



Appeal Decision

On-line Inquiry Opened – 27 September 2022

Accompanied site visit made on 29 September 2022

by David Spencer BA(Hons) DipTP MRTPI

an Inspector appointed by the Secretary of State for Communities and Local Government

Decision date: 17th October 2022

Appeal Ref: APP/W1145/W/22/3295530

Land North of Abbotsham Road, Bideford EX39 3QP

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant outline planning permission.
 - The appeal is made by Mrs J Turner and Gladman Developments Ltd against the decision of Torrington District Council.
 - The application Ref 1/0926/2020/OUTM, dated 12 October 2020, was refused by notice dated 9 February 2022.
 - The development proposed is an outline planning application for the erection of up to 290 dwellings, including affordable housing with public open space, landscaping and sustainable drainage system (SuDS) and two vehicular access points from Abbotsham Road. All matters reserved except for means of access.
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Decision

1. The appeal is allowed and planning permission is granted for up to 290 dwellings, including affordable housing with public open space, landscaping and sustainable drainage system (SuDS) and two vehicular access points from Abbotsham Road. All matters reserved except for means of access. At land north of Abbotsham Road, Bideford EX39 3QP in accordance with the terms of the application, Ref 1/0926/2020/OUTM, dated 9 February 2022, and subject to the conditions set out in the schedule at the end of this decision.

Preliminary Matters

2. The proposal was submitted in outline with all matters reserved except for the means of access. The application was accompanied by a Design and Access Statement, an illustrative Development Framework Plan and numerous technical documents.
3. Notwithstanding the proximity of the site to sensitive statutory and non-statutory designations, its location within the zone of influence of the Taw-Torrington Estuary Site of Special Scientific Interest (SSSI) and the presence of protected species and associated habitats on the site, the proposed development has been screened out as not being of a scale and nature likely to result in a significant environmental impact. As such an Environmental Impact Assessment has not been required.
4. The Local Planning Authority's (LPA) decision contains a single reason for refusal which can be disaggregated into three component elements: (i) sustainable location; (ii) landscape; and (iii) ecology. On submission of the LPA's Statement of Case it confirmed that it no longer wished to pursue the sustainable location aspect. That said, this issue, allied to local infrastructure

capacity, remains a matter of concern to local residents and community representatives and I address it in the decision below, including consideration of the proposed planning obligations.

5. In response to the LPAs Statement of Case, which clarified their principal concerns, the appellant produced a Revised Development Framework Plan (the RDFP). Again, this is an illustrative plan, accompanying an outline proposal. The description and red line of the appeal proposal have not been amended. The effect of the RDFP was to illustrate an option for the appeal site to come forward excluding development in the north-west of the site. To some extent the LPA could have secured similar as part of reserved matters when considering the details of layout and scale, bearing in mind the description of the development was “up to 290 dwellings” (my emphasis). On this basis, the RDFP was consulted on between 14 July and 12 August 2022. I have taken into account the comments received. Furthermore, as the RDFP signals a reduced scale of development I consider no one would be prejudiced by my taking the RDFP into consideration¹ as an illustration of how the appeal site could be developed.
6. Following the submission of the appellant’s RDFP the LPA further considered its position. Subject to the appellant’s evidence to this Inquiry being confined to a scheme controlled at a maximum of 215 dwellings (based on the RDFP) and the north-west of the site being subject to a condition that it remains in agricultural use² the LPA entered into a Statement of Common Ground signed and dated 19 August 2022. The statement confirmed that, on this basis, both main parties considered the appeal ought to be allowed³. Consequently, other than in response to my request that the LPA clarify its position regarding strand (iii) of its reason for refusal (ecology) and in support of the submitted planning obligations, the LPA produced no further evidence to the Inquiry. Notwithstanding, the LPAs position and the consultation on the RDFP, there is continued and considerable objection to the appeal proposal from local residents and others as evidenced in the written responses to both the planning application and the appeal, together with appearances at the Inquiry.
7. A Unilateral Undertaking (UU) pursuant to Section 106 of the Town and Country Planning Act 1990 (as amended) and dated 27 September 2022 has been submitted [ID4]. The UU includes obligations concerning, amongst other things, affordable housing, public open space provision and maintenance, education, highways and health. I return to the matter of the planning obligations in more detail later in this decision.

Main Issues

8. The main issues in this appeal are as follows:
 - (i) The effect on the character and appearance of the surrounding area;
 - (ii) The effect on the biodiversity value of the site, including Badgershill Wood; and

¹ Having regard to the judgement in *Bernard Wheatcroft Ltd v SSE* [1982] 43 P&CR 233

² Based on the Retained Agricultural Use Plan [ref 2020-013 501 Rev A]

³ Paragraphs 1.2.3 and 2.4.4 of Statement of Common Ground, 19 August 2022

- (iii) Whether material considerations, including the housing land supply position, indicate a decision otherwise in accordance with the development plan.

Reasons

Development Plan policy

9. The development plan for the purposes of this appeal comprises the North Devon and Torrridge Local Plan 2018 (the NDTLP). This is the starting point for decision-making within the primacy of Section 38(6) of the Planning and Compulsory Purchase Act 2004, which requires planning applications to be determined in accordance with the development plan unless material considerations indicate otherwise. The NDTLP is a relatively recent document having been examined and found sound against the requirements of the National Planning Policy Framework (NPPF) and local circumstances. Accordingly, as a starting point, and being a plan less than five years old, the NDTLP has considerable force and weight for decision-making⁴.
10. Policy ST01 of the NDTLP sets out the principles of sustainable development in North Devon. This includes reaffirming the positive approach to be taken in decision-making as set out in the NPPF and reiterating the presumption in favour of sustainable development for decision-making in a way which is generally consistent with parts c) and d) of paragraph 11 of the NPPF.
11. Policy ST06 of the NDTLP set out the spatial strategy, identifying Bideford as a 'strategic centre' which will provide a focus for housing and employment development over the plan period. Bideford is the highest order settlement in Torrridge due to its size and sustainability credentials. Policy ST08 identifies the housing requirement for North Devon as being at least 17,220 dwellings over the plan period, of which 4,127 homes are assigned to Bideford. It is important to recognise that the housing requirement in Policy ST08 is expressed as a minimum. Policy BID of the NDTLP sets out the town strategy and spatial vision for Bideford including, amongst other things, enabling significant growth to strengthen Bideford's role as a strategic centre, within the context of having due regard to the importance of the setting and landscape quality of the area. Consequently, sizeable greenfield land releases at the edge of the town are allocated in the NDTLP (accounting for approximately two-thirds of the 4,127 homes). The largest of these is the Bideford West Urban Extension (Winsford Park), directly adjacent to the south of the appeal site on Abbotsham Road.
12. The appeal site is located in open countryside adjacent to but beyond the settlement boundary of Bideford. Accordingly, for the purposes of the development plan, the appeal site is 'countryside' where part 4 of Policy ST07 of the NDTLP limits development to those uses requiring a countryside location.
13. Policy ST14 of the NDTLP seeks to protect and enhance the character and intrinsic beauty of what is a predominantly rural area, including the local landscape character. The appeal site is not covered by any statutory or local landscape value designation. Nonetheless, Policy DM08a of the NDTLP requires all development proposals to respond to the landscape character including undesignated landscapes by taking account of and respecting the sensitivity and capacity of the landscape asset.

⁴ See NPPF paragraph 12

14. Policies ST14 and DM08 of the NDTLP seek to conserve and enhance the biodiversity of North Devon. Whilst there are no statutory biodiversity designations on or directly adjacent to the site, Badgershill Wood is a locally identified Site of Nature Conservation Importance. Policy DM08 stipulates that any development likely to adversely affect local sites will only be permitted where there the need for and benefits of the development clearly outweigh the loss, and the coherence of the local ecological network is maintained.
15. The NDTLP at Policy ST21 sets out a strategic policy for managing housing delivery including corrective measures should any material under-delivery against the plan's annual housing requirement arise. This includes positively considering additional sources of housing supply, including sites outside of defined settlement limits subject to criteria. Policy ST21 also refers to implementing a plan review where there is a sustained situation of no five-year supply of deliverable housing land. On the evidence before me, a plan review has only recently been initiated, with adoption envisaged at the end of 2025⁵.

