LAND OFF SPRUCE CLOSE, EXETER

Appellant's Closing Submissions

Introduction

1. For all the many documents before you, madam, the question at the heart of this appeal is simple:

   Do the scheme's harms **significantly** and **demonstrably** outweigh its benefits?

   That is, the parties agree, the determinative test in national policy for this appeal. It sets a very high bar for the Council to meet – and, on the logic of the Council's own case, it comes nowhere close.

2. The Council accepts that this scheme will have at least *some* significant benefits. It also accepts that the scheme will cause no *"real world"* environmental harm at all. In those circumstances, it cannot sensibly be that the adverse impacts of the scheme will outweigh – still less significantly and demonstrably outweigh – the scheme's benefits.

3. The only "harm" on which the Council now relies is the "harm" to the supposed "principle" of two local development plan policies. The first of those is Exeter First Local Plan Review ("**ELPFR**") Policy H1,[1] which, Mr Upton accepted, is not a development management policy at all. It does not provide any basis for refusing permission in this case.

4. The second policy on which the Council relies is Exeter Core Strategy ("**ECS**") Policy CP16.[2] Mr Upton agreed that Policy CP16 does not preclude development occurring as a

[1] CD-DP5.

[2] CD-SPD23, p.59.

matter of principle in this area; a site-specific assessment is required. Mr Upton endorsed the assessment prepared on behalf of the Council by Ms Anne Priscott, including her findings that *"the development would not result in harm to the character and local distinctiveness of this rural area"* and *"would accord with… CP16"*. In those circumstances, the Council's case that there is conflict with Policy CP16 is untenable.

5. As Dr Rocke explained, there is therefore no conflict with the development plan taken as a whole. There are no material considerations which weigh against the grant of permission. This means that the appeal should be allowed.

6. If you disagree with us, madam, and find that the proposal does not accord with the development plan taken as a whole, then the appeal should still be allowed on the basis that material considerations weigh in favour of the grant of permission. Chief among those material considerations is the titled balance at §11(d)(ii) NPPF. We return to that balance below.

7. We start by summarising the considerable areas of common ground between the parties, before turning to the housing land supply position, then to matters of landscape, and finally on to the overall planning balance.

Common ground

8. In an inquiry which has focussed on matters of difference between the parties, we start by emphasising the key points of common ground – no less important because they are agreed. In fact, the **most important** points in this case are agreed between the Appellant and the Council, which is to say:

(a) The appeal site is a sustainable location for development next to the existing urban area of Exeter with good accessibility to employment, shops, education establishments, and other social and community facilities including trains.[3] That position is agreed not only with the LPA, but also with the highways authority – the Devon County Council.[4]

(b) The Council is unable to meet the Government's minimum requirement at §74 NPPF to demonstrate a minimum 5 year housing land supply ("**5yhls**"). We agree that this is not a new problem. The Council has been unable to demonstrate and maintain[5] a 5yhls for over a decade. We return to this below.

(c) In the absence of a 5yhls, the development plan policies which are most important for determining the application are deemed to be out-of-date: see §11(d) and footnote 8 NPPF. This means that, applying the balance at §11(d)(ii) NPPF, the appeal should be allowed unless any adverse impacts of the scheme would significantly and demonstrably outweigh its benefits.

(d) We arrive at that tilted balance in agreement that there is an affordable housing crisis in Exeter. The Council's shortfall in affordable housing is – it agrees –

[3] The Rule 6 Party disputes this, principally on the basis that the Appellant and the Council have underestimated the walking times from the site to local facilities. Dr Rocke has provided an analysis of the relevant walking times which accords with professional guidance published by The Institution of Highways and Transportation and with the Manual for Streets. He addresses the many problems with Dr Baker's alternative calculations in his rebuttal proof of evidence.

[4] CD-ID5.

[5] The Council accepts that it was unable to demonstrate a 5yhls at any time between 2010 and 2019. In cross-examination, Mr Upton accepted that it is not accurate to say that the Council had a 5yhls in 2021: rather, the Council "asserted" that it had a 5yhls for a brief period (when this application was determined) but that assertion was almost immediately tested by an inspector, who found that the Council could not demonstrate a 5yhls: see Pennsylvania Road decision at CD-A-14, §§94-95.

"*persistent*" and "*acute*", and will only worsen with time. The appeal scheme will deliver a policy-compliant level of affordable housing (35%), and the Inspector should afford substantial weight to this.[6] Again, we return to this below.

(e) We agree the proposal will deliver a range of other benefits, including the provision of public open space, enhancements to sustainable transport, and in excess of 10% biodiversity net gain.

(f) We agree that the proposal will cause no "real world" environmental harm at all.

(g) We agree that there are no technical constraints to the scheme coming forward well within 5 years e.g. in relation to flooding, drainage, ecology, heritage, air quality or anything else.

Housing Land Supply in Exeter

9. §74 NPPF requires that the Council identify a **minimum** 5 year supply of housing sites. That is, as Mr Upton accepted, a floor not a ceiling. It is the **least** the Government expects in order to facilitate its objective at §60 NPPF to significantly boost housing land supply – which was itself a *radical* shift brought about by the first NPPF in 2012. It is a minimum requirement that this Council accepts it cannot meet. That acknowledged and continuing failing sets the stage for the determination of this appeal.

