence of harm, there is no conflict with Policy CP16, and it does not support refusal of planning permission as a matter of principle.
- 7.58 In the light of the foregoing it is considered that, in the circumstances of this case, the Council has misconstrued ECS Policy CP16 and applied it as a blanket restraint policy. It therefore appears to be following the approach foreshadowed in ELPFR Policy LS1 which it has accepted is inconsistent with the NPPF and, in consequence, out of date, rather than applying CP16 as a criteria-based policy, and therefore with an onus to demonstrate actual harm to character and distinctiveness as a basis for alleging conflict. The Council's position in this respect would appear to be inconsistent with both that which it assumed in relation to the Home Farm Appeal, and in its acceptance, for the purposes of this and other Appeals, that Policy LS1 is out-of-date.
- 7.59 If the Inspector accepts the Appellants' position in relation to the interpretation and application of ECS Policy CP16, then the balance of the evidence provided by both of the principal parties, and not least the expert, independent advice taken by the Council prior to determination of the application<sup>92</sup>, is unequivocally that there is no harm that gives rise to a conflict with the policy.

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<sup>92</sup> CD-DD7\_Report of Anne Priscott, September 2021

## Matter (vii)

### Whether there would be conflict with policies that seek to protect open space?

- 7.60 This is a matter that has been raised by the EGG. It is not a matter of concern to the Council, and no issue has been taken with policies relating to the protection of open space in either the Council's refusal reason or Statement of Case.
- 7.61 The only 'loss' of open space is where the proposed access road from Spruce Close cuts across the existing green space between the northern boundaries of the existing properties in Spruce Close and the southern boundary of the Appeal site. However, following submission of the application the impact of the access road was reduced by realigning it to the north-east so that it does not follow the line of the existing farm access across the centre of the space. In addition, the depth of the replacement provision adjacent to the southern boundary of the Appeal site was increased. The consequence is a net gain in the area of open space to the north of the existing properties in Spruce Close, which exceeds the area to be lost by a considerable margin.
- 7.62 In her original consultation response<sup>93</sup>, the Council's Public and Green Spaces Officer expressed the following concerns relating to the impact of the proposals on the existing open space:
- *The existing ECC green space at the top of Juniper Close provides around 4,500m<sup>2</sup> of flat, safe open play space for local children, uninterrupted save for a few sparsely distributed trees, and its dimensions easily fit the Fields in Trust definition of a Local Area of Play.*
  - *The proposed application would involve the construction of a highway that bisects this green space into two parts (approx. 2,650m<sup>2</sup> and 1,200m<sup>2</sup>). Both of these green spaces would still meet the definition of a Local Area of Play in their own right, however the proximity of the new highway would significantly reduce their suitability as spaces for informal play from a safety perspective. Also the reduction in dimensions reduces the suitability of the spaces for play and physical activity, particularly for informal ball games. In its current form, with insignificant*

<sup>93</sup> E-Mail from Louise Harvey, Service Manager Public and Green Spaces dated 03 July 2020

*compensation for lost value (not just lost land area) I think the proposed highway across the green space is unacceptable. ...*

- *In order to support the plan, I'd like to see a larger mass of fairly flat, open POS provided within the site which is away from the main site access road. I'd expect this to be in excess of 1,000 m<sup>2</sup> with minimum dimensions of 30 metres wide on all axes which creates some space for smaller children to kick around and for families to picnic etc. whilst still maintaining a buffer to highways. ...*

7.63 The position of the Council's Public and Green Spaces Officer on the revised arrangements<sup>94</sup> was as follows:

- *Whilst we still do not support the intersection of the existing Juniper Close green space with the access highway, as it divides up green space and adds an additional potential hazard to users of the POS, **the updated arrangement has sufficiently addressed my concerns to enable us to remove our objection to this element of the proposal.** The new arrangement maintains a much more usable area with similar levels of play potential to the existing space and the creation of new POS within the application area adjacent to the retained green space means that the POS looks to have a similar area to existing. At reserved matters stage we would expect to see details of the POS / highway boundary treatment, and will want to see appropriate barrier features (e.g. park railings, post and chain) provided along this boundary to limit the risk to young users of the POS who might enter the road.*
- *The proposed layout does provide access to a suitably sized area of play within 100 metres of all dwellings, **so recommended LAP (Local Area of Play) criteria are met within the illustrative masterplan.***
- *The proposed play area does not appear to meet LEAP criteria (20 metres x 20 metres, 20 metre distance from habitable parts of dwellings). As previously stated we would expect a LEAP to be provided on a site of this size, especially given that there is no off-site LEAP within the recommended 400 metre walking*

<sup>94</sup> E-Mail from Louise Harvey, Service Manager Public and Green Spaces dated 28 May 2021

*distance of the proposed application site. Furthermore, the drawing key suggests that the play area would be equipped with “play on the way” equipment which suggest that this would not be a LEAP type provision. **We would therefore maintain our objection to the proposal until it can be demonstrated that a suitably sized and equipped LEAP will be provided within the application.***