Issue 1 - Character and Appearance

Landscape Impact

16. The appeal site is situated at the western edge of the town of Bideford. It predominantly comprises rolling pastoral farmland, rising steeply, on the southern side of the Kenwith Valley. In the lower half of the site the hillside is indented by a combe through which a watercourse flows north towards the valley floor. The combe is wooded including its steeply sided slopes, with established broadleaved tree cover extending into immediately adjoining rising land, notably to the west. This is Badgershill Wood, which occupies a central position within the site. The appeal site is strongly bounded by well-established hedgerows and hedgebanks, together with a thicker band of tree and scrub planting along the A39 at the western boundary of the site.
17. The most fine-grained analysis of landscape character is contained within the Joint Landscape Character Assessment (LCA) for North Devon and Torridge 2010. The host landscape character type unit at the appeal location is Type 5b – Coastal Undulating Farmland - which forms part of the broader national landscape character area 149 (The Culm), an area which covers much of the gently hilly ridges and plateaus of Devon between Dartmoor and Exmoor. The appeal site exhibits a number of the key characteristics and special qualities of the host landscape including the strongly rolling landform, bands of broadleaved woodland, fields bound by Devon hedgebanks and predominantly pastoral land use. Badgershill Wood is a particularly positive landscape feature of the appeal site. The adjoining pastoral fields on the appeal site provide a pleasant context within which the woodland is experienced.
18. In terms of other special qualities of the host landscape, I observed that there are no open, uninterrupted views towards the sea or estuary of the Torridge, both across or from within the appeal site. Due to the proximity of the urban edge of Bideford and the adjoining A39 there is negligible tranquillity at the appeal site. Moreover, the qualities of the host landscape at the appeal site, special and otherwise, are somewhat diminished by the following three factors.

⁵ Table 2, Mr Carvel's Proof of Evidence.

19. Firstly, the A39 is a dominant feature at the site. This is not only in terms of noise but additionally, the road crosses the Kenwith Valley at height across a concrete viaduct structure immediately to the north-west of the appeal site. This feature starkly interrupts the valley. The viaduct and structural planting along the A39 also serve to disconnect the appeal site from the markedly more rural undulating coastal farmland to the west, which is more redolent of the host landscape character type. Accordingly, the A39 encloses the appeal site such that its character is more related to being at the edge of Bideford rather than representing the start of uninterrupted and unfettered countryside rolling west towards the Atlantic coast.
20. Secondly, the modern houses on the Londonderry Farm estate, on rising land, immediately to the east of the site are a visually prominent urbanising feature in the landscape at the appeal location. They are clearly visible from the A39 Kenwith viaduct, from within Osborne Lane and when approaching from the west along Abbotsham Road. These houses can also be glimpsed from long distance including various viewpoints in the appellant's Landscape and Visual Impact Assessment (LVIA). They also provide a strong urban foreground in views from the public open space on higher land near Bridge Plats Way. More widely, in various views around the appeal site, development is already a feature in the surrounding landscape. This includes the large framework structure on the higher land to the west of the appeal site at 'The Ultimate Adventure Centre'. Also notable is the prominence of new development under construction on the ridge line to the north at Northam on sites allocated in the NDTLP. Whilst this is at a moderate distance from the appeal location, it nonetheless exemplifies that the character of the undulating landscape at the western fringes of Bideford is further transitioning, and modern housing development is becoming a more conspicuous feature.
21. In this regard, and thirdly, I must also take into consideration the impact of the Winsford Park allocation immediately to the south of the appeal site, opposite on Abbotsham Road. The site is allocated in the NDTLP at Policy BID01 for, amongst other things, 1,050 homes and community infrastructure. The evidence before me is that planning permission is being sought for the site, indicating a commitment to develop the allocation. In character terms, the Winsford Park allocation is in the same landscape character type as the appeal site. Whilst it is on less steeply rising land than the appeal site it nonetheless shares many of the same landscape features and special qualities including a blend of pastoral fields, hedgebanks and woodland blocks. Notably, the Winsford Park site is on higher land. Accordingly, development would be prominent along this part of Abbotsham Road bringing the urban edge of Bideford from the recent housing at Londonderry Farm and Moreton Park further west to the A39. Consequently, the character of this edge of the Bideford would change as a consequence of what is already proposed in the NDTLP. In views across the Kenwith Valley, the Winsford Park development on its higher land would be a conspicuous backdrop to the appeal site.
22. As such the appeal site is enveloped to the south and east by existing and planned modern residential development and to the west by the main A39 road. Therefore, whilst the character of the appeal site is representative of the host landscape type and is otherwise a pleasant and verdant area of countryside, particularly Badgershill Wood, it is not a pristine area of landscape, such that the few special qualities of the host landscape at the

appeal site are compromised and reduced. Accordingly, I find that the landscape character of the appeal site is of no more than medium quality.

23. The permanent loss of characteristic pastoral farmland and the consequent change to the setting of Badgershill Wood would inevitably result in harm to a landscape of medium quality. Higher value elements in the landscape including Badgershill Wood and the hedgebanks would be retained. As set out above, the large grassland field on the steeply rising land to the north-west of the appeal site, which provides an appreciable part of the rural setting to Badgershill Wood, could also be retained, through proposed conditions, and so remain an area in a characteristic land use. Accordingly, taking all of the above into account, the harm to the landscape character at the appeal site would be no more than moderate.

Visual Impact

24. Due to the topography, vegetation and adjoining development, the appeal site is relatively well-contained in the wider landscape. There are few public points at which the degree of change to the landscape arising from the appeal proposal would be experienced. The principal ones are on Abbotsham Road, where occasional views can be gained down across the sloping site from the few gateway entrances. Clearly the proposed development would dominate the foreground in these views and interrupt the sense of the panorama over the Kenwith Valley towards Godborough and Raleigh Hills. However, the proposed housing would be seen against the visually prominent development at Londonderry Farm as well as the significant changes that will arise from the adjacent Winsford Park site. To some degree, translocating the existing roadside hedgebank and additional landscaping would lessen the visual impact of housing closest to Abbotsham Road. There is a gateway near Lower Winsford Court where there is an isolated, short and detached stretch of footway on Abbotsham Road. I accept this viewpoint could be occasionally appreciated by a small number of pedestrians confident enough to negotiate the highway conditions on Abbotsham Road. However, the limited views on Abbotsham Road are to be mainly glimpsed, very transitorily, from within a passing vehicle at either 40mph or 30mph given the general absence of footways along this part of Abbotsham Road. Overall, I ascribe no more than moderate visual harm for receptors on Abbotsham Road.
25. Views across the south-east part of the site can be achieved at Osborne Lane where there are gaps in the hedge and at the track entrance to Lower Winsford Cottage. From my observations on site, Osborne Lane appears to be a reasonably popular byway for walkers and can be accessed by connecting footway along Abbotsham Road. These views look across the rolling grassland of the site, towards the fringes of Badgershill Wood. These limited views would be lost with a resulting sense of enclosure and urbanisation. However, it is important to take into account that the rural character at this location would change with the implementation of the Winsford Park site to the south-west. Additionally, landscaping on the appeal site has the potential to soften the edge of development at this location and reinforce Osborne Lane as a green corridor. As such there would be minor visual harm for pedestrian receptors at the southern end of Osborne Lane.
26. Elsewhere on Osborne Lane, the highway is moderately cut into the steep hillside and the good quality hedgebanks along the appeal site boundary are to

- be retained, together with the scope to strengthen landscaping along this edge. As such the appeal proposal would not be visually prominent. Where housing may be glimpsed this would be in the context that housing on Londonderry Farm to the east is already visually prominent within large parts of Osborne Lane. Similar would apply in Northdown Road to the north of the appeal site. Overall, there would be negligible visual impact or harm from within Osborne Lane and Northdown Road.
27. The A39 Kenwith viaduct to the north-west of the appeal site affords elevated views down across the Kenwith Valley, particularly for southbound traffic. The rising topography of Badgers Hill and the woodland of Badgershill Wood would be effective in screening the majority of the appeal proposal from this perspective. As set out elsewhere, proposed conditions to retain the north-west slope of the site as undeveloped land would ensure that development would not form a bold or proximate new urban edge to Bideford in this perspective. That said, development in the north-east of site (proposed Area B) would be visible to passing traffic heading south over the viaduct. It would be seen, however, in the context of the adjoining Londonderry Farm housing, which is highly conspicuous in views from the viaduct, occupying rising land behind the appeal site. As such, the appeal proposal would not appear as an incongruous feature in the landscape and would largely be read as a recognisable and measured consolidation of the existing urban pattern of development.
28. The loss of characteristic rolling farmland would be seen from the viaduct in respect of the north-east part of the site. There is no footway along this part of the A39, including on the viaduct. The speed of the road and volume of traffic makes it unattractive for cycling. The visual receptors affected on the viaduct are therefore those in vehicles heading south on the A39. Noting the new traffic lights at the Buckleigh Road junction, I consider it reasonable for most traffic to have reached a speed of 50mph by the time it is crossing the viaduct. The appellant has calculated that at this speed the appeal site would be visible for approximately 6 seconds, and I arrive at a similar assessment from my own observations. Accordingly, the adverse visual effect on the landscape from the loss of rolling fields would be only momentarily experienced from the viaduct and therefore of no more than a minor visual harm would arise.
29. I have visited the further afield viewpoints identified in the appellant's LVIA to the west and north of the A39 and I am satisfied that in many perspectives the appeal proposal would not be visible due to intervening landforms and vegetation. It would be seen at some distance from the north near Silford⁶ but would read in the wider landscape as a moderate consolidation of existing housing development at Bideford, most notably Londonderry Farm and in time with the Winsford Park development on the higher land above the appeal site. Accordingly, where the appeal proposal could be seen at some distance it would not appear especially conspicuous or as an isolated incursion of development into an otherwise untouched area of countryside.
30. The proposal would be visible from open space at Bridge Plats Way to the east and from existing residential properties at Londonderry Farm. In terms of the public views from the open space, the visual impact of the appeal proposal