[6] This is recorded as a matter on which the Appellant and the Council agree in the main Statement of Common Ground at CD-ID4, §6.4. Mr Upton's attempt to resile from this agreement during the inquiry is addressed further below.

10. In a section 78 appeal like this one, the courts do not require a calculation of the precise figure for the Council's housing land supply with mathematical exactitude. This is not an EiP. The key questions for you to determine on a section 78 appeal like this are (i) whether there is a 5yhls shortfall, and (ii) if there is, broadly (i.e. within what **range**) is its magnitude.[7]

11. In this case, the answer to the first of the two key questions is not in dispute: the Council accepts that it does not have a 5yhls.

12. The only question for you, madam, is how great, in broad terms, the shortfall is. And here, too, there are some points of agreement. We agree that there is a five year requirement in Exeter of 3,250 homes. We also agree that, in accordance with §74 NPPF, a 5% buffer should be applied. We disagree only on the supply side of the calculation.

13. When it comes to the sites in the Council's trajectory, much of the disagreement relates to the application of the requirement for Category (b) sites (i.e. those with outline planning permission for major development, or allocated in the plan) to only be considered if they are supported by what the NPPF calls "***clear evidence*** that housing completions will begin on site within 5 years".

14. The PPG at §68-007 explains that (with **emphasis** added):

> "Such evidence, to demonstrate deliverability, may include:
> - current planning status – for example, on larger scale sites with outline or hybrid permission how much progress has been made towards approving reserved matters,

[7] *R (Hallam Land Management Ltd) v Secretary of State for Communities and Local Government* [2018] EWCA Civ 1808 at §51-52.

or whether these link to a planning performance agreement that sets out the timescale for approval of reserved matters applications and discharge of conditions;
- **firm progress** being made towards the submission of an application –for example, a written agreement between the local planning authority and the site developer(s) which confirms the developers' delivery intentions and anticipated start and build-out rates;
- **firm progress** with site assessment work; or
- **clear relevant information** about site viability, ownership constraints or infrastructure provision, such as successful participation in bids for large-scale infrastructure funding or other similar projects[…]"

15. Mr Pycroft conducts a thorough survey of the appeal decisions which have considered these requirements in section 3 of his proof. The position was crystallised by Inspector Harold Stephens in the Great Torrington decision at CDA-23:

> "56. […] [The PPG] indicates the expectation that 'clear evidence' must be something cogent, as opposed to simply mere assertions. There must be strong evidence that a given site will in reality deliver housing in the timescale and in the numbers contended by the party concerned.
>
> 57. Clear evidence requires more than just being informed by landowners, agents or developers that sites will come forward, rather, that a realistic assessment of the factors concerning the delivery has been considered. This means not only are the planning matters that need to be considered but also the technical, legal and commercial/financial aspects of delivery assessed. Securing an email or completed pro forma from a developer or agent does not in itself constitute 'clear evidence'. Developers are financially incentivised to reduce competition (supply) an d this can be achieved by optimistically forecasting delivery of housing from their own site and consequentially remove the need for other sites to come forward."

16. The onus is on local planning authorities to provide *"clear evidence"* of deliverability – not appellants: see e.g. the Woolpit decision at CD-A18, §§65 and 68. If the authority fails to provide such evidence, then the site should be removed from the authority's trajectory. Inspectors have done so where, for example, there are *"no reserved matters applications and no evidence of a written agreement"*: see the Nantwich decision at CD-A16, §21. The Secretary of State has removed sites on the basis that proformas (very similar to those provided in this appeal in Ms Smith's Appendix B) did not constitute *"clear evidence"*: see the Braintree decision at CD-A21 at §41 and Mr Pycroft's discussion of it in his rebuttal at §3.4.

17. During the roundtable, Ms Smith accepted for the Council that the approach taken in those appeal decisions is correct.

18. For the specifics of each of the disputed sites, the Inspector is referred to Mr Pycroft's Appendix EP1 and to his rebuttal proof, which contain a comprehensive site-by-site review against the relevant tests in the NPPF and PPG.

19. A shorter site-by-site summary is appended to these closing submissions for your convenience.

20. The key theme which emerges from the Council's evidence on this topic is the lack of detail. Time after time. The Council has provided a selection of questionnaires, but these are undated and unsigned. They are not, as the appeal decisions require, *"written agreements"*. We don't even know who completed them. They do not provide the information we need to assess timescales for completions. We are told, for example, that a reserved matters application will soon be submitted in respect of one site, but not told how existing objections will be overcome. In respect of another site, we are told that a pre-application meeting has taken place, but not what the content or outcome of that conversation was. The PPG and the appeal decisions make plain that this comes nowhere close to being *"clear"* enough.

21. Presented with these deficiencies during the roundtable, Ms Smith defended her assessment on the basis that the Council could point to *"some evidence"* in respect of each of the disputed sites – but, as she also acknowledged, that's not the relevant test. National policy and guidance requires the Council to produce *clear* evidence, and in respect of six of the disputed sites there is none.