- 7.64 As is confirmed in the Committee Report<sup>95</sup>, and their incorporation in the revised Open Space Parameter Plan<sup>96</sup>, it was subsequently agreed to incorporate both a LEAP and an additional LAP within the Appeal site. Therefore, in terms of the requirements of ELPFR Policy LE3, there is no conflict since the small area lost to accommodate the access road from Spruce Close is to be replaced by open space of least equivalent recreational and amenity value, and the proposed development will also deliver enhanced provision through the delivery of a LEAP which will be available to existing as well as future residents.
- 7.65 The Appeal proposals therefore meet the Council's open space requirements through the on-site provisions proposed, incorporating the enhanced area of open space adjacent to the southern boundary, the central green space incorporating the mature hedgerow that currently separates the two fields which will accommodate a LAP, the enhanced space adjacent to the northern site boundary resulting from the drawing back of built development to the 115 metre contour and which will accommodate a LEAP, and the walking loop around the eastern periphery of the proposed development.
- 7.66 The offer to dedicate the three fields to the north, north-west and north-east of the Appeal site as a new parkland for the community, is therefore properly construed as a very significant additional community benefit. As set out in the Officer's report, whilst it is the Appellants' view, corroborated by the consultation responses of the Public and Green Spaces Team, that the on-site provisions provide adequate compensation for the minor loss to the access road, the additional fields were offered having regard to the perceived loss of open space by the community arising from the development of the Appeal site itself, and as a positive response to the perceived recreational value of land in the vicinity notwithstanding there being no legal rights of access to it. Of the 10.47 hectares of public open space to be secured through the Appeal proposals, the proposed New Valley Park on the upper slopes adjoining the Appeal site accounts for 9.13 hectares, equating to an uplift in the open space

<sup>95</sup> CD-DD4\_Committee Report, p.50

<sup>96</sup> CD-PA26\_Parameter Plan – Open Space

provisions by approximately 681% beyond that to be delivered on the Appeal site itself, and which in itself is sufficient to meet the requirements of the development.

- 7.67 It is important to be clear that, whilst the Appeal site is used by some members of the local community for informal recreation, and in particular dog walking, there is no public right of access to any of the land comprised within the Appeal site, nor is there any public right of access to any of the fields that are being offered for the benefit of the local community as part of the Appeal proposals. The clear, and correct, advice given to Members in relation to this matter was as follows:

*Apart from concerns over vehicle access, loss of open space was the issue raised the most in objections, due to the physical and mental health benefits the open space provides, as well as its ecological value (discussed separately under '7' below). At first the applicant considered the open space provided on the site as part of the development was sufficient to accord with saved Policy L3 d) and NPPF 99 b). However, following discussions with officers, it was agreed to increase the amount of open space on the site and include the three fields to the northwest, west and northeast as additional compensatory open space. It was also agreed to provide a LEAP, as well as a LAP, as part of the development. **In total, 10.47ha of public open space will be secured. This is approximately 80% of the land affected by the application.***

*Some objectors have said that the New Valley Park is already used as public open space, so shouldn't be counted as compensation. However, officers consider that securing this land as public open space through a s106 legal agreement in perpetuity combined with a Landscape and Ecological Management Plan (LEMP) to enhance its quality satisfies saved Policy L3 d) and NPPF 99 b). The applicant has submitted a letter stating that if the application is not successful the landowner would use the land for grazing stock, which would mean securing the land with fencing preventing public access to give it a viable long term use. Some objectors have stated they would prefer this than see housing on the site. Whether the landowner carried this out or not, it's clear that many more residents value using the fields for recreation. **It should not be forgotten that the land is private and access could be restricted at any time. Therefore, securing 10.47ha of open space as part of the application is considered to be a significant material consideration weighing in its favour. In***

*accordance with saved Policy L3 d), equipped play space will also be provided as part of this. **Lastly, the three fields in the New Valley Park provide far ranging views of the surrounding landscape and retaining them in perpetuity will benefit future generations.***<sup>97</sup>

- 7.68 EGG's contention that the fields already exist as green infrastructure as defined by the NPPF, and that affording access to them is an essential condition of planning permission since they have longstanding informal recreational use<sup>98</sup>, is not accepted. The fields in question are in agricultural use and, as a matter of fact, have no public rights of access. Any informal recreational use of them therefore amounts to trespass, and the landowner is at liberty to deny access at any time. Moreover, the definition of 'green infrastructure'<sup>99</sup> requires it to be 'capable' of delivering a wide range of environmental, economic, health and wellbeing benefits for nature, climate, local and wider communities and prosperity. However, it is not 'capable' of delivering those benefits if, as is currently the situation, it is not available to do so.
- 7.69 The weight to be afforded to this benefit is dealt with in later evidence. However, for the reasons outlined there is not considered to be any conflict with ELPFR Policy L3, a position that is endorsed by the Council's professional advisors. Moreover, given that the dedication of the three fields will deliver recreational and biodiversity enhancements of this part of the landscape setting to the north of Exeter, and potentially landscape enhancements as well through a management and planting regime that it will be within the gift of the community to implement, all of which are integral to the protection sought through ECS Policy CP16, the proposals derive strong support from the latter policy in this respect.