⁶ In the vicinity of Appellant Viewpoint 21

would be minor given the dominance of existing housing in the foreground. Private views from residential properties would undoubtedly be affected but given intervening distances and the ability to strengthen landscaping along the eastern edge of the site, the visual harm would be moderate only. I have also visited the Godborough Hill reserve to the north of the appeal site. This affords uninterrupted views across the Kenwith Valley to the appeal site. It is, however, not a widely accessible site, being gated off, although I accept volunteers and organised visitors access the site. The appeal proposal would be plainly visible from Godborough Hill albeit within the context of neighbouring modern housing on Londonderry Farm and the forthcoming impact of further housing on Winsford Park above the appeal site. With this in mind and given the managed nature of the access to Godborough Hill I attribute no more than moderate visual harm from this perspective.

31. As set out above, existing established vegetation would screen the proposed development in a number of views. Additional landscaping would be required to help integrate the development in the Kenwith Valley and soften the edges of development along Abbotsham Road and Osborne Lane. The effectiveness of landscaping, principally the rate of growth in a coastal climate (salt and wind) is doubted and I was shown examples of planting on the nearby exposed Godborough Hill reserve site. To some extent the appeal site is more sheltered, including from prevailing south-westerlies by the topography and by established planting along the A39. I see little reason why the proposed landscaping cannot become similarly established over time on the appeal site. Moreover, the detail of the landscaping scheme, to be secured by condition, would be a matter for the Local Planning Authority to agree, including a mix of species suited to local conditions. On this basis I am satisfied that landscaping would be effective in minimising visual impacts in various perspectives.
32. Overall, whilst in many perspectives the appeal proposal would be read as a coherent consolidation of existing and planned for development in Bideford I nonetheless find that there would be some harmful visual impacts arising from the loss of views over characteristic rolling pastoral farmland and limited glimpsed views of the Kenwith Valley panorama. Accordingly, I find that any adverse visual impacts would be at worst of a moderate scale and localised in nature. This would reduce over time as landscaping becomes established and the development settles into its largely edge of town context.

Other related Character and Appearance matters

33. The North Devon Area of Outstanding Natural Beauty (AONB) is at its closest point approximately 800 metres to the west. Due to topography and the A39 there is no intervisibility between the appeal site and the AONB. The village of Abbotsham further separates the appeal site from the AONB. Consequently, the appeal proposal would not adversely affect the landscape and scenic beauty of the AONB or its setting.

Conclusion on Character and Appearance

34. Whilst it is not a valued landscape for the purposes of NPPF paragraph 174 a), the appeal site is nonetheless a pleasant area of countryside, representative of the host landscape type, including some of the special qualities. Whilst the appeal proposal would retain high value landscape features such as hedgerows and woodland, the irreversible loss of the characteristic pastoral fields on the valley side and the moderate degree of envelopment of Badgershill wood and

the combe valley by housing to the south and east would be harmful in landscape terms. The character of the appeal location is, however, appreciably affected by existing and planned development, including noise from the adjacent A39, which diminishes the landscape character at the appeal site to no more than medium value. There would be relatively few public perspectives in which the harm to the landscape would be experienced. The principal one would be along Abbotsham Road but this must be seen in the context of the forthcoming change at this location resulting from the major urban extension on the adjoining Winsford Park site. That reflects that sustainable growth in Bideford as part of the recent NDTLP has required incursion into comparable areas of the host landscape type and on this basis the appeal proposal would be little different and no more harmful from a landscape perspective.

35. Overall, the harm to the character and appearance of the area would be moderate. Accordingly, the proposal would be contrary to Policies ST14 and DM08a of the NDTLP which seek to protect and enhance local landscape character. These policies are consistent with the NPPF at paragraph 174.

Issue 2 - Biodiversity

36. There are no statutory biodiversity designations at the appeal site or immediately adjoining it. Badgershill Wood on the appeal site is a locally designated Site of Nature Conservation Interest being a woodland priority habitat. At the time of this appeal, Badgershill Wood is not on the ancient woodland inventory but a review is in progress⁷. An ancient woodland specialist from the Devon Biodiversity Records Centre has surveyed the wood and concluded that the woodland should be treated as provisional Ancient Woodland. Confirmation of any part of Badgershill Wood as Ancient Woodland remains to be determined. On the opposite side of the Kenwith Valley to the appeal site is Godborough Castle and Turners Wood County Wildlife Site (CWS), albeit separated by intervening land and lanes on the valley floor. Further to the east, at some distance (c. 730 metres), is the Kenwith Valley Local Nature Reserve (LNR). The site is within the zone of influence of the Taw Torridge Estuary SSSI, being approximately 1.9km to the east of the SSSI.
37. The appeal site has been comprehensively surveyed for its flora and fauna in accordance with recognised Phase 1 habitat survey methodologies. The vast majority of the site is intensively grazed improved grassland which is shown to have relatively little biodiversity value. The habitats of greatest value are Badgershill Wood and the various hedgerows in and around the site. Badger setts are recorded within the wood and the hedgerows provide corridors for both foraging badgers and recorded bats species. No development is proposed within the woodland. Other than for two vehicular access points, an internal road connection through hedges H1 and H9 and modest pedestrian/cycle connections into Northdown Road and Osborne Lane, the vast majority of hedgerows would be retained, including that proposed to be translocated along Abbotsham Road.
38. Retaining these higher value ecological habitats provides a strong basis for conserving the biodiversity value of the site including its ability to continue to provide meaningful wildlife connectivity through the site. Their retention and buffering would also provide a platform for enhancing biodiversity on the site. This could be secured by condition to inform subsequent detailed proposals.

⁷ Anticipated to conclude by April 2023

The minor loss of hedgerows would be compensated for by the significant enhancement of hedgerows around the site and significant additional comparable habitat provision including planting around Badgershill Wood.

39. In respect of Badgershill Wood, the proposed conditions to provide certainty that the north-west part of the site would be retained as undeveloped farmland would valuably enable Badgershill Wood to 'breathe', including unhindered movement for foraging and wider connectivity into the Kenwith Valley. In this way, the treatment of Badgershill Wood would be markedly different to the heavily enclosed combe woodland on the neighbouring Londonderry Farm development. Furthermore, as pointed out by Dr Mansfield in evidence, the layout at Londonderry Farm generally backs onto the wood, reducing natural surveillance and collective responsibility. Whilst layout and design are reserved matters in this case, it is already recognised in the evidence that development could be set back but orientated towards the woodland on the appeal site thus reducing potential anti-social issues and risks for the ecological welfare of the wood. Accordingly, I am satisfied that detailed matters of layout and design could appropriately form part of the approach to ensuring Badgershill Wood is protected and embraced by future residents for its value for nature on their doorsteps.
40. As set out above, work is ongoing to determine whether parts of Badgerhill Wood comprise ancient woodland, as such it is prudent to take a precautionary approach. Having Paragraph 180c) of the NPPF in mind, I note that the proposals would not result in the loss of any woodland and that more generally a 15 metres buffer to the woodland, which would provide appropriate avoidance of harm as per Natural England's standing advice⁸ can be achieved. Such a measure could be secured by condition to direct detailed layouts and design at the later reserved matters stage. This would be an effective approach.
41. In terms of whether the appeal proposal would deteriorate the quality of the prospective ancient woodland and the overall biodiversity value of Badgershill Wood by enabling public access and through the general proximity of development, matters are balanced. From my observations on site, livestock grazing, human activity and lack of management means significant parts of the wood lack valuable understorey, scrub and woodland ground flora. It is fair to describe the current condition of the woodland as moderate. Whilst the woodland provides a priority habitat and supports badger setts and potential roosts for bats, it could, with proper management, provide a more ecologically beneficial and diverse habitat. Consequently, the appellant proposes a woodland management plan, as part of a wider Landscape and Environmental Management Plan (LEMP), all of which could be secured by condition. This could include details for measures to protect areas within the wood from access and buffering of the woodland with additional planting. As such I find the appeal proposal would present an opportunity to significantly enhance the management of the wood for wider biodiversity and its potential ancient woodland interest.
42. Access within the woodland could be managed by way of clearly identified routes and providing information to future residents and visitors. Given the topography within the wood, there are obvious existing paths that are likely to