22. The problems with the Council's assessment of deliverable supply do not end with their flawed application of the "clear evidence" test. As Mr Pycroft demonstrates, there are a range of other issues, including the Council's application of unrealistic build rates and the Council's failure to apply the ratio to C2 accommodation required by the PPG.

23. Then, there are the two co-living schemes. As Mr Pycroft explained, given the short-term, temporary nature of the accommodation, these schemes should be excluded from the Council's housing land supply entirely. These schemes are clearly communal. And they are not akin to permanent C3 residential accommodation. Lease periods are as short as 3 months. Occupants are intended to spend much of their time *"at home"* not in their very small studio bedrooms but in the generous community amenity space. That was, indeed, the basis on which the Council approved both schemes – the units would otherwise have failed against space standards.

24. Even if you do not exclude the units altogether, Mr Pycroft suggested a ratio of 1.8 should be applied. That is the ratio applicable to *"other communal accommodation"* in the Housing Delivery Test Rule Book.

25. To reiterate, madam, you need not identify the Council's precise housing land supply figure, decimal point by decimal point. You are entitled to identify instead a *"broad magnitude"*. So on the figures:

    (a) Mr Pycroft's evidence shows that the housing land supply picture is bleak. As at the agreed base date of 31st March 2022, the Council will have a deliverable supply of 2,167 dwellings. This equates to a housing land supply of just **3.17 years**.

(b) If you were to decide to apply a ratio of 1.8 to the co-living schemes, rather than to exclude them entirely, the Council would have a deliverable supply of 2,451 dwellings, which equates to 3.59 years.

(c) On either view, the shortfall is substantial. Still, if you accept Mr Pycroft's case on the lack of "*clear evidence*" above, you are entitled, to identify a range on the basis of the evidence you have heard (which would not require you to determine whether co-living should be excluded altogether, or should be included subject to an appropriate ratio) of e.g., 3.1 – 3.5 years.

26. Whatever view you take of the disputed sites, one thing is clear: the Government's critical objective of significantly boost housing land supply is not being achieved in Exeter. The minimum targets for housing land supply are not being met.

27. As above, this means that, in accordance with §11(d)(ii) NPPF, footnote 8, the development plan policies which are most important for determining the application are deemed to be out-of-date. The appeal should therefore be allowed unless *"any adverse impacts of doing so would significantly and demonstrably outweigh the benefits"* of doing so.

28. What, then, are the "harms" which are said to both significantly and demonstrably outweigh this scheme's benefits?

The curious case of "non-actual" landscape harm

29. In this appeal, the main parties are in total and express agreement on all landscape matters: see Landscape SoCG at CD-ID9, §3.1. We agree that the site is not covered by any statutory landscape designations. We agree that the LVIA prepared by Mr Bunn accords

with the relevant professional guidelines (GLVIA3) and that its findings are correct. We agree that all of the findings in Ms Priscott's independent review of the LVIA are correct. We agree that the proposals will cause no *"actual"* harm to the landscape (and, indeed, no *"real world"* harm to the environment at all).

30. On landscape, the Rule 6 Party have taken an outlier position: that the proposal will cause material harm to the landscape setting of the city. Their case rests on three foundations, each of which buckled during the roundtable discussion:

    (a) First, they made much of the Exeter Fringes Study,[8] which Mr Bunn used in the LVIA and in his evidence as *"a good starting point"*. This corresponds with Ms Priscott's treatment of the Study as a *"starting point for more site-specific analysis"* (CD-DD7, §37) – again, a starting point, not the end point. In the end, Mr Bennett agreed with Mr Bunn that the Study provides only a *"broad-brush"* assessment and that there are varying degrees of sensitivity within each zone assessed. The zones are so large, and the elevations within them so varied, that a site-specific assessment is inevitably required. And, in this case, each of the three site-specific assessments which have been carried out – by Mr Bunn, by Ms Priscott, and by the case officer – have come to the same conclusion: that, whilst developing the site will inevitably result in some *change* to the site, the scheme will not cause any significant *harm* to the landscape setting of Exeter.

    (b) Secondly, they rely on advice they received from the landscape consultant Mr David Williams. But Mr Williams' comments are, with respect, limited in scope

[8] CD-SPD17.

and in utility. In his email, Mr Williams says that he had only *"a very brief look"* at some of the relevant documents. He tells us that he did not undertake a site visit, and that he *"do[esn't] know the area"*. He acknowledges that the LVIA *"generally follows GLVIA3"*. His criticisms of its methodology are, in the end, *"very few"*. In response to these criticisms, Mr Bunn explained that every LVIA is different, and that there's a need to take a proportionate approach. When choosing between Mr Bunn's comprehensive evidence based on several years of working on this site, and Mr Williams' *"brief look"*, it is – with respect – not a close-run contest.

(c) Thirdly, the Rule 6 Party produced photographs of a very large number of additional viewpoints. Many of those, Mr Bennett accepted, are not points from which the development will be seen. Some are located more than 3km from the site, contrary to the advice of Mr Williams and to the approach of Mr Bunn. Others show views from private dwellings, despite it not being the function of an LVIA to assess residential amenity, and despite the Council never having requested that residential amenity be assessed.

