

Proof of Evidence of Robin Upton BSc (Hons) MRTPI

On behalf of Exeter City Council

Land off Spruce Close, Exeter, EX4 9DR

Appeal Reference: APP/Y1110/W/22/3292721

LPA Ref: 20/0538/OUT

Prepared by: Robin Upton MRTPI

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1.0 THE AUTHOR – QUALIFICATIONS AND EXPERIENCE

- 1.0.1 My name is Robin Upton and I am a Director of Tetra Tech Planning. I am instructed to present evidence at this Inquiry by Exeter City Council (the Council). I am a chartered member of the Royal Town Planning Institute. I have practiced as a Planning Consultant for 15 years, prior to which I worked for 9 years as a Planning Officer in Local Government.
- 1.0.2 Throughout my career I have advised a wide client base in relation to strategic planning and planning policy, acting on their behalf on a range of planning applications and appeals. I also represent clients at local plan examination. I work predominantly within the residential development sector.
- 1.0.3 The evidence which I have prepared and provide for in this appeal is true and has been prepared and is given in accordance with the guidance of my professional institution, the Royal Town Planning Institute. I confirm that the opinions expressed are my true and professional opinions, irrespective of by whom I am instructed.
- 1.0.4 In March 2022, I was appointed by the Council to provide consultancy services and to act as the planning witness in relation to this appeal. I am also acting on behalf of the Council in relation to other recent appeals and as a case officer in relation to pre-application enquiries and planning applications.
- 1.0.5 Since becoming involved in this appeal, I have provided advice and met with officers within the Council regarding the preparation of supporting evidence relating to planning issues. I have reviewed the determined planning application details and the planning officer's committee report. My own assessment of these details and associated evidence has informed the findings presented within my Proof of Evidence with regard to planning matters and consideration of the planning balance.
- 1.0.6 I have reviewed the Proof of Evidence prepared by Katherine Smith (CD-KS1), of the Council, in respect of housing delivery that should be read in conjunction with my Proof of Evidence.

2.0 SUMMARY OF PROOF

- 2.0.1 The appeal proposal consists of a development of 93 dwellings (32 affordable and 61 open market) with associated highways, drainage, landscaping and public open space on Land Off Spruce Close And Celia Crescent. The appeal scheme is contrary to Development Plan Policies H1 and CP16 as it is located on greenfield land that is the least preferred location for development. The appeal site is also located on land identified for protection and thus the development is contrary to the spatial approach of the Development Plan.
- 2.0.2 I consider that full weight can be given to Policies H1 and CP16 as they are consistent with the National Planning Policy Framework 2021 (the NPPF).
- 2.0.3 At the time the application was determined, the Council was able to demonstrate a 5-year Housing Land Supply (5-Year HLS). This position has been reviewed by the Council since the decision was made. At this time, the Council is unable to demonstrate a 5-Year HLS and, in accordance with Paragraph 11 of the NPPF, where there are no relevant development plan policies, or the policies which are most important for determining the application are out-of-date, development proposals should be approved without delay unless any adverse impacts of doing so would significantly and demonstrably outweigh the benefits.
- 2.0.4 The Council published its latest 5-Year HLS in April 2022 (CD-SPD10) concluding that the Council could demonstrate 4 years and 10 months HLS, representing a shortfall of 123 homes. This figure was reduced to 4 years and 8 months following a further review during the course of this appeal, representing a 213 dwelling shortfall.
- 2.0.5 The Council does not dispute it is unable to demonstrate a delivery five-year supply of housing in the District. It is acknowledged that the 'tilted balance' as set out at Paragraph 11d) of the NPPF is engaged as part of the determination of this appeal. An assessment of the weight to be applied to the Development Plan policies of most relevance in the determination of the application is provided within Section 9 of my Proof of Evidence.
- 2.0.6 As part of my assessment of the appeal scheme, the public benefits attributed to the appeal proposals, namely environmental, social and economic ones have been acknowledged. It is also acknowledged that a specific landscape impact refusal reason could not be substantiated

in this case. However, the weight given to the benefits, such as housing delivery, is reduced given the extent of the relatively modest shortfall in housing land supply. These benefits do not outweigh the fact the appeal development is contrary to Policies H1 and CP16.

- 2.0.7 This Proof of Evidence sets out planning policy matters, assesses the balance of public benefits versus conflict with Development Plan Policies H1 and CP16 and takes into account the implications of the tilted balance. I conclude that the harm arising from the identified conflict with the development plan significantly and demonstrably outweighs the benefits of the appeal development. This Proof should be read in conjunction with the Proof of Evidence prepared by Katharine Smith (CD-KS1) acting on behalf of the Council on 5-Year HLS matters.

3.0 INTRODUCTION

3.1.1 The appeal application, as amended, proposes residential development (up to 93 dwellings) with associated means of access and supporting infrastructure. All matters are reserved by this Outline application for future consideration save for access.