⁸ See CD4.8 Natural England Correspondence 20 November 2020

form the basis of limited informal routes in the wood, the details of which can be determined as part of subsequent detailed proposals and accompanying management plans secured by condition. Additionally, more sensitive parts of the wood could be fenced off to restrict access. This approach may not exclude all activity from the remainder of the woodland, but any residual use would be at a level that would not cause significant harm to the woodland or give rise to its deterioration.

43. Based on the survey work (2017-20)⁹, development would avoid and suitably buffer the location of main and outlier badger setts within Badgershill Wood. The proposed retention of land to the north-west of the site as open farmland together with hedgerows in and around the site would maintain connectivity with the woodland for foraging. Additional survey work could be secured by condition to ensure that prior to the commencement of construction work any changes in the location of badger setts and associated activity are identified, so as to enable effective protection measures to be put in place. In terms of public access into Badgershill Wood, unmanaged this would create potential issues of disturbance for badgers. To address this, areas within the woodland could be fenced off, a perimeter fence with badger gates erected around a suitable boundary to the woodland to further manage and limit the access points into the wood and information/signage provided. These are matters of detail that could be secured via conditions as part of the proposed environmental and woodland management plans. At this in principle stage, I am satisfied that development would avoid those parts of the site hosting badger setts and that reasonable options exist to manage access at the woodland in a way which would not harm the existing badger population.
44. Appropriate bat surveys have been undertaken and various bat species have been recorded at the appeal site with potential bat roosts identified in Badgershill Wood¹⁰. The use of hedgerows within and around the site for commuting and foraging bats is important. With the exception of the removal of very short lengths of hedging for external and internal accesses, the woodland and hedgerows are otherwise to be retained. Again, the details for the buffering of existing woodland and hedgerows around the site to protect and enhance bat routes could be secured through appropriate conditions. Similarly, the luminosity of external lighting in areas potentially sensitive for commuting and foraging bats could be reasonably dealt with by way of a condition. Overall, I am satisfied that the appeal proposal would not adversely affect bat populations at the site subject to various conditions being imposed.

Other biodiversity matters

45. Cat predation is raised as an issue. The survey work has identified few species at present on the site that would be at risk. No dormice have been recorded and the breeding bird assemblage¹¹ on the site, notwithstanding local observations of various raptors and other species, can be reasonably described as being of no more than local importance. The opportunity to diversify habitats (including gardens), improve the woodland and strengthen hedge banks across the site would result in tangible habitat gains likely to support increased numbers of generalist garden and woodland birds. Additionally,

⁹ Badger Survey Report (FPCR, September 2020)

¹⁰ Table 11 and Figure 22, Core Document 1.10 (Ecological Appraisal, FPCR, September 2020)

¹¹ Table 12, Core Document 1.10

measures such as bird boxes within Badgershill Wood would support woodland birds further.

46. The appeal site is within the North Devon Biosphere reserve, in the transition area rather than the core area. In support of NDTLP Policy ST04 (Quality of Design), paragraph 3.29 of the plan encourages development within the transition area to accord with the objectives of the Biosphere Reserve Strategy which include, amongst other things, restoration and functioning of habitats and improve resilience to climate change. As set out above, the appeal proposal would retain valuable habitats on the site, it would provide for significant additional on-site green infrastructure, including SuDS basins that will not only manage waterflows in the context of climate change but also increase habitat diversity. The appeal site would continue to function in terms of enabling wildlife connectivity at this edge of Bideford. Overall, I find the appeal proposal would not harm the objectives of the Biosphere Reserve Strategy.
47. Reference was made to the benefits of consolidating land for nature within the Kenwith Valley, linking the LNR site to the east with the Godborough Castle CWS and ultimately to incorporate Badgershill Wood. Allied to this, objectors assert that the wider local ecology of the Kenwith Valley would be subject to a significant adverse effect. Given the intervening distances there would be no harm to the biodiversity value of the LNR or the Godborough Castle CWS. With the retention of the north-west of the site as open farmland, Badgershill Wood would continue to function as part of a coherent ecological network in the Kenwith Valley. The appeal proposal would incorporate significant areas of green infrastructure such that those parts of the site closest to the Kenwith Valley would remain open and largely for the benefit of biodiversity. With regard to the Taw Torridge Estuary SSSI, downstream of the Kenwith Valley, given the separating distance (1.9km) and the proposed use of SuDS to manage water quality impacts, I share the assessment of Natural England that there would be no adverse impact on the qualifying interests of the SSSI.
48. The NPPF at paragraph 174 (d) states that development should provide for biodiversity net gain (BNG). NDTLP Policy DM08 at part 8 states that development should enable net gains by designing in biodiversity features and enhancements. The Environment Act 2021 will set net gain as being at least 10% (likely to come into force in late 2023). The appellant has undertaken an assessment using recognised metrics¹² and updated on the basis of the RDFP. This shows a BNG in habitats of 31.19% and in hedgerow habitats of 11.75%, with sizeable benefits coming from improvement of the woodland habitats and alternative management of areas that are currently modified grassland in poor condition. The outputs are disputed with local objectors commenting that the assessment has underestimated the baseline value of the site and has not adequately factored in matters such as cat predation and dogs. Having regard to the latest BNG Briefing Note and Habitat Plan¹³, and noting that BNG is principally a measure of habitat units and their condition/value, I find the outputs to be credible at this indicative outline stage such that the final detailed scheme can achieve a net gain amply in excess of 10%. The ability to deliver biodiversity net gain in excess of the minimum 10% is a benefit to be weighed any balance.

¹² DEFRA metric v2.0 – see Dr Mansfield Proof of Evidence paragraphs 6.2 & 6.3

¹³ Core Documents 9.1 and 9.2

Conclusion on Ecology

49. Overall, the appeal proposal would minimise impacts on biodiversity, including protected species, and deliver quantifiable biodiversity net gain. The retention of the north-west of the site as undeveloped land, secured by condition, would ensure that, together with retained and augmented hedgerow buffer provision, ecological connectivity through the site would be maintained and improved. The issue of public access within Badgershill Wood is balanced in terms of the benefits and the risks to biodiversity. Subject to various comprehensive conditions concerning management¹⁴ during and after construction and the provision of necessary buffering and lighting controls, together with the detailed consideration of the layout of the proposed development, I consider the any potential adverse impacts would be appropriately mitigated. Through direct avoidance and with various conditions in place, there would be no loss or deterioration of the prospective ancient woodland. Overall, the appeal proposal would accord with Policies ST14 and DM08 of the NDTLP in terms of protecting the natural environment, avoiding an adverse impact on protected species and the locally designated Badgershill Wood site, providing overall biodiversity net gain and maintaining the coherent local ecological network at this edge of Bideford. The proposal would also accord with paragraphs 174 and 180 of the NPPF.

Issue 3 - Material considerations indicating a decision other than in accordance with the development plan.

50. At the time the LPA made its decision and during the appeal process there has been no dispute between the main parties that the LPA cannot demonstrate a requisite five-year supply of deliverable housing sites. The latest 'Five Year Housing Land Supply Position Statement' available provides the position as of 1 April 2019¹⁵. Both main parties refer to the Great Torrington appeal decision¹⁶ in Torridge which concluded in March 2020 that notwithstanding the adoption of the Local Plan in 2018, the housing land supply at that time was held to be equivalent to 4.23 years. A considerable period of time has passed since the detailed assessment of housing land supply carried out in that decision (at paragraphs 30-73) which has left some to suggest the housing land supply picture in North Devon may well have improved as NDTLP allocations come to fruition. Alternatively, the appellant surmises that the situation is likely to have deteriorated. Either way, there is no empirical alternative to the 4.23 years figure, which my colleague methodically arrived at. Consequently, based on the evidence that is before me, I too conclude that there is no demonstrable five-year supply of deliverable housing land and that the situation remains at best only 4.23 years.