31. In the end, the Council is right to agree with the Appellant that *"there is no evidence that the proposals will cause actual harm to the landscape"*: see SoCG at CD-ID4, §6.9.

32. From there, the Council's case takes a strange turn. It disavows the existence of any *"real world"* environmental harm, and rests instead on the purported *"in principle"* harm occasioned by breach of Policies H1 and CP16.

33. That position is, with respect, incoherent on its own terms.

34. On H1:

(a) Mr Upton confirmed that H1 is an out-of-date strategic policy to guide the Council's approach to selecting sites in its local planning exercises.

(b) He agreed it is not a development management policy (i.e. its purpose is not to guide the determination of individual applications like this one, and it does not set any criteria by which such applications are to be judged). Mr Upton also agreed that H1 does not require an applicant for planning permission in Exeter to undertake a sequential sites assessment (the previous criticisms of the Appellant on that point in his proof no longer being pursued). Which is why H1 was not even *analysed* in the case officer's report, let alone found to be breached.

(c) Mr Upton also agreed that H1 does not preclude development on greenfield land. Nor could it – as the Fringes study makes clear,[9] it is inevitable that meeting Exeter's needs for new housing will require development on greenfield land.

(d) For those reasons, as Dr Rocke explained, there is no tenable objection to this scheme under H1.

35. On CP16:

(a) Mr Upton agreed that CP16 does not preclude development occurring as a matter of principle in the area of the *"hills to the north and north west"*.

[9] CD-SPD14, §1.3.

(b) He agreed that, instead, it requires a scheme-by-scheme assessment to consider whether a given proposal would harm the *"character and distinctiveness"* of the area.

(c) He agreed that this scheme had been properly assessed by Ms Priscott. He accepted and endorsed all of her conclusions, including that *"the development would not result in harm to the character and local distinctiveness of this rural area"* and, as such, that *"the development would not result in harm to the character and local distinctiveness of this rural area"* and, as such, *"would accord with… CP16"*.

(d) Even though he endorses the report which concludes that CP16 is accorded with, Mr Upton maintained an objection on the basis that CP16 is offended in this case *"as a matter of principle"*.

(e) But, with respect, that cannot possibly be right. Mr Upton agrees that CP16 does not preclude development as a matter of principle. Again, it could not – meeting Exeter's housing needs inevitably requires development on what is currently greenfield land. But if a policy does not preclude development *as a matter of principle* then there cannot logically be conflict with it as *a matter of principle*.

(f) In oral evidence, Mr Upton attempted to distinguish Ms Priscott's report on the basis that she was assessing the impact of the proposal on landscape "*areas*", whilst he was looking at the impact on only the appeal site. With respect to Mr Upton, this contortion gets the Council nowhere. The purpose of the relevant part of CP16 is to protect the character of the listed *areas*, not of particular sites. We know that must be so because the parties agree that CP16 does not preclude all

development from coming forward in those areas, but requires a site-specific assessment of scheme's impact on the area's character. That was the approach that the case officer and Ms Priscott took. They were right.

(g) There is therefore no tenable objection to this scheme under CP16.

36. For those reasons, the case officer was right to conclude that the proposal accords with Policies H1 and CP16. The Council accepts that the proposal accords with the long list of other relevant development plan policies: see Mr Upton's proof at §§7.2.2-7.2.3. The proposal therefore accords with the development taken as a whole. Other material considerations – which we turn to below – only further support a grant of permission. If you agree, madam, then the appeal can and should be allowed on that basis.

37. If you disagree with us, madam, and consider that there is a breach of H1 and/or CP16, and on the basis of that breach that allowing the appeal would not accord with the development plan read as a whole, the appeal should still be allowed. That is for two reasons:

(a) As Dr Rocke explained, any conflict with those policies cannot be afforded full weight, on account of their out-of-datedness and inconsistency with the NPPF. Both policies are deemed to be out of date. But they are also substantively out of date. H1 is a policy from 2005 prepared under a predecessor to the predecessor to the first NPPF. It sets a sequential approach to allocating residential sites which was then, but is no longer, found in national policy. CP16 was prepared under a totally different national policy framework as part of a plan which met the development needs of a different generation (i.e. those set in 2006 under the

Regional Strategy), and which was intended to – but never was – reviewed if housing land supply started to fail (which it did), supplemented by a site allocations DPD to allocate smaller sites just like this (which never came forward), and latterly replaced by a Greater Exeter strategic plan (which failed). The Council now intends to replace it through a new Local Plan, but no draft of that exists either. CP16 was only ever intended to be *part* of a local development framework picture that was never completed, but was supposed to include a mechanism to allocate smaller sites like ours. Again, that limits the weight you can attribute to any conflict you find with that policy.

(b) In any event, a raft of other material considerations – and in particular the tilted balance at §11(d)(ii) NPPF – weigh decisively in favour of the grant of permission.