### **Matter (viii)**

#### **Whether the proposals give rise to any other matters that could conflict with the Development Plan?**

- 7.70 There are no above or below ground heritage assets that would be affected by the proposed development. It is common ground that there is no harm to either on- or off-site heritage

<sup>97</sup> CD-DD4\_Committee Report, pp. 50-51, emphasis added

<sup>98</sup> CD-ID7\_EGG, Statement of Case, para. 5.6

<sup>99</sup> NPPF, Annex 2, Glossary, p.67

assets consequential upon the proposed development<sup>100</sup>. As such, there is no conflict with ECS Policy CP4 or ELPFR Policies C1-C5.

- 7.71 The site is in Flood Zone 1, and therefore not at risk of flooding. It is common ground that, through the SUDS drainage scheme proposed, there will be betterment compared with existing greenfield runoff rates that will reduce the current propensity for localised flooding<sup>101</sup>. The proposals are therefore in accordance with ECS Policy CP12 and ELPFR Policy EN4.
- 7.72 The Air Quality Assessment submitted with the application confirms that any impacts on air quality arising from the occupation stage of the development will be negligible. Nevertheless, a commitment is given to providing electric vehicle charging points as well as a travel plan, which can be secured by condition. Any temporary construction impacts arising from dust generation can be mitigated through a Construction Method Statement, which can again be secured by condition. There is therefore no conflict with ECS Policy CP11 or ELPFR Policy EN3.

### Overall Conclusion

- 7.73 For the reasons outlined above, it is concluded that the Appeal proposals are in accordance with the provisions of the Development Plan that are most important for determining the Appeal, and that the policy conflicts alleged by the Council in their refusal reasons do not withstand proper scrutiny.
- 7.74 The professional advice to Members of the Planning Committee was clear and unequivocal:

*In conclusion, **the application is considered to accord with relevant development plan policies and brings a number of sustainability benefits.** It is clearly very contentious in the eyes of local residents who are used to using the fields for recreation and they provide a sense of well-being, however the land is private and public access could be prevented at any time. The application will secure 10.47ha of public open space, far more than a typical residential development of this scale. This is approximately 80% of the land affected by the application. Furthermore, the land secured on the upper slopes is the most sensitive in landscape setting terms and*

<sup>100</sup> CD-ID4\_SoCG, para. 6.13

<sup>101</sup> Ibid para. 6.8

*offers the best views of the surrounding hills and landscape. This land will be secured in perpetuity benefitting not just current, but future generations as well. It will effectively stop any further development encroachment into the countryside in this part of the city and provide an appropriate 'edge' to the city transitioning from higher density to lower density residential development on the wooded mid-slopes to public open space that will be enhanced for its accessibility, amenity and biodiversity value.*<sup>102</sup>

7.75 The summary table below includes an assessment of the proposals in relation to the most important policies:

### Schedule 7.1 Summary Development Plan Compliance

Policy	Assessment of Compliance with the Most Important Policies	Compliance
<b>Exeter Core Strategy</b>		
CP1	The proposals are in accordance with the spatial strategy and will contribute to meeting the minimum housing requirement within the environmental limits of the city, in a sustainable location that is well related to existing development and has good accessibility to a range of community facilities, and offers genuine choice of transport modes.	✓
CP4	Densities have been optimised across the site, reducing with elevation, and are in keeping with those of the existing adjacent urban area. There is no harm to heritage assets, the character and quality of the local environment, and the safety and convenience of highway users is enhanced through relocation of parking and improving bus accessibility.	✓
CP5	The illustrative proposals demonstrate a mix of housing to meet a range of local needs, including affordable housing, and confirm that an appropriate mix can be secured through a future reserved matters submission.	✓
CP7	Provision is made for affordable housing in accordance with the requirements of this policy, and secured through the S106 Obligation that accompanies the Appeal	✓
CP11	Development is contained within a strong existing landscape framework, and the northern extent is restricted to the 115.5 metre contour consistent with existing adjacent development (secured through parameter plans and conditions). It is common ground that the proposals will not give rise to adverse impacts in terms of air quality.	✓
CP12	The proposals are in Flood Zone 1, utilise SUDS drainage, and it is common ground that they will	✓

<sup>102</sup> CD-DD4\_Committee Report, p.60

	result in betterment through regulating water runoff and thus reducing existing localised flooding.	
CP16	It is common ground that there is no evidence to suggest that the proposals will cause actual landscape harm. Moreover, they will contribute to bringing forward landscape, recreation and biodiversity enhancement, in particular through the proposals for the New Valley Park. Even if there were adduced to be some harm occasioned by the change from a greenfield to a developed site, considered overall with the enhancements that will be delivered, there is not considered to be conflict with this policy.	✓
<b>Exeter Local Plan First Review</b>		
H1	This policy establishes a search sequence against which to assess proposals for housing development. It does not preclude development on greenfield sites, and the available evidence indicates that such sites are required in order to meet housing needs. If there is deemed to be conflict with the policy construed on its face, it can be afforded limited weight since the policy is based on national policy that has long been superseded, expressly related to the allocation of land through Development Plans, and was not intended to apply to individual planning applications through the Development Management process.	✓
LS1	It is common ground that the proposals will not harm the landscape setting of the City, and that is confirmed by the evidence. To the extent that there is conflict it is because residential development is not included within the limited categories of development that the policy indicates will be permitted in the designated landscape setting. For this reason there is considered to be partial conflict with the policy. However, it is common ground that the policy is inconsistent with national policy and out-of-date.	✓x