51. The NPPF at paragraph 60 states that to support the Government's objective of significantly boosting the supply of homes, it is important that a sufficient amount and variety of land can come forward where it is needed. There is minimal evidence before me that the housing land supply is likely to be recovered any time soon. A review of the NDTLP is in its very early stages.

¹⁴ Both a Construction Management Environmental Plan and a Landscape Ecological Management Plan (including a Woodland Management Plan)

¹⁵ Core Document 7.1

¹⁶ APP/W1145/W/19/3238460 – Land at Caddywell Lane/Burwood Lane, Great Torrington (issued 18 March 2020)

52. Policy ST21 of the NDTLP provides a framework for managing the delivery of the housing requirement in North Devon based on maintaining a five-year supply of deliverable housing land. The engagement of the mechanisms contained in Policy ST21 was carefully considered as part of the Great Torrington appeal which found that recent levels of housing delivery mean parts 1 and 2 of the policy were brought into effect¹⁷. Notwithstanding the passage of time since that appeal decision, there are no submissions from the LPA that ongoing monitoring now indicates that parts 1 and 2 of the policy are no longer engaged. The activation of part 2 of the policy is critical in this appeal given that it facilitates a recovery in housing delivery by supporting additional residential development outside of defined settlement limits subject to criteria.
53. The appeal proposal would be located at the edge of Bideford, the top tier location in Torridge for sustainable housing growth as identified in NDTLP Policies ST06, ST08 and BID. The town is identified to accommodate significant growth at 4,127 homes, such that the scale of the appeal proposal would not unbalance the spatial distribution of housing identified in the NDTLP. The scale of the housing land supply deficit at the time of the Great Torrington appeal was determined to be some 1,600 units. The appeal proposal would deliver approximately 13% of the shortfall. Accordingly, criteria (a) & (c) of Policy ST21 (2) would be satisfied.
54. The appeal site is identified in the Council's Strategic Housing Land Availability Assessment (SHLAA) at parcels BID/10 and BID/11 as being developable, with an indicative combined capacity of 210 units (almost identical to what is being proposed here). To echo, the Great Torrington appeal at paragraph 72. "This is precisely the type of site that should be released if Policy ST21(2) is engaged." As a medium-sized development opportunity requiring no significant up-front infrastructure delivery to unlock the site, it is likely to be an attractive proposition to housebuilders. A significant amount of preliminary technical work has been undertaken to inform the outline proposal such that there should be no impediments to the timely submission of reserved matters and first construction within the required timeframes. The appellant submits that up to 150 homes could be completed within the five-year period. That feels potentially optimistic but even on a more cautious approach of say 100 homes, the appeal proposal would still make a meaningful contribution in addressing the deficit in housing supply in the short term. As such, I find criterion (b) of Policy ST21 (2) would be met.
55. Criterion (d) of ST21(2) references being in accordance with other NDTLP policies, in so far as they apply. Whilst I have found moderate landscape harm contrary to Policies ST14 and DM08a, in all other respects I find the proposal would accord with relevant development plan policies. In terms of the landscape harm, I have set out above, that such harm appears unavoidable for Bideford to sustainably expand, noting the location of NDTLP allocations. Moreover, paragraph 7.65 of the NDTLP sets out that when Policy ST21(2) is triggered it is expected that such sites will be developable SHLAA sites and will normally adjoin development boundaries for defined settlements. The appeal site provides a logical location for Bideford to expand having regard to criterion (d) of Policy ST21(2).

¹⁷ Paragraph 68 of 3238460

56. To conclude on this main issue, there are two key considerations. Firstly, the LPA cannot demonstrate a five-year supply of deliverable housing sites and so paragraph 11(d) of the NPPF applies. This approach is also embodied at Policy ST01 of the NDTLP. Secondly, the appeal proposal would accord with the requirements of NDTLP Policy ST21 in terms of recovering the deficit in housing land supply on unallocated but deliverable edge of settlement sites, at a proportionate scale and in the right locations.

Other Matters

Sustainable Location

57. The settlement of Bideford takes the form of an east-west lozenge of development spanning both sides of the River Torridge. The appeal site is at the western edge of the town. On this side of the river is the town centre, community hospital, schools, college and the sizeable employment and retail offer on Clovelly Road. Proposed residential allocations in the NDTLP would significantly extend and consolidate the east-west form of Bideford most notably at Winsford Park to the south and west of the appeal site. As set out in Policy BID01 of the NDTLP, the adjacent Winsford Park allocation is intended to provide local infrastructure, including a primary school, as well as connections through to the Clovelly Road. Accordingly, the appeal site is reasonably well-related to existing services and facilities in Bideford. Housing development at the appeal site would not be out-of-kilter with the planned settlement pattern for the town to 2031 which has been adjudged to be sustainable as part of the relatively recent NDTLP process.

58. In terms of modes of travel, Abbotsham Road would provide the most direct route for pedestrians and cyclists to access facilities in Bideford. For most of its length into the town centre there is a good standard of footway on both sides of the road, with street lighting, and a pedestrian crossing where Abbotsham Road meets High Street. The appeal proposal would also involve widening the short length of footway along Abbotsham Road from Osborne Lane to Lane Field Road. Whilst I accept that some of the distances involved, such as to the town centre, would be at the margins of reasonable everyday walking distances, nonetheless, the infrastructure would exist to provide a safe and convenient option for those who choose to walk to access services in the town.

59. The site is comfortably within reasonable cycling distances to facilities in Bideford. Good quality off-road cycling infrastructure has been installed along Abbotsham Road as part of the nearby Moreton Park development. The appeal proposals would readily connect to this, including upgrades along Abbotsham Road to an improved crossing point over to Moreton Park¹⁸. Elsewhere, Abbotsham Road is either 30mph or 20mph and street-lit, conditions which would be conducive to safe cycling. Whilst there is a notable undulation in Abbotsham Road close to the Harsleywood development, it is otherwise of a relatively comfortable gradient for most cyclists and no impediment to those on electric bicycles. Additionally, the proposed Kenwith Valley Cycle Route (as promoted at Policy BID08 of the NDTLP) to the north of the appeal site would provide an alternative, flatter route into the town once implemented. Separate pedestrian and cycle accesses are illustratively shown onto Osborne Lane and Northdown Road to the east and north of the site respectively. Whilst these would be matters of detail for a reserved matters stage, I saw nothing on site

¹⁸ Drawing P20034-002A

that would indicate that in principle these connections could not be achieved. The differences in levels between the appeal site and Northdown Road are modest and the network of lanes in the Kenwith valley are lightly trafficked and would provide a safe means of linking to proposed cycle path along the valley. Overall, the appeal site would be sustainably located to support a degree of modal shift to cycling.

60. Not everyone will want to, or be able to, walk or cycle the distances involved in reaching services and facilities in Bideford despite their relative proximity. Buses serve the adjacent Londonderry Farm development with bus stops only a short walk from the appeal site. A less frequent bus service connects along the Abbotsham Road and the appeal proposal could provide for a bus stop on the site frontage as part of any detailed proposals in conjunction with any provision to be made as part of the urban extension on the opposite Winsford Park site. Accordingly, there would be reasonable opportunities for residents to access bus services, consolidating the appeal site's sustainable location.
61. Allied to the issue of sustainable location is the issue of whether infrastructure in Bideford could sustainably support additional demands arising from the proposed development. The evidence, including from infrastructure providers, points to some moderate capacity issues but there are no identified 'showstoppers' and that ultimately appropriate mitigation could be secured, if required. I deal with this below under my separate consideration of the proposed planning obligations.
62. Taking all of the above into consideration and recognising that land directly adjacent to the appeal site is allocated for major residential development in the NDTLP, the appeal proposal would be sustainably located. The location would be consistent with the transport strategy in NDTLP Policy ST10, the strategy in Policy BID, and NPPF paragraph 105 in terms of managing patterns of growth.