3.1.2 The appeal application was refused by the Council for the following reason:

The adopted Core Strategy sets out an approach which steers development away from the hills that are strategically important to the setting of the city. The Local Plan sets out a sequential approach to development with greenfield sites being at the bottom of that hierarchy. As the Council can demonstrate a five year housing land supply greater weight is afforded to its adopted policies. It is considered that the development of this site would undermine the spatial approach set out in the development plan by allowing development on a site which lies in an area identified for protection, and as such the proposal is contrary to policy H1 of the Exeter Local Plan First Review 1995-2011 and Policy CP16 of the Core Strategy adopted February 2012.

3.1.3 As set out within the officer's report (CD-DD4) at the time the appeal application was reported to the Planning Committee in October 2021, the Council was able to demonstrate a housing land supply (HLS) of five years and five months for the period from 2020/21 to 2025/26. This position is evident within the above refusal reason.

3.1.4 Since the submission of the appeal, as described in the Statement of Common Ground (SoCG) (CD-ID4) and the Proof of Evidence prepared by Katharine Smith (CD-KS1), the Council has updated its HLS for the 2022/23 to 2026/27 period. This updated analysis concludes that the Council is currently able to identify a supply of four years and 8 months for the period commencing 1st April 2022. The supply of deliverable homes falls short of the five year housing requirement by 213 homes.

3.1.5 The officer's report (CD-DD4) provides a detailed analysis of all planning considerations relevant to the proposals. It is acknowledged that the Planning Officer at the time recommended the

application for approval, however, whilst giving the recommendation due regard, it was the unanimous decision of the Council to refuse planning permission for the reason stated on the decision notice.

3.1.6 My Proof of Evidence should be read in conjunction with the Council's submitted Statement of Case, (CD-ID3) insofar as it provides a description of the appeal proposals, the decision making process, relevant development plan policies, other material considerations and as a rebuttal to the Appellant's Statement of Case (CD-ID2). My Proof of Evidence elaborates upon the Council's submitted Statement of Case, providing an assessment in relation to:

- The scheme's compliance with Local and National planning policies
- The weight attributed to the Development Plan and Policies H1 and CP16 in particular
- Five year supply considerations
- The planning balance

3.1.7 As previously described, my evidence should be read in conjunction with the HLS evidence provided by Katharine Smith (CD-KS1).

4.0 DESCRIPTION OF APPEAL SITE AND SURROUNDINGS

- 4.1.1 The appeal site comprises two fields to the northeast of residential properties on Celia Crescent and northwest of the public open space which is accessed from Spruce Close and Juniper Close, and part of the public open space and Spruce Close and adjoining verge/green space for access. The site is in Mincinglake and Whipton ward. The area of the site is 4.1ha. The two fields are designated as Landscape Setting on the Core Strategy Key Diagram and the Exeter Local Plan First Review 1995-2011 Proposals Map. The public open space accessed from Spruce Close and Juniper Close is designated as Open Space on the latter; it is not designated as Landscape Setting. A Site of Nature Conservation Importance covers the vegetation along the northeast boundary of the lower field and the bottom right corner of the upper field, which continues behind the existing properties in Spruce Close and Tamarisk Close. Through this runs an incised stream designated as Flood Zone 2/3. The remainder of the site is in Flood Zone 1. The fields are bounded by mature hedgerows and trees. 16 trees along/adjacent to the southwest boundary of the fields have Tree Preservation Orders (13 oaks and 3 ash). There are no heritage assets on the site or in the vicinity.
- 4.1.2 The fields are used for agriculture, but are not intensively farmed. They are in an area of grade 3 agricultural land ('Good to Moderate' - grade 2 is very good and grade 1 is excellent). There are no public rights of way across them. However, the public have been able to access the land informally from the public open space adjacent to Spruce Close/Juniper Close and a short access road leading from Celia Crescent to the site boundary. This access road has footways on both sides and provides access to garages. Since the application was determined, this access has been fenced off. People use the fields for recreation, primarily walking and dog walking. There is a link from the upper field to the field further up the slope to the northwest, which itself has links to the fields to the west and northeast of the site. These fields are in the same ownership as the two fields the subject of the application. They are also designated as Landscape Setting. The field to the west is also designated as part of a Valley Park and County Wildlife Site (CWS) ('Savoy Hill'), as well as a Site of Nature Conservation Importance. Informal

footpaths crossing these fields and the fields subject of the application can clearly be seen on aerial imagery.

- 4.1.3 Celia Crescent joins Chancellor's Way to the south, which joins Beacon Lane further south. Chancellor's Way is served by the F1 bus route. Buses on this route currently need to carry out a reversing manoeuvre on Savoy Hill as part of the route. Spruce Close and Juniper Close join Pinwood Meadow Drive to the south, which joins Beacon Heath further south.

