

APPEAL REF: APP/Y1110/W/22/3292721
ADDRESS: LAND OFF SPRUCE CLOSE, EXETER

Appellant: Salter Property Investments Ltd

Local Planning Authority (LPA): Exeter City Council

LPA Application Ref: 20/0538/OUT

Description of development: Outline application for up to 93 residential dwellings (approval sought for details of access only)

Spokespersons

For the Appellant: Zack Simons - Counsel

For the Council: Kate Olley - Counsel

For the Rule 6 (Exeter Green Space Group): Naima Allcock

The CMC

1. The case management conference (CMC) was held at 10:00 on Wednesday 4 May 2022, led by Hannah Porter, the Inspector appointed by the Secretary of State to conduct the Inquiry. This post-CMC note summaries the procedural and administrative matters related to the Inquiry and its ongoing management.

The Inquiry

2. The Inquiry is scheduled to run as an in-person event, opening at **10:00 on Tuesday 5 July 2022**. The Council is in the process of securing a suitable venue and will share details ASAP.
3. The Inspector was not made aware of any reason why holding a face-to-face Inquiry would lead to procedural unfairness or be contrary to natural justice. Should the situation with the C-19 pandemic require a change of format, the parties are asked to remain flexible over the possibility of running the event, or part of it, virtually.
4. The Inquiry is expected to sit for no more than 4 days, sitting will resume at 09:30 on subsequent days and finish by 15:00 on the final day.

Provisional Main Issues

5. The likely main issues in this case were discussed during the CMC, the Inspector anticipates these will relate to:
 - I. Whether the appeal site offers an appropriate location for the proposed development having regard to the Council's 'spatial approach' and access to services and facilities by sustainable modes;
 - II. The effect of the proposed development on the character and distinctiveness of the area, including the landscape setting of Exeter.

6. The main parties confirmed that the Council's current lack of a 5-year housing land supply triggers the 'tilted balance'. The Inquiry will nonetheless look into the extent of that undersupply and any benefits to be weighed in the planning balance, including any implications of not proceeding with the scheme.
7. Although not comprising part of the Council's reasons for refusal, the Rule 6 and other interested parties have expressed concerns which will need to be addressed, including in respect of public open space, highway safety, parking, living conditions and flood risk. Whether or not these are dealt with as main issues in the eventual decision will depend on the evidence before the Inspector.

Statement(s) of Common Ground

8. The main and Rule 6 parties expressed general agreement to work collaboratively on producing meaningful Statement(s) of Common Ground (SoCG), hopefully narrowing areas of disagreement to expediate Inquiry time. It is expected that topic-specific may cover matters of 5-year HLS, landscape/character and appearance, locational sustainability and, potentially, highways.
9. The Inspector asks that SoCGs focus principally on the areas of difference, comprising a precis of the respective positions in relation to each point of contention. Any SoCG should be signed by both the Council and the Appellant, and ideally the Rule 6, and be used to inform the respective proofs.
10. It would be helpful to the Inspector if the HLS SoCG included the parties' respective positions on the housing requirement and a consolidated table listing those sites in the housing land supply that are contested, together with comments of the parties on the preferred figures for each site. It should also include two calculations of the deliverable supply based on each parties' position.
11. In respect of locational sustainability, any accompanying SoCG might usefully include distances to the various services and facilities proximate to the appeal site entrance and furthest house when accessed by road or footway, existing pedestrian, cycle and bus provision, including bus routes and timetables. Within a landscape/character and appearance SoCG, the Inspector would welcome a schedule of vantages from which she should view the site.
12. The main parties are asked to work on a schedule of proposed conditions, which should be led by the Council in the first instance. Careful attention will need to be paid to the wording and they will need to be properly justified having regard to the tests for conditions. Any difference in view on the suggested conditions, including suggested alternative wording, should be highlighted in the schedule with a brief explanation given. (A final version of suggested conditions must be submitted with the proofs. The final wording of any pre-commencement conditions will need the written agreement of the Appellant).

Dealing with the Evidence

13. Having considered the parties' respective positions, the Inspector considers the matters of 5-year HLS as well as landscape/character and appearance would be most appropriately dealt with in round-table sessions, informed by topic specific SoCGs and the respective proofs.
14. Similar to a s78 hearing, round-table sessions will follow a structured discussion led by the Inspector. The Inspector will circulate agendas for these sessions. While the final structure of the round-table discussion will be for the Inspector, she would welcome the input of the parties in suggested agendas if there were a willingness to do so.
15. It was agreed that Main Issue I, the policy principle for the development, together with any outstanding matters and the planning balance, will be dealt through the presentation of evidence-in-chief.
16. Planning obligations and conditions will be dealt with through the usual round-table discussion (without prejudice) – matters relating to NHS contributions can be dealt with during this session.

Witnesses

17. During the CMC, the Appellant indicated they shall be fielding separate witnesses who would cover: 5-year HLS, affordable housing, landscape/character and appearance, and planning issues. Subject to matters remaining unresolved, the Council expects to field a witness covering 5-year HLS. The Council intends for its main planning witness to deal with matters related to landscape/character and appearance. The Rule 6 party indicated an intention to field a landscape witness although this is not yet confirmed. At the time of submitted their Statement of Case the Rule 6 party must indicate whether they will be fielding their own witness(es) and in relation to which issue/matter.