Highways

63. Matters of access are not reserved and the appeal proposal would involve two points of highway access onto Abbotsham Road. The proposal is informed by a Transport Assessment, a Travel Plan and Stage 1 Road Safety Audit. I give significant weight to the absence of objection from the local highway authority¹⁹ subject to conditions and planning obligations being secured. There is little before me to demonstrate that the location and standard of the junctions proposed onto Abbotsham Road, the details of which could be secured by condition, would not be safe. Road traffic accidents on Abbotsham Road are relatively low and there is no particular pattern or cluster to indicate a particular highway safety issue²⁰. The necessary visibility splays, in accordance with Manual for Streets standards, can be achieved at the appeal site following the proposed translocation of the existing hedge bounding onto Abbotsham Road and the extension of the 30mph speed limit.
64. In terms of the performance and safety of the wider local road network, access to the A39 can be readily achieved via the 'Big Sheep' junction a short distance to the west of the site. I note within the appellant's Transport Assessment²¹ that any required upgrades to 'Big Sheep' junction are to be solely funded by

¹⁹ Core Document 4.16

²⁰ Page 83 of Core Document 1.8

²¹ Paragraph 6.3.3 of CD1.8

the Winsford Park development and I have not read anything to the contrary, including from Devon County Council Highways. With regards to the Abbotsham Road into Bideford, the highway is of a good width and standard. I observed the highway performance during both the AM and PM peaks, and whilst my site visit can only provide a snapshot, I nonetheless observed that traffic maintained reasonable flows. Reference has also been made to the appeal site generating "rat-running" traffic onto Northdown Road but there would be no direct vehicular access from the site. Furthermore, the character and width of Northdown Road does not make it an attractive alternative for vehicular traffic accessing the centre of Bideford compared to the directness and good standard of Abbotsham Road. Consequently, there would be no harm to highway conditions on Northdown Road.

65. The appellant has undertaken proportionate forecasting work, which also factors in likely background growth correlated to circumstances in Torridge. The appellant's transport assessment also considers the likely impact of the Winsford Park allocation. The appellant has taken observed traffic movements at the nearby Lane Field Road junction to develop locally derived trip rates generated by the appeal development. This has been checked against a standard methodology (TRICS) and shown to broadly corroborate locally based observations. Based on the higher number of 290 houses, the appellant's transport assessment shows that nearby road junctions on Abbotsham Road would continue to operate with spare capacity, including when allowance is also made for Winsford Park. Overall, I am satisfied that the residual cumulative impacts on the road network would not be severe. As such, the proposal would accord with NDTLP Policy ST10 and NPPF paragraphs 110 and 111.

Flood Risk

66. The appeal site is located with the Bideford Critical Drainage Area (CDA) as defined by the Environment Agency²². This does not preclude new development, but it does require a careful approach to considering drainage matters to ensure known issues, notably within the Kenwith Valley, are not exacerbated. Minimum drainage standards are set for the CDA so as to reduce current run-off rates, principally through the use of the Sustainable Drainage Systems (SuDS) hierarchy.
67. Most of the appeal site has a very low risk of flooding due to the rising topography. Only a narrow area along the small watercourse within the site is at risk of fluvial flooding and through the imposition of conditions development can avoid this area. Elsewhere the risk of flooding could be reduced by daylighting an existing culvert for that part of the watercourse on the site and again this could be secured by condition, as sought by the Local Lead Flood Authority (LLFA).
68. The appeal site drains towards the watercourse in the centre of the site which flows north into the adjacent Kenwith valley, an area already at risk of flooding. Extensive areas of what is currently permeable grass pasture (where run-off is currently uncontrolled) would be developed but the rate of run-off can be suitably managed through the application of SuDS to ensure that surface water run-off rates would be reduced to the 1 in 10 year event consistent with the CDA standards. Due to restricted underlying permeability the proposed solution is attenuation basins of sufficient scale to ensure a rate of discharge

²² Core Document 6.17

equivalent to 1 in 10 year discharge rate, up to and including the 1 in 100 year rainfall event (plus 40% allowance for climate change). The long-term storage capacity of the basins has been modelled to account for a 16 hour storm duration. Each development parcel is indicatively shown to have its own scaled SuDS basin and the details of these could be appropriately secured by condition. The appellant has re-run calculations based on a 215 dwelling scheme and as such I am satisfied that there would be a betterment in run-off rates compared to existing uncontrolled conditions²³. Accordingly, the appeal proposal would not increase flood risk elsewhere, including within the Kenwith Valley flood storage area. The proposed development would also reduce flood risk within the site, including in habitats such as Badgershill Wood.

69. I attach significant weight to the absence of objections from both the Environment Agency and the LLFA on the principle of the approach outlined by the appellant in their Flood Risk Assessment and subject to conditions being imposed on any permission. Overall, on the issue of flood risk, I find the proposal would accord with NDTLP Policies ST03 and BID (i) as well as paragraphs 167 and 169 of the NPPF.

Miscellaneous

70. References have been made to Policies ST04 and DM04 of the NDTLP in respect of design principles and quality. Notwithstanding the separately identified moderate landscape harm, I have little before me to demonstrate that a high-quality development that respects the key characteristics and special qualities of the site cannot be secured through the detailed reserved matters and by various conditions imposed at this outline stage, including the preparation of a design code. Accordingly, I find no conflict with these policies.
71. With regards to the impact on best and most versatile (BMV) agricultural land, the appellant has undertaken a detailed analysis²⁴ as part of the appeal process. Applying the NPPF definition of BMV this shows that some 30% of the site is grade 3a land, with the remainder being grade 3b and 4 or woodland. Approximately a quarter of the identified Grade 3a land would be in the area that could be subject to a condition to be retained in agricultural use. Accordingly, the appeal proposal would result in a very small loss of BMV at the lower end of the index. Having regard to NPPF paragraph 174(b) and NDTLP Policy ST14 (d) this would be a very minor harm to be weighed in any balance.
72. I have been referred to a separate 2015 appeal decision which dismissed a nearby scheme for 3 houses in the Kenwith Valley²⁵. I have few details about the circumstances for that appeal, which predates the adoption of the NDTLP. I also note my colleague in that decision found significant harm to the character and appearance of that part of Bideford primarily because the scheme would not physically and visually appear part of the urban area. Accordingly, my colleague in applying the tilted balance arrived at a conclusion that the significant environmental harm outweighed the modest benefits arising from only 3 additional houses. I have assessed the appeal proposal before me on its own merits, including the materially different circumstances of only moderate harm to character and appearance (noting the changing context with the adjacent planned Bideford West Urban Extensions site) together with the

²³ Table 2, Core Document 9.11

²⁴ Agricultural Quality of Land North of Abbotsham Road, Bideford, Land Research Associates August 2022 [CD9.5]

²⁵ APP/W1145/W/15/3121618

significant benefit of over 200 additional homes at a time of housing under-delivery. Accordingly, I give very little weight to the 2015 appeal decision.

Planning Obligations

73. The appellant has submitted a Unilateral Undertaking (UU) containing covenants to both Torridge District Council and Devon County Council which would provide for various planning obligations proposed to mitigate the impact of development and to make provision for affordable housing. The UU is submitted in the form of a deed, binding those with an existing and future interest in the land. The UU allows me to discount any obligation that does not the three statutory tests at Regulation 122 of the Community Infrastructure Levy (CIL) Regulations 2010 (as amended), which are also set out at NPPF paragraph 57.
74. In general terms, Policy ST23 of the NTDLP sets out that developments will be expected to provide, or contribute towards the timely provision of physical, social and green infrastructure made necessary by the specific and/or cumulative impact of the development. The policy further identifies that whilst the starting point is on-site provision, off-site provision will be secured via planning obligations (there is not a CIL in North Devon). The policy also stipulates that development which increases the demand for off-site services and infrastructure will only be allowed where sufficient capacity exists or which extra capacity can be provided, including through developer contributions. Given the appeal proposal is in outline and the precise housing numbers and mix would be addressed at Reserved Matters, various planning obligations are necessarily expressed as a formulaic per dwelling requirement.
75. The submitted obligations would provide for the delivery of 23% of the total dwellings to be affordable housing on a tenure split of 75% affordable rent and 25% intermediate housing. The obligation provides for an affordable housing scheme to be submitted to and approved by the LPA and appropriate trigger points for the delivery of the housing in accordance with part 8 of Policy ST18 of the NDTLP. The obligation contains a reasonable mechanism to transfer the affordable dwellings to a Registered Provider. In terms of the occupation of the dwellings, Torridge District Council operates a Choice Based Lettings system, which would ensure those with the greatest housing need would be prioritised. The obligation contains an appropriate backstop in the form of a reasonable timeframe to transfer the dwellings.
76. The requirement in the NDTLP at Policy ST18 is for 30% affordable housing on residential development proposals of 11 or more dwellings. Part 5 of the policy states that negotiation to vary the scale and nature of affordable housing provision, along with the balance of other infrastructure and planning requirements, will be considered on the basis of a robust appraisal of development viability. Concern has been expressed that following the illustrative RDFP and the appellant's proposal to limit the development at no more than the 215 dwellings, the viability of the appeal proposal, and in particular the provision of affordable housing is uncertain. The LPA has engaged the District Valuer who advises that, on the basis of a 215 dwellings scheme, a 23% on-site provision would be viable in the context of other infrastructure and planning requirements. On this basis, I find the affordable housing obligation would meet the requirements of NTDLP Policy ST18, the

Affordable Housing Supplementary Planning Document 2022 and the relevant tests and so I have taken it into account.