- 7.76 There are no other provisions of the Development Plan with which the proposals are considered to conflict.
- 7.77 Given that there is partial conflict with only one of the basket of most important policies, and it is common ground that the policy in question is inconsistent with current national policy and out-of-date, this is not considered to place the Appeal proposals in conflict with the Development Plan construed as a whole.
- 7.78 As proposals that are in accordance with the Development Plan, as a matter of both planning law and policy, they should be determined in accordance with the plan, and therefore approved, unless material considerations indicate otherwise. Notwithstanding, and without prejudice to, the foregoing, in the event of some conflict with the Development Plan being adduced to arise, it is necessary to have regard to whether there are other material considerations that indicate any such conflict should be set aside. The matter of other material considerations is considered in the next section of this evidence.

## 8. Other Material Considerations

8.1 For the reasons set out in the foregoing evidence, the Appeal proposals are considered to be in accordance with the provisions of the Development Plan when construed as a whole. As such, in accordance with planning law and policy, they should be determined in accordance with the Plan, and therefore approved, unless other material considerations indicate otherwise. The weight of contrary material considerations, should they arise, must be sufficient to set aside the weight of the case in favour of the proposals.

8.2 The NPPF is a very material consideration that must be considered alongside the provisions of the Development Plan, and in particular the presumption in favour of sustainable development. That presumption is clearly set out in the NPPF and the implications for decision-making in particular are a very important material consideration:

*For decision-taking this (the presumption in favour of sustainable development) means:*

*c) approving development proposals that accord with an up-to-date development plan without delay; or*

*d) Where there are no relevant development plan policies, **or the policies which are most important for determining the application are out-of-date**, granting permission unless:*

*i. the application of policies in this Framework that protect areas or assets of particular importance provides a clear reason for refusing the development proposed; or*

*ii. 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.<sup>103</sup>*

8.3 Footnote 8 confirms that the circumstances when the most important policies may be out-of-date include, for applications involving the provision of housing, “... situations where the local planning authority cannot demonstrate a five year supply of deliverable housing sites, or

<sup>103</sup> NPPF, para. 11(c) and (d), emphasis added

*where the housing delivery test indicates that the delivery of housing was substantially below (less than 75%) of the housing requirement over the previous three years".* In relation to the provisions of paragraph 11(d)(i), Footnote 7 confirms that the policies referred to are those in the Framework (rather than those in the Development Plan) relating to habitat sites and/or designated Sites of Special Scientific Interest, land designated as Green Belt, Local Green Space, an Area of Outstanding Natural Beauty, a National Park or defined as Heritage Coast, irreplaceable habitats, designated heritage assets and areas at risk of flooding or coastal change.

- 8.4 In its Statement of Case the Council accepts that it is currently unable to demonstrate a five year supply of deliverable housing land<sup>104</sup>. The only difference between the parties is the scale of the shortfall, Mr Pycroft's evidence indicating the position to be considerably worse than the four years and ten months based on the Council's assessment, and which affects the weight to be given to it in the overall planning balance. Whilst any shortfall against the 'minimum' five year requirement is a serious matter with potential implications in terms of ensuring that homes are available in the right places and at the right time to accommodate needs, a supply of only 3.17 years, equating to 1,246 dwellings, is a substantial deficit. It must be considered in the context of the Council's persistent inability to demonstrate a five year supply year on year since at least 2010<sup>105</sup>, and which indicates a need for a very significant boost in the supply of deliverable housing land.
- 8.5 Given this acceptance, the 'tilted balance' is engaged in accordance with paragraph 11(d) and Footnote 8, and the presumption in favour of sustainable development applies. It follows that planning permission should be granted absent clear reason for refusing the Appeal proposals on the basis of the application of policies in the Framework that protect assets of particular importance, or any adverse impacts of doing so 'significantly and demonstrably' outweighing the benefits when assessed against the policies in the Framework taken as a whole.
- 8.6 In the circumstances of this case, there are no policies in the Framework that protect areas or assets of particular importance<sup>106</sup> that provide clear reason for refusal. Therefore, the determining factor is whether there are adverse impacts when assessed against the policies in the Framework as a whole that significantly and demonstrably outweigh the benefits.

<sup>104</sup> CD-ID3\_ECC, Statement of Case, para. 3.3.2

<sup>105</sup> See para. 6.12 above

<sup>106</sup> NPPF, Footnote 7

- 8.7 The foregoing evidence, drawing on that of Mr Bunn relating to landscape and visual impacts, has confirmed that the proposals will conserve and enhance the natural environment, including delivery of biodiversity net gain well beyond any current national policy requirements. Indeed, there is no dispute between the principal parties that there is no conflict with the salient provisions of national policy in this respect. There are no unacceptable impacts on highway safety or severe residual cumulative impacts on the road network. Indeed, as is again agreed between the principal parties, the proposals will give rise to net benefits in transportation terms. Moreover, through the provisions for the New Valley Park, the Appeal proposals will make a very positive and significant contribution to promoting healthy and safe communities.
- 8.8 A summary assessment of the proposals against the policies in the Framework taken as a whole is set out in Schedule 8.1 below.