5.0 THE PROPOSALS

- 5.1.1 The appeal application was submitted in Outline with all matters reserved except access. The proposal is to develop up to 93 dwellings with access provided from the short access road leading from Celia Crescent to the site boundary and an access road across the public open space linking to Spruce Close. The access has been designed to facilitate an extension of the F1 bus route along Pinwood Meadow Drive/Spruce Close through the site and back along Celia Crescent/Chancellor's Way. This will create a bus loop, removing the reversing manoeuvre currently taking place on the route at Savoy Hill. This has been agreed with Stagecoach and Devon County Council as Local Highway Authority. The application was revised from up to 105 dwellings to up to 93, and the access through the public open space was realigned to reduce its impact on the public open space.
- 5.1.2 The appellant submitted parameters plans for land use, density and scale, which can be secured by condition. These would restrict the developable area of the two fields to c.2.58ha and preserve the remaining areas to the north, east and south as green space (c.1.32ha). They would restrict the development of the upper field to detached dwellings, whilst terraced, semi-detached or detached dwellings could be developed on the lower field. They would restrict the scale of the dwellings to a maximum of 9.5 metres on the upper field and 11 metres on the lower field. These details would be the subject of a reserved matters application.
- 5.1.3 A parameters plan was also submitted for open space. This includes a Local Area of Play (LAP) in the middle of the site and a Locally Equipped Area for Play (LEAP) on the green space at the top of the upper field. These have been requested and agreed by the Council's Public & Green Spaces Team. The parameters plan also includes the fields to the northwest, west and northeast of the site as New Valley Park (c.9.13ha). These areas of open space can be secured by s106 legal agreement. The total amount of public open space is 10.47ha.
- 5.1.4 A parameters plan has also been submitted for access and movement. This shows the routes of the primary street, green streets, homezone streets, walking loop, foot/cycle ways and pedestrian routes in the New Valley Park. The existing access from the upper field will be retained and a new access created to the footpath between Lancelot Road and Savoy Hill.

- 5.1.5 An illustrative masterplan has been submitted indicating the layout of the development. This shows that the dwellings would be built up to the 115 metre contour line, the same as the highest dwellings on Celia Crescent. It indicates a green corridor/habitat buffer along the northeast boundary and a 5 metre maintenance buffer along the southwest boundary to protect the trees along this boundary. It also indicates a greenway partly along the boundary between the two fields. Mood boards have also been submitted showing the character, materials and colour palette of the dwellings in the lower and higher density areas, and the landscaping proposals in the New Valley Park.
- 5.1.6 Detailed access plans have been submitted. These show new bus stops approximately half way along Pinwood Meadow Drive, at the public open space adjacent to Spruce Close/Juniper Close and at the entrance to the site off Celia Crescent. The bus loop will be anti-clockwise only. Double yellow lines will be provided along parts of Pinwood Meadow Drive and Celia Crescent, as well as the access road from Celia Crescent, to protect the bus route and to improve the safety and functionality of these roads. Spruce Close will be realigned with new parking bays on either side. There will be no net loss of on-street parking for existing residents.

6.0 RELEVANT PLANNING HISTORY

- 6.1.1 There is no site-specific planning history (in terms of applications) which is relevant to the consideration of this appeal.

7.0 PLANNING POLICY AND GUIDANCE

7.1 Introduction

- 7.1.1 Section 38(6) of the Planning and Compulsory Purchase Act 2004 requires that planning applications be determined in accordance with the development plan unless material considerations indicate otherwise.
- 7.1.2 This section of my evidence considers the planning policy context relevant to the proposed development as contained in the Development Plan and other policy documents material to the Application's determination.

7.2 The Development Plan

- 7.2.1 The statutory development plan for Exeter currently comprises the following:
- Exeter Local Plan First Review 1995-2011 (Adopted 31 March 2005) (CD-DP5)
 - Core Strategy (Adopted 21 February 2012) (CD-DP4)
 - Devon Waste Plan 2011 – 2031 (Adopted 11 December 2014) (Devon County Council) (CD-DP6)
- 7.2.2 The policies which are most important for determining the appeal are discussed in more detail at section 7.3 of this proof. In addition, the policies listed below are relevant to the consideration of the appeal.

Exeter Local Plan First Review Policies

AP1 – Design and Location of Development

AP2 – Sequential Approach

H1 – Search Sequence

H2 – Location Priorities

H7 – Housing for Disabled People

L3 – Protection of Open Space

L4 – Provision of Youth and Adult Play Space in Residential Development

T1 – Hierarchy of Transport Modes
T2 – Accessibility Criteria
T3 – Encouraging Use of Sustainable Modes
C5 – Archaeology
LS1 – Landscape Setting
LS2 – Ramsar/Special Protection Area
LS3 – Sites of Special Scientific Interest
LS4 – Nature Conservation
EN3 – Air and Water Quality
EN4 – Flood Risk DG1 – Objectives of Urban Design
DG5 – Provision of Open Space and Children’s Play Areas

Core Strategy Policies

CP1 – Spatial Strategy
CP4 – Density
CP5 – Mixed Housing
CP7 – Affordable Housing
CP9 – Transport
CP11 – Pollution
CP12 – Flood Risk
CP15 – Sustainable Construction
CP16 – Green Infrastructure, Landscape and Biodiversity
CP17 – Design and Local Distinctiveness CP18 – Infrastructure

Devon Waste Plan

W4 – Waste Prevention
W21 – Making Provision for Waste Management

7.2.3 The Council considers that aside from policies H1 and CP16, the appeal proposals are compliant with all of the above policies.