38. And it's to that balance to which we now turn.

The planning balance

(i) Market housing

39. Since 2012, Central Government's objective – now at §60 NPPF – has been to significantly boost the supply of homes. Again, that objective represented a radical departure from pre-NPPF national policy by making the meeting of housing needs not just a material consideration, but one of particular standing.[10]

40. To recognise the importance of that objective, the Secretary of State regularly attributes at *least* significant weight to the delivery of market homes even in circumstances where –

[10] *Gallagher Homes Ltd v Solihull MBC* [2014] EWCA Civ 1610 at §8 and §16.

unlike here – the relevant authority *can* demonstrate a minimum of 5 years' supply of housing: see e.g. the Nantwich decision at CD-A16, DL §§17-23 and 28.

41. Of course, in cases like this one where the minimum requirements of national policy are not being met, the imperative at §60 NPPF is even more important and that has the effect of elevating the weight to be attributed to the delivery of market homes.

42. The Council accepts that, if permission were granted, this scheme is capable of being delivered well within 5 years. The scheme would, in that way, make a meaningful contribution to the Council's housing land supply. There are no technical or infrastructure-related constraints to the scheme coming forward promptly.

43. Nonetheless, Mr Upton gives only *"medium"* weight to this scheme's delivery of market homes. He does so whilst acknowledging he knows of no case in which the Secretary of State has taken the same approach.

44. Mr Upton's stated reason for *"reduc[ing]"* the weight afforded to this important benefit is that the shortfall in the Council's housing land supply is *"capable of being rectified in the short term"*. But, as Mr Upton accepted in cross-examination, neither he nor Ms Smith have provided any evidence which demonstrates that the Council will rectify its housing land supply position, still less when or how. It is no more than bare assertion. And it is an assertion which flies in the face of what we do know: that the Council has been unable to demonstrate and maintain a 5yhls for over a decade (see e.g. the Clyst Road decision at CD-A13, §42); that, as above, the development plan was never reviewed; the vehicle for allocating non-strategic sites (the Site Allocations and Development Management DPD)

was never been adopted; that the once-floated Greater Exeter Strategic Plan has long been abandoned; and that, even now, there is no draft new Exeter Local Plan.

45. If the Council is to start addressing its housing needs **now**, the challenge **cannot** be met through the plan-led system. Which means that those needs must be met through the development management process. Through planning applications just like this one.

46. In those circumstances, Dr Rocke's evidence that this scheme's delivery of market homes should be given substantial weight should be preferred.

(ii) Affordable housing

47. By providing for 35% affordable housing, the Council agrees that we accord with the relevant local plan policy (ECS Policy CP7).

48. The fact that the scheme "only" accords with that policy is not, as the R6 party suggest, a reason to *reduce* the weight to the delivery of affordable housing – which Ms Allcock rightly described as an "*issue of our time*". On the contrary, the Council's affordable housing policy are designed to achieve a very important societal benefit. Again, it is agreed that we accord with the policy. Which means we achieve that important benefit. That is not a reason to diminish the weight to be attributed to that accordance. On the contrary, as Inspector Nick Fagan said in the Coalpit Heath case (CDA-5) at §61:

> "The fact that much need affordable housing and custom-build housing are elements that are no more than that required by policy is irrelevant – they would still comprise significant social benefits that merit substantial weight."

49. The Council accepts that there is a substantial ongoing annual need to deliver more affordable homes in Exeter. This is corroborated by the affordability indicators set out in Mr Stacey's evidence. The number of households on the Council's housing register stands at 3,149 as at 31st March 2022, a 13% increase on the year before. As the Inspector said in the Oxford Brookes case at CD-A2, §13.101, *"each one of those households represents a real person or family in urgent need who have been let down by a persistent failure to deliver enough affordable houses"*. They are some of the most vulnerable in our society. And their interests have not been given voice at this inquiry. Average waiting times stand at 2.21 years for a 1-bed home and 2.23 years for a 4-bed+ home. There are, on average, 128 bids being placed per home. Average house prices are nearly ten times average incomes for those in the lower quartile of income.

50. This picture is bleak. It is deteriorating. And the Council has no plan address it.

51. Mr Stacey explained that there has been a considerable shortfall (2,134 homes) against the Council's own 2015 SHMA target arising over the eight-year period between 2013/14 and 2020/21. And NB even that target is too low based as it is on the 2012 definition of affordable housing. Whilst the SHMA figure was used in the formation of annual need, it has been overtaken by changes made to the definition in 2018 which capture a broader spectrum of needs. As such the needs are likely to be higher than they were in 2015. Furthermore, and worryingly, Mr Stacey projects further shortfalls against the Council's needs moving forward. Future supply seems to have collapsed. Across all of Exeter, there were only **6** net additions to affordable housing stock in 2020/21.

52. In cross-examination, Mr Upton accepted that the Council itself describes this situation as a *"crisis"*. He accepted that the shortfall in affordable housing is both *"persistent"* and *"acute"*, and will only worsen with time.

53. The position which had been agreed between the Council and the Appellant (at least until Mr Upton gave his oral evidence) is therefore the right one: that the scheme's provision of affordable homes is a benefit which should be afforded substantial weight. Mr Upton's attempt to resile from that agreement at the inquiry by saying that affordable housing is a *"substantial"* benefit *"in the round"*, but that only *"significant weight"* should be afforded to it *"in the planning balance"*, was – with respect to him – confusing and confused.