77. With regards to open space provision, Policy DM10 of the NDTLP requires development to provide new accessible green infrastructure, including public open space and built facilities. The policy cross-references Table 13.1 in the NDTLP which summarises the sought standard and quantum of provision based on population. The obligation commits the owner of the site to submit an Open Space Scheme and Management Plan for approval by the LPA at the time of the first Reserved Matters application. Additionally, the obligation requires details of the Private Management Company who will manage and maintain the open space to be submitted to and approved by the LPA. Consequently, the planning obligation would commit the purchasers of each dwelling to pay a fair and reasonable proportion of the costs incurred by the management company in delivering the approved open space scheme and management plan. Illustratively, at this outline stage, the appeal scheme is potentially capable of delivering a standard and quantum of green infrastructure, including public open space, that compares very favourably to that sought by Policy DM10. On this basis I find the proposed open space transfer and works obligation is necessary and would meet the relevant tests.
78. The UU also contains provision for a 'Built Recreation contribution' defined by precise sums on a per dwelling basis to contribute proportionally towards a new community hall on the adjoining Winsford Park site, swimming pool provision at the Torridge Leisure Centre in Northam and 3G artificial playing pitch provision in Bideford. There is little in the LPAs Committee Report or CIL Compliance statement to explain how these contributions would meet the necessary tests other than a general assertion around increased usage and pressure. There are few details regarding the Winsford Park facility and whilst I was verbally advised at the Inquiry of a shortfall in the funding for the community hall there are no evidence before me to corroborate this, the extent of any shortfall and how the sum sought would be fairly and reasonably related in scale and kind. Similarly, I have very little information on the existing capacity of the Torridge Leisure Centre pool, including any deficiency, together with any information on the ability or plans to expand and improve this facility. References at the Inquiry to a "built facilities calculator" and to the Infrastructure Delivery Plan do not assist when those documents, or relevant extracts, have not been provided. The same applies in respect of the sought sum towards 3G artificial pitch provision. Consequently, I find the proposed built recreation contributions would not meet the necessary tests and so I have not taken them in to account.
79. The UU contains a provision to make a per dwelling contribution to healthcare in the form of per dwelling contribution to mitigate impact on the Northam Surgery, within whose catchment the appeal site is located. The NHS Devon Clinical Commissioning Group (CCG) advises that the surgery has insufficient capacity to accommodate demand from the appeal site and is already oversubscribed on its patient list totals by 120%. A modest extension to the Northam surgery site is proposed, to which I was advised at the Inquiry that planning permission has now been granted. The CCG has set out a formula which shows that the contribution towards capital costs of extending the surgery would be fairly and reasonably related in scale and kind. Overall, I find the contribution would meet the necessary tests and so I have taken it into account.

80. In terms of the obligations to Devon County Council (DCC), there are various in relation to transport. The first relates to a contribution towards the Kenwith Valley Cycle Route (KVCR). This proposed route is identified in the NDTLP, with Policy BID08 in support of its delivery. To this end DCC has undertaken a design phase and identified the overall capital cost of the scheme at c.£2million. This is to be regarded as a minimum cost given recent increases in construction costs. Approximately a third of this capital cost has been secured via other developer contributions leaving a significant funding shortfall. In terms of its necessity, the proposed KVCR is a very short distance to the north of the appeal site, connected by quiet country lanes. The cycle route would provide a safe, generally flat route into Bideford along the valley floor as well as a leisure route to the coast. It would be an attractive alternative to using the car, consistent with NPPF paragraphs 104 c) and 105. The DCC methodology applies a pro-rata contribution based on a proportion of overall housing growth in Bideford and Northam. Accordingly, the proposed contribution would be fairly and reasonably related in scale and kind to the appeal proposal. The proposed KVCR contribution would meet the necessary tests.
81. Vehicular traffic from the appeal proposal will assign to the adjacent A39 North Devon Link Road (NDLR) in order to access facilities in Bideford, Northam and further afield in Barnstaple as shown in the appellant's Transport Assessment. Various junctions along the NDLR require improvement to upgrade capacity and enhance safety including at Bideford. Strategically this is consistent with Policy ST23 of the NDTLP and also Policy ST10 which seeks to maintain the operational effectiveness of the A39 as a strategic road. The Buckleigh Road junction (B3236) has recently been upgraded and so the UU proposes a per dwelling contribution towards the upgrading of the A39/A386 Heywood roundabout, a project specifically identified at part h) of Policy BID in the NDTLP in terms of supporting sustainable growth in Bideford. The proposed project would involve increasing capacity on the approaches to the roundabout and installing toucan crossings, for which indicative plans have been prepared. I was advised at the Inquiry that the cost of the Heywood roundabout improvement would be c.£3.7million and as per the approach to KVCR, DCC has taken an approach of a pro-rata contribution based on a proportion of overall housing growth in Bideford and Northam. As a large-scale windfall site, the appeal site was not factored into previous apportionment of costs of the planned growth in the NDTLP. Any minor concerns I have about this are in large part offset by the valid submission made by DCC that infrastructure projects are suffering from upward cost pressures and as such any additionality of contributions from the appeal site would help ensure delivery of the Heywood scheme. At £1,345 per dwelling, the appeal scheme would contribute less than 10% towards the overall cost of the project, which I find to be fairly and reasonably related in scale and kind, when taken in the round with other major growth proposals in Bideford and Northam. I therefore find the obligation would meet the tests and so I have taken it into account.
82. The final transport related obligation concerns the cost of implementing Traffic Regulation Orders (TRO) to extend the 30mph speed limit west along Abbotsham Road and to close-off the majority of Osborne Lane to vehicular traffic. Extending the 30mph speed limit is necessary to secure safe vehicular access into the site and improving safety more generally for all highway users on that part of Abbotsham Road fronting along the appeal site. I was advised

that it is an objective of DCC to close Osborne Lane to vehicular traffic from the trackway to Lower Winsford Cottage down to Northdown Road. Osborne Lane is a very narrow highway with banks on either side, as such it is generally unappealing for vehicular traffic. I am not persuaded that its closure would adversely affect traffic movements from the appeal development, which would use the more direct Abbotsham Road. Additionally, closure of most of Osborne Lane would allow it to serve as an attractive pedestrian and cycle route connecting eastern parts of the site more directly to Abbotsham Road thus promoting walking and cycling as part of a genuine choice of transport modes for future occupiers of the appeal development. This would be consistent and paragraphs 104 and 105 of the NPPF. The sum sought for the TRO is very modest. Overall, I therefore find the TRO obligation is necessary.

83. Turning to education, contributions are sought in respect of primary education (places and land), Special Educational Needs (SEN) and early years provision. In respect of primary education DCC advise that whilst there is some current headroom to accommodate additional pupils, existing permissions and allocations will significantly exceed the capacity of Bideford primary schools by some 80%. Major windfall developments, such as the appeal proposal, will add to this situation. The NDTLP plans for new primary school provision in the town, including a potential 420 place school on the adjacent Winsford Park site. As such a proportional contribution from qualifying dwellings²⁶ in the appeal proposal towards expanding primary education provision in terms of both places and additional land acquisition costs in the town is necessary and the sum sought fairly and reasonably related in scale and kind. I have therefore taken the primary education contributions into account.
84. Turning to SEN provision, the approach of DCC is to request a contribution on all proposals over 150 dwellings, as a quantifiable scale of development likely to generate whole pupil numbers who will require a specialist place. The DCC document on developer contributions linked in the Council's CIL Compliance Statement states that as of December 2021 there is no spare SEN capacity in Devon. As such a contribution would be necessary. Whilst the cost of individual SEN places is significant, the appeal proposal would generate a relatively small demand and as such a modest cost per qualifying dwelling. Overall, I find the contribution would be fairly and reasonably related in scale and kind. I have therefore taken the contribution into account.
85. With regards to early years provision (2-4 year olds) there is little before me, in contrast to primary education or SEN that there is a particular capacity issue (or hotspot) in Bideford such that a contribution towards providing additional statutory early places would be necessary. I note the example that the new primary school at Winsford Park could accommodate early years provision but that does not distinguish between what capacity may already exist as opposed to what may be required to serve the substantial Bideford West Urban Extension. As such I do not find the early years contribution to meet the required tests.
86. Finally, an obligation is proposed towards enhanced library provision in Bideford. Existing provision in the town falls well short of DCCs space standard for modern library facilities. A £1.25m project has been identified to provide a relocated library facility which would be addressing an existing deficiency and

²⁶ 2 bedrooms or more, as per DCC 'Education Approach for Developer Contributions' (December 2021)

providing capacity to meet the growth of the town as set out in NDTLP. The approach of DCC is take account of both existing and planned dwellings in Bideford and planned growth (some 12,000 dwellings) and divide the cost equally on a pro-rata basis at approximately £105 per dwelling. The obligation would be therefore fairly and reasonably related in scale and kind. On this basis the obligation would meet the tests and so I have taken it into account.