7.3 Other Material Considerations

National Planning Policy Framework

7.3.1 National Planning Policy Framework (the NPPF) (2021) – in particular sections:

- 2. Achieving sustainable development
- 4. Decision-making
- 5. Delivering a sufficient supply of homes
- 8. Promoting healthy and safe communities
- 9. Promoting sustainable transport
- 11. Making effective use of land
- 12. Achieving well-designed places
- 14. Meeting the challenge of climate change, flooding and coastal change
- 15. Conserving and enhancing the natural environment
- 16. Conserving and enhancing the historic environment

Annex 1: Implementation

Exeter City Council Supplementary Planning Documents

7.3.2 The following Supplementary Planning Documents (SPD) are relevant to the appeal.

- Affordable Housing SPD (April 2014)
- Sustainable Transport SPD (March 2013)
- Planning Obligations SPD (April 2014)
- Public Open Space SPD (Sept 2005)
- Residential Design Guide SPD (Sept 2010)
- Trees and Development SPD (Sept 2009)

7.4 The policies which are most important for determining the appeal

7.4.1 In this case, as listed in the refusal reason, Policy H1 of the Exeter Local Plan First Review and adopted Policy CP16 of the Core Strategy are of primary relevance to this appeal.

7.4.2 Policy H1 is reproduced below:

H1: PROPOSALS FOR HOUSING DEVELOPMENT WILL BE ASSESSED AGAINST THE FOLLOWING SEARCH SEQUENCE:

(i) PREVIOUSLY-DEVELOPED LAND, CONVERSIONS AND INFILL WITHIN THE URBAN AREAS;

(ii) PREVIOUSLY-DEVELOPED LAND ON THE URBAN FRINGE WITHIN PUBLIC TRANSPORT CORRIDORS;

(iii) GREENFIELD LAND THROUGH SUSTAINABLE URBAN EXTENSIONS WITHIN PUBLIC TRANSPORT CORRIDORS.

7.4.3 Policy CP16 is reproduced below.

The strategic green infrastructure (GI) network is shown on the key diagram. The Exeter GI network has been identified to protect and enhance current environmental assets and local identity and to provide a framework for sustainable new development.

GI will be an integral part of planning for the urban extensions at Monkerton/Hill Barton, Newcourt and Alphington. New multifunctional areas of green space and green corridors will be created to meet the needs of these new communities. A sustainable movement network will link the urban area to the urban extensions and beyond to the open countryside. To the east of the city green corridors, that incorporate multi-use trails (for cycling, walking and horse riding) and provide high quality biodiversity habitat, will link Exeter to the proposed Clyst Valley Park and on to Cranbrook.

The character and local distinctiveness of the areas identified below will be protected, and proposals for landscape, recreation, biodiversity and educational enhancement brought forward, in accordance with guidance in the Green Infrastructure Strategy, through the Development Management DPD:

- **the hills to the north and north west;**
- Knowle Hill to the south west;
- the strategic gap between Topsham and Exeter;
- and the Valley Parks: Riverside, Duryard, Mincinglake, Ludwell, Alphington to Whitestone Cross, Savoy Hill and Hoopern.

The Exe Estuary European Site will be protected. Development that is likely to have a significant effect on the integrity of the Exe Estuary, East Devon Pebblebed Heaths/East Devon Heaths or Dawlish Warren European sites will be subject to the Habitats Regulations 2010 and the requirement therein to undertake a Habitat Regulations Assessment. Contributions will be sought from new development towards management and other measures at the Exe Estuary, Dawlish Warren and Pebblebed Heaths and at other European sites as may be justified by the emerging evidence base.

The biodiversity value of Stoke Woods and Bonhay Road cutting SSSI, and all other sites of national, regional and local conservation importance will be protected, and unavoidable impacts mitigated and compensated for, in accordance with their relative status.

Biodiversity enhancement areas, for the restoration or creation of new priority habitats, will be identified within the strategic nature areas to the north of the city and in other areas of biodiversity and geological interest. Proposals for these areas will be brought forward through the Development Management DPD.

Opportunities to provide green corridors, open space and allotments, to enhance cycling and walking opportunities, to link existing habitats, to incorporate environmental assets and to integrate biodiversity, proposed by the Exeter Green Infrastructure Strategy, will be secured through partnership working, direct implementation and the application of Policy CP18 (see Section 11).

7.4.4 Policy CP16 refers to various character areas. The appeal site lies within the hills to the north and north west character area (bolded for emphasis in the policy text above), adjacent but outside the defined urban area boundary.

7.4.5 The Key Diagram, referenced in the first sentence of Policy CP16 is reproduced at **Figure 1** below, where the approximate location of the appeal site is circled green.