54. In the end, you should prefer the position in the Statement of Common Ground, and the evidence of Dr Rocke and Mr Stacey: the scheme's provision of affordable homes should be given substantial weight in the planning balance.

(iii) <u>Open space</u>

55. The proposal provides 10.47 hectares of open space. 1.34 hectares of that is provided as formal open space within the appeal site. 9.13 hectares is provided as off-site open space for informal recreation – what will become New Valley Park.

56. Neither the appeal site nor the site of the proposed New Valley Park is currently "open space" within the meaning of the NPPF. The public currently does not have the right to access either site. If members of the public are, as the Rule 6 Party suggests, currently accessing the New Valley Park site, they are not doing it lawfully.

57. The public open space being provided both on- and off-site is, therefore, entirely new public open space.

58. The open space provision within the appeal site would *more than* compensate for the loss of a small area of land to accommodate the access road from Spruce Close. It represents a quantitative and qualitative improvement on the existing position.[11] As such, as the Council rightly accepts, it accords with ELPFR Policy L3.

59. But beyond all of that, we have the New Valley Park. It is a further community benefit. And it is a very special benefit. There is currently no (lawful) public access to any of that land. Our proposal would confer rights of public access over it in perpetuity. As the officer recognised in his advice to members, *"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"*. Ms Priscott concluded, similarly, that the New Valley Park proposal is *"highly beneficial"*, as it 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"*. It is also *"considered a very welcome opportunity"* by the Exeter Civic Society, insofar as it *"further preserv[es] landscape views from afar, provid[es] hillside for recreation, giv[es] space for a LEAP for activities not catered for in the LAP and extend[s] footpaths in several directions, including towards Mincinglake Valley Park."* This proposal would, the Society concluded *"benefit the wider local area and Exeter as a whole"*.

[11] In cross-examination, Rev Hanna accepted that the small area of land lost to accommodate the access road from Spruce Close will be replaced by open space of at least equivalent value *"in quantitative terms"*. He did not accept that the replacement will be equivalent *"in qualitative terms"* (though he did accept that, by formalising public access to what would become New Valley Park, there would be *"some benefit"*). He accepted that this point of disagreement between the Appellant and the Rule 6 Party will ultimately be a matter for the planning judgment of the Inspector.

60. You will have seen this on site, Madam: the views from what will become the New Valley Park are magnificent. They are far-reaching. Preserving those views and making them accessible to future generations is – just as Ms Priscott put it – highly beneficial. It will be an enormously positive outcome of this scheme.

61. In the end, the provision of New Valley Park for the benefit of the local community as a whole is, as Dr Rocke concludes, a benefit which should be afforded significant weight.

(iv) Other benefits

62. As Dr Rocke explains, the scheme offers a range of further benefits to be weighed in the planning balance. These include enhancements to sustainable transport, which the local highways authority considers to be a *"significant benefit"*, and which received the strong support of the local operator, Stagecoach South West. Dr Rocke also rightly gives weight to the scheme's delivery of over 10% biodiversity net gain, to its economic benefits (in terms of construction jobs, CIL contribution and additional Council Tax receipts), to its reduction in localised off-site flooding, and to its improvements to highway functionality.

(v) Striking the balance

63. In the end, the position is simple:

64. The case officer recommended this scheme for approval, finding that it would cause no material harm, whilst delivering considerable benefits. He did so at a time when the Council asserted (albeit wrongly) that it had a 5yhls, so that the "flat" planning balance applied.

65. Since then, the scales have only tipped further in the Appellant's favour. The Council has accepted that it does not have a 5yhls, such that the "tilted" balance is now engaged. That imposes a heavy burden on the Council in order to justify refusing planning permission, which it has nowhere near discharged.

66. On one side of those scales, you have before you, madam, extensive evidence of the scheme's benefits. Most importantly, the scheme would deliver desperately needed and sustainably located market and affordable homes at a time of clear housing crisis in Exeter. Among its other benefits, the proposal would enhance the existing transport network and provide public open space of very considerable value.

67. On the other side of the scales, for all the Council's and the Rule 6 Party's evidence, there is no credible basis for finding that this scheme would cause *any* significant harm. In fact, the Council now accepts that the scheme would not cause any "*real world*" environmental harm *at all*. The scheme has, on the Council's own case, only "*real world*" benefits. It is in the real world that this appeal falls to be determined. Let's get real: the Council's case that its supposed adverse effects, based as they are not on any *actual* harm, but on alleged "*in principle*" harm relying on outdated policies designed to meet the needs of another era, cannot outweigh – let alone significantly or demonstrably outweigh – this scheme's very substantial and desperately needed benefits.

68. The scheme accords with the development plan, and the balance at §11(d)(ii) tilts decisively in favour of granting permission.