Inquiry Running Order

18. As for the running order of the Inquiry, on the first day of the Inquiry, following her opening, the Inspector will invite opening statements (10 mins) from the main parties. The Council will be first and then the Rule 6, followed by Appellant and written transcripts will be required before the close of the Inquiry.
19. The Inspector will then hear opening statements from interested parties, although there is scope for some flexibility if someone has difficulties that prevent them from attending and speaking then.
20. The Inspector then anticipates holding the round table sessions; firstly, dealing the matter of landscape/character and appearance and secondly, 5-year HLS. At the start of each session, the Inspector will ask each party to summaries their respective positions with a brief (around 5 minutes) introductory statement.

21. The Inquiry will hear evidence-in-chief on the other issues, hearing from the Council witness followed by cross-examination and any questions from the Inspector; then the Rule 6 on the same basis; followed by the Appellant's witness.
22. There will then be round-table discussion on possible conditions and on the provisions of the planning obligation, on a without prejudice basis.
23. Finally, the parties will present their closing submissions in order of Council, Rule 6 then Appellant. Written transcripts of those closings are to be submitted by email in the break prior to the closing session.
24. If any application for costs is to be made, advance notice should be given, with any application and rebuttal submitted in writing before closings. The Appellant will be given the opportunity to make any final response orally, if required, after closings.
25. The advocates should work collaboratively on their time estimates and agree a detailed Inquiry timetable based on this proposed running order.

Core and Inquiry Documents

26. The main parties should agree who will be co-ordinating and keeping updated a Core Documents List and Library, which should comprise only those documents that will be referred to during the Inquiry and include an index for ease of use.
27. In respect of local and national policies and guidance, specific paragraph or reference ID numbers rather than policy documents in their entirety should be provided. Any references to appeal decisions or legal judgements should be included where they are referred to as part of the issues arising in the Inquiry and shall reference specifically the sections of relevance. Proofs of evidence should be drafted cross-referencing back to the Core Documents rather than repeating the content verbatim.
28. The Appellant will submit the final agreed and integrated core document list and library electronically to the Planning Inspectorate at the same time as the proofs, concurrently sending in a hard copy to the office for the Inspector.
29. It is expected that the Council will be able to host a location on its website for the Core Documents and other Inquiry documents, including notifications, proofs, appendices, and summaries, as well as any other documents submitted during the Inquiry. It would be helpful if the Council could provide a single point of contact on their dedicated webpage in case of any queries or issues accessing documents.

Timetable for submissions

30. In light of the relatively late granting of Rule 6 status to the Exeter Green Space Group, the Rule 6 Statement of Case no later than **26 May 2022**. At the time of submitted their Statement of Case the Rule 6 party must

indicate whether they will be fielding their own witness(es) and in relation to which issue/matter.

31. An extension to the submission of proofs was agreed at the CMC. All proofs of evidence dealing with each of the main issues identified, as well as the other highlighted areas raised by the Rule 6 and interested parties, shall be submitted no later than **14 June 2022**. The preferred format and content of proofs issued with the case management conference agenda must adhere to the guidance in Annex A of the pre-conference note.
32. Further to a schedule of proposed conditions being worked up as part of the SoCGs, a final draft of this schedule can be submitted at the same time as the proofs on **21 June 2022**.
33. As outlined during the CMC, there is no reference in the Inquiry Rules or Procedural Guide to supplementary or rebuttal proofs. The Inspector does not encourage them, however, there may be exceptional circumstances when they can save Inquiry time. Should this be the case then copies should be provided no later than **28 June 2022**. Rebuttal proofs must not introduce new issues.
34. Any final draft of the proposed legal agreements shall be submitted by **28 June 2022**. At the same time, or before, the Council must provide a R122 Compliance Statement that gives a detailed justification for each obligation sought, how it complies with the necessary tests, any policy support and details of how any financial contribution has been calculated and exactly how it would be spent.
35. By **28 June 2022**, the Inspector asks the parties provide time estimates for evidence-in-chief/cross-examination/re-examination. It is important that time estimates are realistic and are complied with as they will inform the draft Inquiry timetable.
36. Written transcripts of opening statements should be provided via the Case Officer on the afternoon before the Inquiry, by **Monday 4 July 2022**. Transcripts of closings shall be submitted in the break before the closings' session starts.
37. Should any application for costs be forthcoming, it must be made before the Inquiry is closed, ideally in writing. If an application is made or added to orally during the Inquiry, the other side will be given the chance to respond, and the costs applicant will have the final response.
38. The Inspector wishes to respectfully remind all parties that the submission of late evidence outside of the above timescales or during the Inquiry may necessitate an adjournment and risks an award of costs.

Other business

39. The Inspector indicated her intention to visit the site to gain an awareness of the general surroundings prior to the Inquiry opening, this will be on an informal unaccompanied basis from public land. A formal

Inquiry site visit will be undertaken after hearing all the evidence and details finalised during the event.

40. The Inspector asks that this post-CMC note be made available on the Council's website along with all the other Inquiry documents.

41. The Inspector notes that the parties have expressed an intention to continue to collaborate and encourages this.

5 May 2022