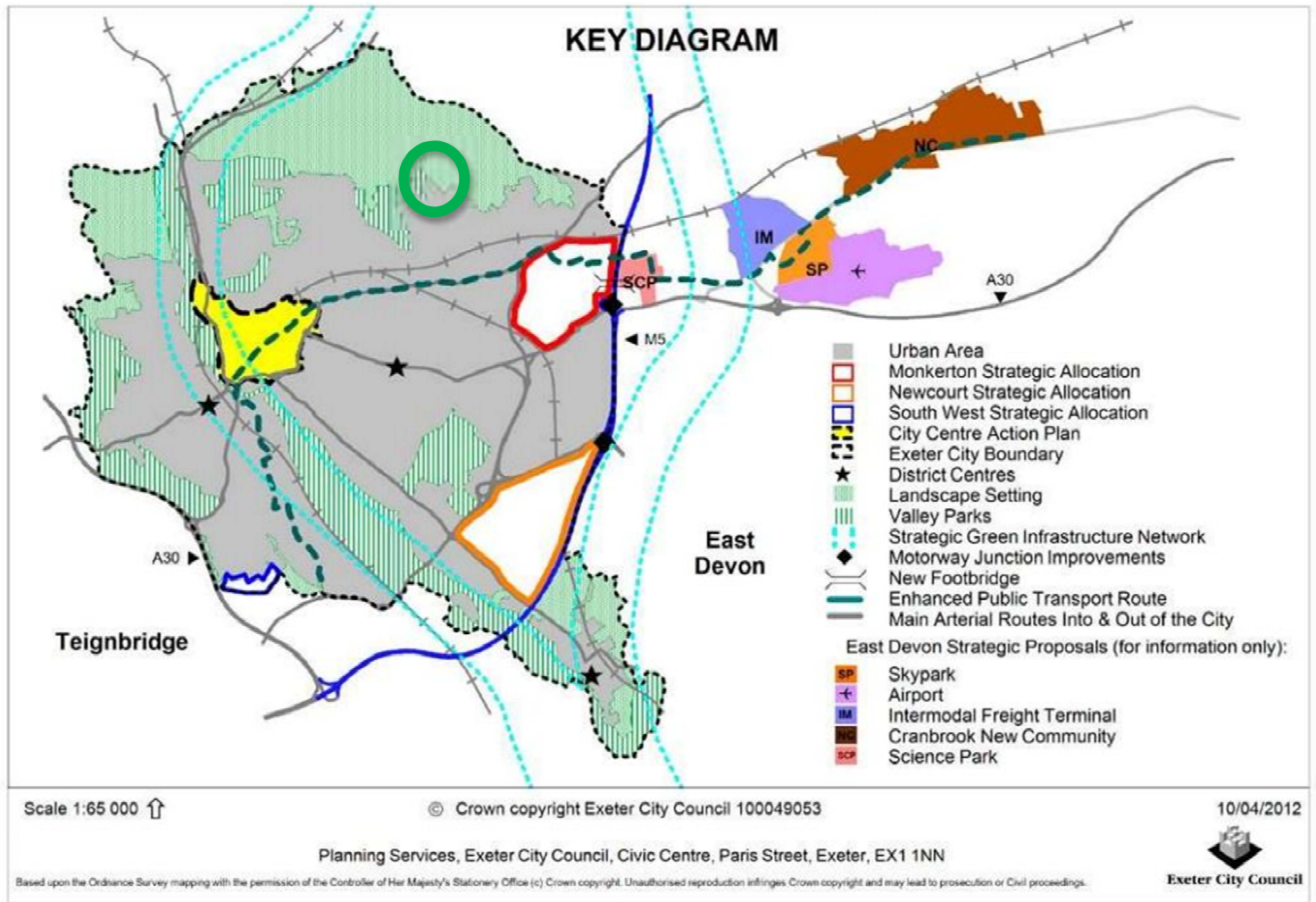


Figure 1 – The Key Diagram Accompanying Policy CP16

8.0 REASON FOR REFUSAL

8.1 Introduction

- 8.1.1 The single reason for refusal is set out at paragraph 3.1.2 of this proof of evidence.
- 8.1.2 The main thrust of the refusal reason is that the location of the appeal application does not meet the Policy H1 sequential approach to development, with greenfield sites being at the bottom of that hierarchy.
- 8.1.3 Furthermore, the appeal site lies in an area identified for protection as set out in Policy CP16, which seeks to protect its character and local distinctiveness.
- 8.1.4 In this section of my proof I describe in greater detail why the appeal development is considered to conflict with Policies H1 and CP16 that combine to form a long standing spatial approach.