#### **Schedule 8.1 Assessment of the Proposals against the Policies in the Framework**

<b>NPPF Policy (matter / paras)</b>	<b>Assessment</b>	<b>Impact<sup>1</sup></b>
<b>Delivering Sufficient Homes</b> (¶ 60-80)	The proposals are positively aligned with the Government's objective of significantly boosting the supply of homes, and they will deliver homes of a size, type and tenure that is needed for different groups in the community, including affordable housing for which there is an acute need. The proposals also relate to a medium size site that can be built out quickly, and therefore contribute positively to maintaining supply and delivery, and thereby to alleviating any deficiency in the five year deliverable supply and ensuring homes are available for occupation when they are needed.	✓
<b>Building a strong economy</b> (¶ 81-85)	The proposals will contribute indirectly, but positively, to this objective by ensuring homes are available at the right time and in the right places to support economic growth.	✓
<b>Ensuring town centre vitality</b> (¶ 86-91)	The proposals will contribute indirectly, but positively, to this objective through providing additional homes that will be well integrated with the city, and which will increase patronage and contribute to sustaining local services and facilities, including nearby local centres.	✓
<b>Promoting healthy and safe communities</b> (¶ 92-95)	The proposals are very positively aligned with this objective through the delivery of new, multi-functional green infrastructure,	✓

92-103)	including the very substantial New Valley Park which will afford access to the countryside in perpetuity for both the existing and future communities, where no legal or formal rights currently exist. They will also benefit the wider social and community infrastructure through the proposed Planning Obligations.	
<b>Promoting sustainable transport</b> (¶ 104-113)	The location of the site provides a genuine choice of transport modes, and together with the scheme design, will promote opportunities for walking, cycling and public transport use. Provisions are incorporated to improve existing on-street parking, and the proposals will make a positive and significant contribution towards extending the benefits of public transport to the existing and proposed future communities. There are no unacceptable impacts on highway safety or severe residual cumulative impacts on the road network.	✓
<b>Supporting high quality communications</b> (¶ 114-118)	The proposals will incorporate the necessary infrastructure for full fibre broadband connections.	✓
<b>Making effective use of land</b> (¶ 119-125)	The proposals optimise the capacity for the site through providing for a gradation in density that responds appropriately to context, including the adjacent urban area and changes in elevation across the site. In so doing, they will avoid homes being built at low densities in circumstances where there is a shortage of land for meeting housing needs, whilst fully and appropriately respecting the site characteristics and context.	✓
<b>Achieving well-designed places</b> (¶ 126-136)	Through the parameter plans that have been submitted with the proposals and will be secured to any planning permission, if granted, the proposals will function well and add to the overall quality of the area, demonstrating respect for, and sympathy with, local character and the surrounding built environment and landscape setting. The proposals will retain and enhance the existing mature landscape context into which they will fit, and which will contribute to establishing a strong sense of place. Through careful site assessment and appropriate response through the parameter plans and as illustrated through the masterplan, the proposals optimise the potential of the site to accommodate and sustain an appropriate amount and mix of development and to support local facilities. Through the substantial provisions for green infrastructure, both on- and off-site, the proposals will provide an inclusive and accessible environment that will promote health and well-being and deliver a very high standard of amenity for existing and future users. Whilst detailed design is reserved for subsequent approval, the outline proposals provide the template for the creation of a high quality, beautiful and sustainable place.	✓
<b>Protecting Green Belt land</b> (¶ 137-151)	The Appeal site does not incorporate Green Belt land.	±

<b>Meeting the challenge of climate change and flooding</b> (¶ 152-173)	The proposals are not in an area of flood risk, and incorporate appropriate measures for containing surface water runoff which will result in betterment of current greenfield rates and reduce localised off-site flooding.	✓
<b>Conserving and enhancing natural environment</b> (¶ 174-188)	The proposals will not cause harm to valued landscapes, sites of biodiversity or geological value or soils. It is common ground that there is no evidence of any landscape harm, and that the proposals will deliver a net gain in biodiversity. There are no constraints arising from existing ground conditions or pollution, and the proposed development will not create a pollution risk.	✓
<b>Conserving and enhancing historic environment</b> (¶ 189-208)	The proposals will not occasion harm to either above- or below-ground heritage assets.	±
<b>Facilitating the sustainable use of minerals</b> (¶ 209-217)	The proposals will have no impact on this objective.	±
<sup>1</sup> Impact: ✓ = Beneficial; ± = Neutral; x = Adverse		

- 8.9 Having regard to the foregoing assessment, when considered in relation to the provisions of the Framework as a whole, there are no adverse impacts that outweigh the benefits and tilt the balance in the opposite direction, let alone significantly and demonstrably so.