69. For those reasons, we ask you to allow the appeal.

ZACK SIMONS

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8th JULY 2022

APPENDIX – SUMMARY OF DISPUTED HOUSING SITES

356d – Land east of Cumberland Way (Council's 5YHLS = 80 dwellings, Appellant's 5YHLS = 0 dwellings)

1. This site has outline planning permission but an application for reserved matters has not been made. At the hearing for the Pennsylvania Road appeal[12], the Council said that an application for reserved matters would be made in September 2021. However, that did not happen and in any case the Inspector for that appeal concluded that it was not clear evidence and removed the site. Based on an unsigned, an undated proforma[13], the Council now says that a reserved matters application will be made in 2022 but has provided no clear evidence of "firm progress" towards the submission of an application. A pre-application meeting has apparently taken place, but the Council cannot tell us any further details about it. This is not clear evidence of deliverability. The questionnaire is scant in detail and in fact provides less detail than those proformas which the Secretary of State did not consider provided clear evidence in Braintree[14]. This site fails to meet the definition of deliverable and should be removed.

417 – Aldens Farm West (Council's 5YHLS = 96 dwellings, Appellant's 5YHLS = 0 dwellings)

2. This site has outline planning permission which was finally approved in November 2021 over 6 years after the application was submitted. A reserved matters application by Burrington Estates was made in February 2022 but has not been determined. The Council relies on an unsigned questionnaire[15] which states that the site is available subject to the

[12] CD-A14, §87.

[13] Smith Main PoE Appendix B – ref: 356d.

[14] Pycroft Rebuttal PoE Appendix EP10.

[15] Smith Main PoE Appendix B – ref: 417.

approval of the reserved matters. But the reserved matters application is subject to objections – including by the LLFA in terms of flood risk and drainage. It is not known when or if these objections will be overcome. The Council has said that new plans will be submitted in early July but that has not happened and in any case it is not known whether they will adequately address the objections. The questionnaire also states that a start on site is expected in summer 2022 but this is not realistic as the reserved matters application has not been approved and the Council has provided no clear evidence of firm progress in relation to the discharge of pre-commencement conditions. Therefore this site should not be included in the deliverable supply.

<u>408b & 408c – the Old Coal Yard – phases 2 and 3 (Council's 5YHLS = 62 dwellings and 62 dwellings, Appellant's 5YHLS = 0 dwellings and 0 dwellings)</u>

3. This site has outline planning permission for 400 dwellings. Of these, reserved matters have been approved for phase 1 (143 dwellings in total, with 87 dwellings included in the five year housing land supply). The Appellant does not dispute the inclusion of 87 dwellings on phase 1 and also includes the neighbouring site for 51 dwellings (ref: 423). Therefore, as he explained at the RTS, BP includes 138 dwellings from Eutopia Homes at this site and the adjoining site in the five year supply, despite no start having been made and certain key stages needing to be met first, including the discharge of conditions and remediation of this contaminated land.

4. The later phases (2 and 3) should be considered within this context. Phase 2 only has outline planning permission and whilst a reserved matters application has been made, it is not known whether it is acceptable or the timescales for its determination. The evidence the Council relies on is an email from the developer's agent, dated September 2021 and

the information within it is out of date. No up to date written evidence has been provided from the site promoter about their timescales.

5. A full planning application has been made on phase 3 rather than a further reserved matters, but it has not been determined. The Council says that a resolution to grant permission has been made under delegated powers, but neither the officer's report nor a report to members seeking the resolution have been provided. No written agreement has been provided by the developer to indicate why this phase will be delivered before the earlier phases have been completed.

6. For all of these reasons, phases 2 and 3 should not be included in the deliverable supply.

426 – Land at Redhills (Council's 5YHLS = 62 dwellings, Appellant's 5YHLS = 0 dwellings)

7. This site has outline planning permission but an application for reserved matters has not been made. It is unclear who is going to develop this site or what their timescales are. Whilst the Council wrote to the promoter, they did not respond. There is no written agreement. In the Nantwich decision[16], the Secretary of State removed such sites from Cheshire East Council's supply.

362 – Bricknells Bungalow (Council's 5YHLS = 57 dwellings, Appellant's 5YHLS = 0 dwellings)

8. This site had outline planning permission for 63 dwellings and reserved matters were approved for 6. Those 6 dwellings have been completed, leaving 57. A further reserved matters application was made just before the outline permission expired for 34 dwellings, but that has been pending determination for almost 4 years and there is no evidence at all from the developer. No evidence has been provided in relation to the remaining 23

[16] CD A-16, DL §21.

dwellings. Due to the absence of clear evidence, this site should not be included in the deliverable supply.

328 – Pinhoe Quarry (Council's 5YHLS = 300 dwellings, Appellant's 5YHLS = 195 dwellings)

9. This site is under construction and is considered deliverable. However, the build rates the Council applies far exceed those experienced by the same developer (Vistry) on another greenfield site in Exeter[17]. Whilst the planning consultant for the housebuilder provided some information in relation to build rates in an email dated 15th August 2021, it is out of date because it stated that 37 dwellings would be completed by December 2021 whereas only 10 dwellings were delivered in 2020/21. The email then states that the developer is looking at a build rate of 50 to 60 units per year but the Council applies a build rate of 60 dwellings in each of the five years. The Inspector is respectfully invited to apply the actual build rate achieved by the same developer in the locality and this means that 195 dwellings should be included in the deliverable supply and results in a deduction of 105 dwellings from the Council's supply.