8.2 Policy H1

- 8.2.1 Policy H1 requires development proposals to be assessed against three sequential criteria. The least preferable location is “greenfield land through sustainable urban extensions within public transport corridors”. The appeal site is clearly a greenfield/undeveloped site, but also could not be described as falling within a public transport corridor. The development is also not part of a planned urban extension. The appeal site therefore fails to fully comply with even the least preferable development location within Policy H1.
- 8.2.2 Furthermore, the purpose of a sequential policy such as Policy H1 is to steer development towards the most preferable locations and to only allow development within the least preferable locations where evidence has been provided to demonstrate that the development could not be located at an alternative location within a more preferable location. To date the appellant has not carried out a sequential test to demonstrate compliance with Policy H1.
- 8.2.3 The appeal proposals are therefore in conflict with and do not accord with Policy H1.

8.3 Policy CP16

- 8.3.1 The appeal site is located in the 'hills to the north and north west' character area, where Policy CP16 seeks to protect its character and local distinctiveness. Clearly the character of the site will change from one of open fields and public open space to an urban development. The existing area of public open space would be eroded by the formation of the site access to such an extent that its useful function would cease. Whilst public open space is replaced and enhanced, this re-provision would be in a less convenient location for existing adjacent residents. Whilst the loss of open space is not a refusal reason, it is clear that the loss of open space at the appeal site will undoubtedly not protect the character of the area. Again, whilst there is no specific landscape refusal reason, it is a matter of fact that the character of the developed part of the appeal site would not be protected due to the stark change in land use. The appeal proposal, therefore, conflicts with the character protection element of Policy CP16.
- 8.3.2 The officer report explains that Policy CP16 was informed by the Exeter Fringes Landscape Sensitivity and Capacity Study (2007) ('the Fringes Study') (CD-SPD14). The Fringes Study splits the areas of open space into different zones for assessment. The Fringes Study zone boundaries are derived from historical landscape character area studies that were considered to vary in typology. The lower field on the site is in Zone 6 and the upper field is in Zone 4. Both are described as having high landscape sensitivity. Zone 6 is described as having medium-low capacity for housing and Zone 4 has low capacity for housing. Given these challenging constraints, the Council has quite rightly challenged the appellant on the compliance of the appeal development with Policy CP16.
- 8.3.3 As described in the Council's Statement of Case, there has been a long-standing strategy of avoiding development of the hills to the north and north west of the City, since the adoption of the Local Plan First Review in 2005 that continued in the Core Strategy in 2012. Work is underway to update the zonal landscape evidence base as part of the emerging new Local Plan.
- 8.3.4 Policy CP16, therefore, represents a wider approach to protect the setting of a large part of the City periphery from development. It is the collective protection of this larger area that contributes towards maintaining the character and local distinctiveness of this part of the City. It may well be that development within some parts of this protected area might be acceptable on an

individual basis in landscape impact terms, however it remains a cogent function of town planning to protect this wider area.

- 8.3.5 It is noted that negotiations between the Council's Officers and the appellant have brought about improvements to the proposals and that Officers instructed a chartered landscape architect to review the revised plans submitted. These improvements include reducing the development contour height from 118m above sea level to 115.5m, the same as the dwellings at the top of Celia Crescent, thus reducing the developable area of the site and increasing the size of public open space. The new Valley Park was also introduced at the request of officers. It is also acknowledged that landscape and visual impact harm brought about by the development was not considered to be of an extent that would justify a specific landscape impact refusal reason.
- 8.3.6 Notwithstanding the latter concessions, it is my view that the combination of the sensitivity of the appeal site and the fact that its character has not been protected are grounds that conflict with Policy CP16.

9.0 THE PLANNING BALANCE

9.1 Introduction

- 9.1.1 This section of my proof of evidence examines the weight in planning terms that can be attributed to Policies H1 and CP16 prior to applying the 'tilted balance'. It then considers the implications of the 'tilted balance' and concludes by considering whether the adverse impacts of the development would significantly and demonstrably outweigh the benefits as part of the planning balance.

9.2 Weight Attributed to Policies H1 and CP16

Policy H1

- 9.2.1 Policy H1 is contained within the Exeter Local Plan First Review 1995-2011 (Adopted 31 March 2005). Whilst this part of the Development Plan expired in 2011, the Secretary of State has confirmed that the majority of the Local Plan First Review policies will be saved until they are replaced by policies in the Local Development Framework. The Exeter Direction letter is provided as CD-DP7 and Policy H1 is listed in the saved policies list at CD-DP8.
- 9.2.2 The NPPF gives further policy guidance on the weight that can be attributed towards policies adopted prior to the Framework. Paragraph 219 of the NPPF states that existing policies should not be considered out-of-date simply because they were adopted or made prior to the publication of this Framework. Due weight should be given to them, according to their degree of consistency with this Framework (the closer the policies in the plan to the policies in the Framework, the greater the weight that may be given).
- 9.2.3 As previously described, Policy H1 requires development proposals to be assessed against three sequential criteria, with a preference towards previously developed land within the urban area, then previously developed land on the urban fringe and lastly on greenfield land through urban extensions within public transport corridors.