The Council's position in its Statement of Case is that it is the conflict that it alleges with Policies H1 and CP16 of the Development Plan that significantly and demonstrably outweighs the benefits<sup>107</sup>, notwithstanding its acceptance that it is unable to demonstrate a five year supply of deliverable housing land. The Council does not allege that granting planning permission would result in adverse impacts that would significantly and demonstrably outweigh the benefits when assessed against the policies in the Framework taken as a whole.

- 8.10 The early contribution that the Appeal proposals can make to the deliverable supply is a material consideration that is properly afforded substantial weight in the decision. The proposals are a medium scale housing development opportunity, that can be satisfactorily

<sup>107</sup> CD-ID3\_ECC, Statement of Case, paras. 5.0.1 – 5.0.2

accessed from the existing highway network and that do not require substantial investment in new supporting infrastructure other than the normal on-site requirements for roads, drainage and utilities. The Appellants have already received strong expressions of interest from a number of national, regional and local housebuilders who are monitoring the Appeal and have indicated their intentions to bid for the site if it is allowed.

- 8.11 The NPPF encourages the identification of small and medium size sites for the very reason that they can deliver housing quickly. The circumstances of this case mean that the proposals are very positively aligned with that objective, and in this respect derive significant weight in their favour accordingly.
- 8.12 The Appeal proposals are therefore positively aligned with the underlying objective for housing in the NPPF to significantly boost housing delivery, particularly where there is evidence of continuity in housing land supply not being maintained. As is explained in the Planning Statement accompanying the Appeal application and outlined in Section 6 of this evidence, from the date of adoption of the ECS, the Council has been unable to demonstrate a five year supply of deliverable housing land<sup>108</sup>. As was confirmed through the Appeal decision (January 2019) relating to Clyst Road, Topsham when it was common ground that the deliverable supply was just over two years and one month, the lack of a five year supply dates back to at least 2010<sup>109</sup>. If, as it now transpires, the Council's (untested) Position Statement published in September 2021 in which it alleged it could demonstrate a deliverable housing land supply of five years and five months for the period commencing April 2021, was erroneous, it means that the Council has been unable to demonstrate a five year supply for a period now extending to twelve years notwithstanding the requirements for an early review of the ECS if the deficit was not eliminated within two years. It also means that the Council's refusal of planning permission for the Appeal proposals, which was premised upon it being able to demonstrate a five year supply and therefore the provisions of the Development Plan assuming 'greater weight', was unsound and has been superseded.
- 8.13 It is therefore evident that the Council's position as regards a five year supply of deliverable housing land is precarious, and that significant additional sites are needed to ensure that the requirement, which is a minimum, can be met and maintained. It has not been assisted by the failure of the Development Delivery DPD to progress, which means that the only

<sup>108</sup> CD-PA3\_Planning Statement, paras. 6.10 - 6.11

<sup>109</sup> Ibid para 6.15 and CD-A13\_Appeal ref. 3202635, para. 42

mechanism available to bolster the supply is through windfall sites that come forward through the Development Management process. As was also outlined in Section 6, notwithstanding that more than 10 years have elapsed since adoption of the ECS, it has yet to be reviewed, and in accordance with the latest iteration of the Council's LDS, that review is unlikely to be completed for at least another two years. There is, in consequence, no immediate prospect of any 'plan-led' response to the urgent need for additional housing sites.

- 8.14 Given that there is no objection in principle to the Appeal proposals, as is confirmed in the report of the Council's professional advisors, this case is not reliant on demonstrating that the Council is unable to demonstrate a five year deliverable supply of housing land. However, if it is unable to do so, then the tilted balance is engaged, and it is necessary to demonstrate harm that 'significantly and demonstrably' outweighs the benefits if planning permission is to be refused.
- 8.15 The evidence of Mr Stacey indicates that there is a very substantial affordable housing need, and which planning policies and decisions are failing to address. His finding of an accumulated shortfall in the delivery of affordable housing in the eight-year period between 2013/14 and 2020/21 of some -2,314 affordable homes against an identified need for 2,600 units over the same period<sup>110</sup>, is a very stark one indeed. Indeed, in his opinion, the evidence indicates that the supply of affordable homes across the city of Exeter has 'collapsed' in recent years with an average annual delivery of just 58 affordable homes (net) since the start of the 2015 SHMA period, and a mere 6 completions in the latest monitoring period,<sup>111</sup> against a need for 325 units (net)<sup>112</sup>.
- 8.16 The future supply of affordable housing outlined by Mr Stacey indicates that the situation is unlikely to improve in the foreseeable future, and on the contrary, is more likely to worsen. To rectify the accumulated shortfall since 2013/14 would require a substantial increase in the delivery of affordable homes from 325 to 752 (net) per annum during the period 2021-2026<sup>113</sup>. Based on Mr Stacey's assessment, the Council's net supply figure for the next five

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<sup>110</sup> Mr Stacey, PoE, para. 6.22

<sup>111</sup> Ibid para. 6.23

<sup>112</sup> Ibid para. 5.22

<sup>113</sup> Ibid para. 7.10

years equates to a mere 120 units per annum, with the Appellants' figure (69) equating to little more than half this amount<sup>114</sup>.