415 – Land off Bewick Avenue (Council's 5YHLS = 53 dwellings, Appellant's 5YHLS = 30 dwellings)

10. This site has planning permission for C2 use[18]. The specific nature of the care, communal facilities and living accommodation were considered by the Council when determining that the site is C2 use[19]. The PPG is very specific about how C2 uses should be included in the deliverable supply and paragraphs 68-035 and 63-016a of the PPG explain that a ratio of

[17] Pycroft Main PoE, Appendix EP1 §2.4.

[18] Pycroft Main PoE, Appendix EP7.

[19] Pycroft Main PoE, Appendix EP1, §2.7.

1.8 should be applied. This means reducing the number of dwellings this site would effectively release in the market by 23.

102-104 Fore Street (Council's 5YHLS = 13 dwellings, Appellant's 5YHLS = 0 dwellings)

11. This site has had planning permission for 13 dwellings for 10 years. The site owner has provided a completed questionnaire, which explains that a lawful start was made so that the permission remained extant. However, the questionnaire also stated that the site is not available for development and not ready to be developed yet. It states that the development may possibly commence in 2 to 5 years' time but they are not sure when the first homes will be completed. The site should be removed from the deliverable supply.

425 – Land corner of Retreat Drive, Topsham (Council's 5YHLS = 10 dwellings, Appellant's 5YHLS = 0 dwellings)

12. This site has extant permission for 10 dwellings – approved in January 2018 but the agent has advised that they cannot confirm the site will be delivered until consent is granted for a new 17 dwelling scheme, which is currently pending determination and it is not known if it will be approved. Therefore, 10 dwellings should be removed from the deliverable supply.

Co-living accommodation: 416 – The Harlequin Centre (Council's 5YHLS = 330 dwellings, Appellant's 5YHLS = 0 dwellings); 418 – Ambulance Station (Council's 5YHLS = 133 dwellings, Appellant's 5YHLS = 0 dwellings)

13. The Harlequin site has planning permission for co-living accommodation comprising of 271 studio rooms and 107 bed spaces in cluster flats[20]. The Council applies a ratio of 1.8 to the cluster flats but includes each studio flat as a single dwelling.

14. The Ambulance Station site has planning permission for co-living accommodation comprising of 133 studio rooms, which the Council includes as being 133 dwellings.

15. Co-living accommodation are sui-generis and there is no guidance in relation to whether they should be included in the deliverable supply. In this case, the co-living units at both the Harlequin Centre and Ambulance Station sites may be occupied by occupants on a very short term basis, which according to the management plan could be as short as 3 months and therefore due to the fact that it could be used on a temporary basis due to the transient nature of the occupants, the Appellant concludes the co-living accommodation should not be included in the deliverable supply. Furthermore, there is no restriction preventing students from living in either co-living schemes and this is relevant because purpose built student accommodation is not included in Exeter's housing land supply due to the fact that it will simply accommodate an increasing student population rather than release other homes ordinarily occupied by students into the open market.

16. Notwithstanding this, should the Inspector consider that co-living units may be included in the deliverable housing land supply then a ratio of 1.8 should be applied for the following three reasons:

[20] Pycroft Main PoE, Appendix EP8A.

a. Firstly, as set out in the officer's report for the Harlequin site[21] – co-living accommodation is *"a special form of housing aimed primarily at younger adults… who might otherwise live in Houses of Multiple Occupation*";

b. Secondly, as reported in the planning statement for the Harlequin site[22], the Housing Delivery Test rule book states that a 1.8 ratio should be applied for "other communal accommodation", which co-living accommodation would fall within; and

c. Thirdly, both schemes have been approved based on the fact that whilst the studio bedrooms are significantly smaller than the minimum internal floor area for a 1 bedroom 1 person dwelling of 37 sq m as set out in the national technical housing standards[23], they have been allowed because they are genuinely co-living developments which offer generous levels of community amenity space and management plans which foster a communal atmosphere.

17. If the Inspector concludes that co-living units should be included in the deliverable supply, but a ratio should be applied, this does not significantly alter the Appellant's supply figure. The Appellant's deliverable supply of 2,167 dwellings equating to 3.17 years against the local housing need and a 5% buffer, would rise by 284 dwellings[24] to 2,451 dwellings, which

[21] Pycroft Main PoE Appendix EP1, §3.11 and Appendix EP8C.

[22] Pycroft Main PoE Appendix EP1, §3.12.

[23] 18 to 36 sq m at the Harlequin Centre – Pycroft Main PoE Appendix EP1, §3.13 and an average of 20 sq m at the Ambulance Station on three floors and 26.5 sq m on the fourth floor – Pycroft Main PoE Appendix EP1, §3.17.

[24] i.e. 378 co-living units at the Harlequin Centre and 133 co-living units at the Ambulance Station = 511 co-living units divided by 1.8 = 283.89.

equates to 3.59 years. Therefore, the Appellant's case is that the Council can demonstrate a deliverable supply of between 3.17 and 3.59 years.