- 9.2.4 In my view this hierarchical approach is consistent with the NPPF that places substantial weight on the value of using suitable brownfield land within settlements at paragraph 120, part b).
- 9.2.5 It is common for modern Development Plan policies to include a target for the amount of development or a percentage of the overall housing requirement to be delivered on brownfield land.
- 9.2.6 As can be seen from Figure 1, the administrative boundary of Exeter City Council is drawn tightly around its urban area, with very little unconstrained greenfield land at the City's periphery. It is likely that the new Exeter Local Plan (that is at a very early state of preparation) will include a requirement to prioritise brownfield land within the urban area, as required by Policy H1. In this regard, NPPF paragraph 17 of the NPPF states that the development plan must include strategic policies to address each local planning authority's priorities for the development and use of land in its area.
- 9.2.7 Policy H1 has been found to be up to date in a number of appeals. For example, paragraph 21 of the dismissed appeal decision in Land at Pennsylvania Road, Exeter (CD-JS23) states that "Policy H1 sets out the Council's approach to the delivery of housing based on a sequential approach which promotes the use of previously developed land (PDL) first. This is therefore one of the most important policies. Whilst there are some differences in wording, the National Planning Policy Framework (the Framework) supports such an approach in seeking to make as much use as possible of PDL. The policy is therefore consistent with the Framework and not out-of-date".
- 9.2.8 I, therefore, consider that Policy H1 is a saved policy that is consistent with the NPPF and is likely to be replaced by a similar policy that prioritises development on previously developed land.
- 9.2.9 Full weight can therefore be afforded to this Development Plan policy when the 'tilted balance' is excluded.

Policy CP16

- 9.2.10 Policy CP16 is contained within the Exeter Core Strategy (Adopted 21 February 2012). Due weight can be afforded to this policy for similar reasons to Policy H1. Given the landscape

sensitivity of the City's periphery, it is highly likely that a similar policy to CP16 will be repeated within the new Exeter Local Plan.

- 9.2.11 I consider Policy CP16 to be up-to-date and consistent with the NPPF at paragraph 174, which states that planning policies... "should contribute to and enhance the natural and local environment by a) protecting and enhancing valued landscapes... (in a manner commensurate with their statutory status or identified quality in the development plan)."
- 9.2.12 Policy CP16 has been found to be up to date in a number of appeals. For example, paragraph 26 of the dismissed appeal decision in Land at Pennsylvania Road, Exeter (CD-JS23) states that "Policy CP16 seeks to protect the character and local distinctiveness of certain areas around the city. Like LS1, it is therefore one of the most important policies. However, unlike Policy LS1 it does not place restrictions on the type of development that would be permitted. The protection of valued landscapes is supported by the Framework and the policy is therefore not inconsistent. It therefore carries full weight".
- 9.2.13 I agree with the latter Inspector's conclusion that Policy CP16 carries full weight when the 'tilted balance' is excluded.

9.3 The Effect of the 'Tilted Balance'

- 9.3.1 It is common ground that the 'tilted balance' is engaged by virtue of the fact that a 5 Year HLS cannot be demonstrated. The proof of evidence from Katharine Smith (CD-KS1) explains that the Council is currently able to identify a supply of four years and 8 months for the period commencing 1st April 2022. The supply of deliverable homes falls short of the five year housing requirement by 213 homes.
- 9.3.2 As is required in accordance with paragraph 11d) of the NPPF, where there are no relevant development plan policies, or the policies which are most important for determining the application are out-of-date, development proposals should be approved without delay unless any adverse impacts of doing so would significantly and demonstrably outweigh the benefits, when assessed against the policies in this Framework taken as a whole, known as the 'tilted balance'.

- 9.3.3 Footnote 8 of the NPPF identifies that development plan policies should be considered out of date for applications involving the provision of housing, where the local planning authority cannot demonstrate a 5-year HLS.
- 9.3.4 However, whilst policies relevant to the supply of housing are deemed “out-of-date” by reference to the NPPF, it does not mean they do not still carry weight. As confirmed by several judgments in the High Court and at the Court of Appeal, the weight to be applied to such policies is up to the decision maker as a matter of planning judgement¹.
- 9.3.5 The weight to be applied to “out of date” policies is one of a ‘balancing’ exercise which will “vary according to the circumstances, including, for example, the extent to which the policies actually fall short of providing for the required five-year supply, and the prospect of development soon coming forward to make up the shortfall².” Such an approach has been affirmed by the Court of Appeal³.
- 9.3.6 In the next section of my evidence I give my opinion on the adjustment of weight to be given to Policies H1 and CP16 as a result of the application of the ‘tilted balance’.

9.4 The Planning Balance

Benefits of the Scheme

- 9.4.1 The provision of 93 dwellings as proposed would be a clear benefit in contributing to the District’s current and future unmet housing needs, as demonstrated by the lack of a 5-year HLS. The 35% that would be affordable would be an additional specific benefit, in meeting the identified special needs of that sector.
- 9.4.2 I also acknowledge that the scheme would bring economic and social benefits, in the form of both direct and indirect employment, and through increased local expenditure and support for

¹ Woodcock Holdings v SOSCLG [2015] EWHC 1173 (Admin) at para 87 (CD-A30)

² Lindblom J in Crane v SOSCLG [2015] EWHC 425 (Admin) at para 71 (CD-A31)

³ SOSCLG v Hopkins Homes [2016] EWCA Civ 168 and IHallam Land Management v SOSCLG at para 29 (CD-A32)

local businesses and services, including public transport. These beneficial economic and social impacts, in my opinion carry moderate weight.