- 8.17 The market signals to which Mr Stacey refers in his evidence indicate worsening affordability in terms of both the private rented sector and market housing. The affordability ratio for market housing is significantly above the national average, and only marginally below that for the south west overall. Mr Stacey's conclusions on the affordability indicators are that, with house prices and rent levels in the average, median and lower quartile segments of the market increasing, simultaneously with the stock of affordable homes failing to keep pace with the level of demand, buying or renting is beyond the means of increasing numbers of people<sup>115</sup>. In his opinion *"... there is an acute housing crisis in ECC district, with a lower quartile house price to average income ratio of 9.83"*<sup>116</sup>, and *"by any measure of affordability, this is an authority in the midst of an affordable housing crisis, and one through which urgent action must be taken to deliver more affordable homes"*<sup>117</sup>.
- 8.18 In the context of the affordable housing emergency in Exeter as evidenced by Mr Stacey, the reflections of Inspector Young in reporting to the Secretary of State on an Appeal at Oxford Brookes University Campus, Wheatley that this is not simply an arithmetical exercise since each household represents a real person or family in urgent need who have been let down by a persistent failure to deliver enough affordable houses<sup>118</sup>, are particularly apt. Mr Stacey's overall conclusion is that, against the scale of unmet need and the lack of suitable alternatives in the private rented sector across ECC, the contribution that the Appeal proposals will make to affordable housing delivery should be afforded 'substantial weight' in the determination of this Appeal<sup>119</sup>. There is no dispute between the Appellants and the Council in this respect since it is agreed as common ground that the delivery of a policy compliant level of affordable housing equating to 32 affordable homes, is a material consideration to which substantial weight should be afforded in the decision<sup>120</sup>.
- 8.19 In the context of the evidence of the scale of affordable housing need in Exeter and shortfalls in delivery to meet that need, the fact that the provisions for affordable housing would be no more than policy compliant does not diminish the weight that is properly afforded to it,

<sup>114</sup> Ibid para. 7.28

<sup>115</sup> Ibid para. 8.71

<sup>116</sup> Ibid para. 8.72

<sup>117</sup> Ibid para. 8.73

<sup>118</sup> Ibid para. 8.15

<sup>119</sup> Ibid para. 12.18

<sup>120</sup> CD-ID4\_SoCG, para. 6.4

contrary to the suggestion of EGG<sup>121</sup>. That principle was endorsed by Inspector Fagan in connection with an Appeal relating to Land East of Park Lane, Coalpit Heath, South Gloucestershire, in which he held as follows:

*There are three different components of the housing that would be delivered: market housing, affordable housing (AH) and custom-build housing (CBH). They are all important and substantial weight should be attached to each component for the reasons raised in evidence by the appellants, which was not substantively challenged by the Council, albeit they all form part of the overall housing requirement and supply. **The fact that the much needed AH and CBH are elements that are no more than that required by policy is irrelevant – they would still comprise significant social benefits that merit substantial weight.***<sup>122</sup>

8.20 Given the Council's acceptance that it is unable to demonstrate a five year supply of deliverable of housing land, and Mr Pycroft's assessment of the scale of the deficit, then, taken together with Mr Stacey's findings, the contribution that the Appeal proposals can, and will, make to increasing the delivery of both market and affordable housing in the context of the policies and objectives set out in the Framework, are material considerations which should properly be afforded 'substantial weight' in the circumstances of this case. As in the above-cited Appeal case at Coalpit Heath, the different components of the housing that will be delivered are all important, and substantial weight should be attached to each component for the reasons set out in the Appellants' evidence. It is common ground that the delivery of 32 affordable homes is properly afforded substantial weight<sup>123</sup>.

8.21 The matter of the overall planning balance, and the significance of these other material considerations vis-à-vis the provisions of the Development Plan, is the focus of the next section of this evidence.

<sup>121</sup> CD-ID7\_EGG, Statement of Case, para. 5.2

<sup>122</sup> CD-A5\_Appeal ref. 3191477, para. 61, emphasis added

<sup>123</sup> CD-ID4\_SoCG, para. 6.4

## 9. Overall Planning Balance

- 9.1 Section 38(6) of the 2004 Act requires that applications for planning permission be determined in accordance with the Development Plan unless material considerations indicate otherwise.
- 9.2 For the reasons set out in earlier evidence, the proposals are considered to be in accordance with the Development Plan considered as a whole.
- 9.3 The benefits of delivering new market housing at Exeter in the context of a constrained land supply, and which will contribute positively to the five year supply of deliverable housing land in a context of a long-standing and persistent shortfall, are properly afforded **substantial weight**. Given the evidence of affordable housing need and the shortfalls in delivery against policy targets, the delivery of 32 units of affordable housing contributes additional **substantial weight** in favour of the proposed development.
- 9.4 The proposals will also deliver green infrastructure well beyond the requirements of the proposed development, in particular the provision of the New Valley Park for the benefit of the local community as a whole. This is a benefit that should be afforded **significant weight** given the evidential value to the community of being able to access the land. The associated contribution that this multi-functional green infrastructure will make to delivering biodiversity net gain contributes additional **moderate weight** in favour of the Appeal proposals.
- 9.5 The enhancements to sustainable transport, which will improve bus accessibility for the wider community, are properly afforded **significant weight**. The associated physical works to facilitate bus accessibility, which will contribute to improved highway functionality, contribute additional **limited weight** in favour of the proposals.
- 9.6 To the extent that the on-site surface water drainage arrangements will result in off-site betterment in terms of reducing localised flooding, this contributes additional **limited weight** in favour of the proposals.
- 9.7 The direct and indirect economic benefits arising from the construction process, the significant CIL payment that will be made to the Council for investment in further infrastructure, and the Council Tax receipts once the development is occupied, are properly afforded **moderate weight**.