- 9.4.3 Environmental benefits are brought about through a Bio-diversity Net Gain strategy. The creation of the new Valley Park is undoubtably a benefit, although it displaces existing public open space. I attached moderate weight to these benefits.
- 9.4.4 These benefits do however need to be balanced against and considered in the context of the level of shortfall of 213 homes. In my opinion this shortfall is low and is capable of being rectified in the short term. The current deficit has only recently occurred, and a proportion of the deficit is due to external factors that have increased the housing requirement in Exeter, namely an increased affordability ratio that has adjusted the standard methodology. . In conclusion, I consider that the appeal scheme's potential benefits to the local housing stock should carry medium weight.

Planning Balance

- 9.4.5 The proposed development would be contrary to policies H1 and CP16 due to the location on greenfield land and the fact that the character of the appeal site has not been protected. The scheme therefore conflicts with the development plan and in circumstances where the tilted balance does not apply (which I acknowledge is not the case here), permission may only be granted if this conflict is outweighed by other material considerations.
- 9.4.6 For the reasons explained above I attach full weight to Development Plan Policies H1 and CP16 when the tilted balance is not applied.
- 9.4.7 It is my opinion that given the relatively recent and low HLS deficit that the weight applied to Policies H1 and CP16 is not significantly diminished when applying the 'tilted balance'. I acknowledge that the 'tilted balance' does reduce the weight that can be attributed to Policies H1 and CP16, however in my opinion, the adverse impacts of the appeal development would significantly and demonstrably outweigh the benefits. These adverse impacts are described below.

- 9.4.8 Whilst it has been found that a specific landscape refusal reason is not justified, the development proposed would nonetheless result in a wholesale change in the site's character. Due to the urbanising effects of the development, its rural character will be lost.
- 9.4.9 Consequently, I am of the view that the proposed development, on greenfield land, would cause substantial harm as a matter of principle to the character and setting of the countryside and hills to the north of the city, contrary to the aims of Paragraph 174 (a) of the National Planning Policy Framework, Local Plan Review Policy H1 and Core Strategy Policy CP16.
- 9.4.10 Weighing in favour of the appeal are the benefits of providing market and affordable housing and the benefits to the local economy. The weight that I consider should be attached to these is set out above.
- 9.4.11 However, in my opinion, even when these considerations are taken together and the 'tilted balance' is applied, the adverse impacts of the appeal development resulting from the conflict with Policies H1 and CP16 would significantly and demonstrably outweigh the benefits.

10.0 CONCLUSION

- 10.1.1 In view of the lack of a 5-year HLS, NPPF paragraph 11(d) is engaged and is a material consideration of this appeal. In such cases, that paragraph advocates that permission be granted unless one or other of the two subparagraphs that follow applies.
- 10.1.2 In relation to sub-paragraph (i) although the site is not a statutory area or asset of protection, it still forms part of a valued character and the setting of the city. Sub-paragraph (i) refers to the application of other policies within the NPPF that protect areas of particular importance. In this regard, I consider that NPPF paragraph 174 provides a basis to refuse the development in spite of the presumption in favour of development provided by NPPF paragraph 11(d).
- 10.1.3 Even if this is not the case, Paragraph 11 of the NPPF states that plans and decisions should apply a presumption in favour of sustainable development and grant permission, when decision taking, where the policies which are most important for determining the application are out-of-date. This includes circumstances where there is no 5-year supply of deliverable housing sites with the appropriate buffer, such that less weight can be afforded to policies that affect the supply of housing.
- 10.1.4 As set out above, I consider that full weight should be afforded to the key policies to which the appeal proposals are contrary, namely Policies H1 and CP16, albeit that this weight is reduced when the tilted balance is applied. In line with NPPF paragraph 11(d), sub-paragraph (ii), it is my view that even when the 'tilted balance' is applied, that the adverse impacts of the appeal development resulting from the conflict with Policies H1 and CP16 would significantly and demonstrably outweigh the benefits.
- 10.1.5 In reaching the above consideration, due regard has been given to the balance of perceived benefits of the proposals against the perceived adverse impact, including the contribution the appeal scheme would make to the housing stock. However, this weight is reduced given that the shortfall in the 5-year HLS is low and has only recently occurred.
- 10.1.6 Balanced against the acknowledged benefits are the adverse impacts of the proposed development in the open countryside upon the 'valued' landscape setting. At the time of the application's determination, the perceived adverse impacts were considered to outweigh the

acknowledged benefits of the proposal towards meeting the Local Planning Authority's housing supply (including affordable housing provision), and other social and economic benefits. I consider that this is still the case in the absence of a 5-year HLS.