9.8 Whilst it is common ground that there is no evidence that the proposed development will cause harm to the landscape, the change from a greenfield to a developed site will inevitably occasion significant change which might be construed to be a disbenefit. To the extent that it is deemed to be such, then given the containment of the site within a strong landscape framework, the perception of change will be localised, and, at worst, should be afforded **moderate weight**.

9.9 A summary of the overall planning balance is set out in Schedule 9.1 below.

#### Schedule 9.1: Summary Planning Balance

Matter	Weight	
	Benefit	Disbenefit
Delivery of Market Housing	Substantial	
Delivery of Affordable Housing	Substantial	
Delivery of New Valley Park	Significant	
Enhancement of Sustainable Transport	Significant	
Biodiversity Net Gain	Moderate	
Loss of Green Fields		Moderate
Economic (Construction Jobs / CIL Contribution / Council Tax Receipts)	Moderate	
Reduction in Localised Off-Site Flooding	Limited	
Improved Highway Functionality	Limited	

9.10 It follows from the above that, even from a 'flat balance' starting point, the outworking of the overall balance results in a weight of benefits that substantially and unequivocally exceeds that of any disbenefits. As such, planning permission should be granted for the Appeal proposals.

9.11 Since the 'tilted balance' is engaged by dint of the Council being unable to demonstrate a five year supply of deliverable housing sites, then the balance is inclined in favour of the Appeal

proposals from the outset. Under such circumstances, the balance is only tipped back in the opposite direction if it can be shown that there are adverse impacts that significantly and demonstrably outweigh the benefits when assessed against the policies in the Framework taken as a whole. This being the case, conflict with the Development Plan as a whole, if it arises, is not determinative of the decision. The foregoing analysis has confirmed that, in the circumstances of this case, no adverse impacts arise from the assessment of the proposals in relation to the policies of the Framework, let alone any such impacts of a magnitude that would ‘significantly and demonstrably’ outweigh the benefits.

- 9.12 The situation is therefore not considered to be finely balanced in the circumstances of this case. Whether the starting point is a ‘flat’ or a ‘tilted’ balance, the end point is the same, and is one of a substantial weight of benefits that is not counterbalanced by any significant disbenefits arising from harm. To the extent that there may be harm, it is minor and relates to the inevitable change that will be occasioned by the replacement of green fields by residential development.
- 9.13 The overall planning balance is therefore, significantly and demonstrably, inclined towards planning permission being granted.
- 9.14 The proposals will deliver net gains across the three overarching objectives of the planning system to the end of achieving sustainable development:
  - **Economic:** they will deliver a range of homes in a sustainable location to provide for currently identified needs, and will thereby contribute to ensuring that sufficient land of the right type is available in the right places and at the right time to support economic growth.
  - **Social:** they will contribute to the number and range of homes to meet current needs, including those who cannot afford to compete for housing on the open market, through the creation of a locally-distinctive place, that will be accessible to local services and open spaces and to sustaining and enhancing which they will contribute, including through enhancing accessibility by sustainable transport, and through the provision of substantial multi-functional green infrastructure for the wider community, will support the community’s health, social and cultural well being.

- **Environmental:** through avoiding designated areas and sensitive environments, areas of flood risk, and making effective use of land where there is an existing shortage for meeting identified housing needs, together with the delivery of significant biodiversity net gain and greatly enhanced accessibility to the countryside beyond the built-up area, the proposals will support the environmental objectives that are integral to sustainable development.

9.15 Having regard to all of the foregoing, the overall balance of considerations is adjudged to be positive, and the proposals will meet current needs without incurring future costs and compromises.

## 10. Conclusions

- 10.1 For the reasons set out in the foregoing evidence it is concluded that, in the circumstances of this case, the provisions of the Development Plan and other material considerations point in the direction of planning permission being granted.
- 10.2 If it is accepted that the proposals are in accordance with the provisions of the Development Plan construed as a whole, then planning permission should be granted since there are no other material considerations that indicate to the contrary.
- 10.3 Even if there is some conflict with the Development Plan, it is considered to be limited and to be outweighed by the substantial benefits of the proposals in the overall planning balance.
- 10.4 Given that the tilted balance is engaged by dint of the Council being unable to demonstrate a five year supply of deliverable housing land, then when assessed against the policies in the Framework taken as a whole, there are no adverse impacts that significantly and demonstrably outweigh the benefits.
- 10.5 Therefore, regardless of whether the starting point is a 'flat' or a 'tilted' balance, the end point is the same, and is that planning permission should be granted.
- 10.6 Having regard to the foregoing circumstances, the Inspector is therefore, respectfully, requested to allow the Appeal.