87. With the exception of the built recreation contribution and the early years education contribution I am satisfied that all of the above planning obligations accord with the three tests in CIL Regulation 122. Therefore, I can take these qualifying obligations into account. On this basis the appeal proposal would make adequate provision for affordable housing and other infrastructure requirements. As such, the proposed development would accord with NDTLP Policies ST10, ST18, ST23, BID and DM10.

Balance and Conclusion

88. The Planning and Compulsory Purchase Act 2004 at Section 38(6) requires that applications for planning permission be determined in accordance with the development plan, unless material considerations indicate otherwise.
89. The absence of a demonstrable 5 year supply of deliverable housing land also means NPPF paragraph 11(d) is applicable. The development plan policies which are most important for determining the application comprise NDTLP Policies ST01, ST06, ST07, ST14, ST21, BID, DM04, DM08 and DM08a. Given the housing land supply situation in North Devon, I find Policies ST06 and ST07 to be out of date. In practice this is already accounted for by the fact that part 2 of Policy ST21 provides a development plan mechanism to override these policies. That said, criterion (d) of part 2 of Policy ST21 requires proposals in all other respects to be in accordance with other Local Plan policies, in so far as they apply. As such, and notwithstanding Policy ST21, it is imperative in this appeal to consider whether the tilted balance at NPPF paragraph 11 d) applies, whereby planning permission should be granted unless any adverse impacts of doing so would significantly and demonstrably outweigh the benefits when assessed against the policies in the NPPF taken as a whole.
90. With regards to the benefits of the proposed development, there is little before me in terms of how long the shortfall in housing land supply is likely to persist. The preparation of a new Local Plan, anticipated at part 3 of NDTLP Policy ST21 is only in its nascent stages and unlikely to be adopted until the end of 2025. In my view it is unlikely that a new Local Plan will be adopted before meaningful completions are capable of having occurred on the appeal site. On this basis the delivery of up to 215 dwellings towards meeting the identified housing need in North Devon would be a very significant social benefit. Furthermore, the benefit of providing 23% of the units as affordable homes given the identified annual need to deliver 345 such homes within the context of the housing delivery shortfall across all tenures in a Borough would be substantial. In addition, the homes would be built to latest construction standards including energy efficiency and this is an additional moderate environmental benefit to be taken into account.
91. Economic benefits in terms of jobs and investment at the construction and occupation stages can be afforded moderate weight. The housing would be within cycling and walking distance of a range of services and facilities in Bideford, including those provided on the adjacent allocated Bideford West

Urban Extension (Winsford Park) development. Accordingly, there would be notable environmental and social benefits by delivering housing at a highly sustainable location. The scheme would also make a fair and proportional contribution to infrastructure provision around the town including the KVCR, the Heywood roundabout upgrade and enhanced library provision. Whilst the planning obligations are necessary to make the development acceptable in planning terms in accordance with Policy ST23 they nonetheless will bring wider benefits to Bideford and Northam residents. As such I attach a moderate weight to these wider social and environmental benefits.

92. There would be a biodiversity net gain of around 31% for habitats and 12% for hedgerows. This would be notably above the target of 10%. The proposal would provide a significant quantum of green infrastructure including areas with public accessibility as well as the scope to improve the management of existing habitats as part of agreed management plans and ongoing maintenance arrangements. Therefore, the environmental benefits for biodiversity and green infrastructure should be afforded significant weight. The proposal would also improve hydrological conditions reducing current rates of uncontrolled run-off and reducing flood risk elsewhere and I give this environmental benefit moderate weight.
93. Turning to the adverse impacts. Other than failing to secure a deliverable housing land supply, Policies ST06 and ST07 are generally consistent with the NPPF in terms of delivering a pattern of sustainable development in North Devon. As a starting point, the policies and the conflict with them should be afforded moderate weight despite their out-of-datedness. Moreover, the degree of conflict with Policies ST06 and ST07 by virtue of being beyond the settlement boundary, and weight to be given to them, is significantly lessened by the positive support for such proposals in Policy ST21 (2) of the same Plan in light of the housing land supply circumstances. As such the conflict with Policies ST06 and ST07 would be only a minor harm in this case in terms of the loss of valuable certainty from a plan-led system.
94. The development would have an adverse effect on the character and appearance of the area in relation to landscape, which would be contrary to NDTLP Policies ST14 and DM08a. The degree of harm would be no more than moderate and localised. The policies are, however, consistent with NPPF and so conflict with them carries appreciable weight notwithstanding the housing land situation. Also as set out above, I also find a very minor harm that would arise from the loss of a very small area of best and most versatile agricultural land (grade 3a).
95. Bringing this all together, I have found non-compliance with some of the most important policies in the NDTLP in the determination of this appeal, namely Policies ST06, ST07, ST14 and DM08a. As such, I find the proposal would not accord with the development plan as a whole, even though I have reduced the weight that I have given these policies due to the lack of five year deliverable supply of housing land and the provisions of Policy ST21(2).
96. Turning to part (i) of paragraph 11(d) of the NPPF there are no areas or assets of particular importance that provide a clear reason for refusing the development (by reference to footnote 7). In respect of part (ii) of paragraph 11(d) when the above considerations are taken together, and weighed in the balance, I find that the adverse impacts would not significantly and

demonstrably outweigh the benefits that I have identified. The development would be in an otherwise suitable location to boost housing supply in North Devon in accordance with NDTLP Policy ST21 (2) and when considered against the policies of the NPPF when taken as a whole. As such the presumption in favour of sustainable development as per NPPF paragraph 11(d) and at NDTLP Policy ST01 would apply. This is a material consideration in favour of the proposed development that indicates that the decision should be taken otherwise than in accordance with the development plan.

Conditions

97. A list of conditions was provided in advance of the inquiry which was presented as agreed between the two main parties in the event of planning permission being granted. I have considered the suggested conditions having regard to Planning Practice Guidance on the use of conditions and paragraphs 55 and 56 of the NPPF. Given the outline nature of the proposal, a notable number of pre-commencement conditions are proposed. As further clarified by Mr Carvel at the Inquiry, I am satisfied that the appellant has provided their agreement to the pre-commencement conditions in the terms sought by Section 100ZA(5) & (6) of the Town & Country Planning Act 1990 (as amended).
98. In addition to the standard time limit conditions (1 & 3) for the submission of reserved matters and commencement of the development, a condition (2) defining the remaining reserved matters to be approved and a condition (4) requiring the development is carried out in accordance with the approved plans are both needed in the interests of proper planning and for the avoidance of doubt. Further conditions (5 & 6) controlling the quantum of housing development and retaining land in the north-west of the site for agricultural use are both necessary for the avoidance of doubt and to ensure that environmental impacts on the landscape are reduced to an acceptable level and the biodiversity value of the site, including connectivity to the Kenwith Valley, is not harmed.
99. A condition (7) requiring a phasing plan and associated details is necessarily a pre-commencement condition in the interests of proper planning and to ensure the site, which contains distinct internal compartments of land, comes forward in a comprehensive and co-ordinated manner. Given the topography of the site a condition (33) requiring plans as part of the reserved matters to show finished floor levels of the proposed dwellings and other construction levels across the site, is necessarily a pre-commencement condition and required to ensure the proper planning of the site, to protect the character of the area and in the interests of residential amenity.
100. To ensure appropriate implementation of the approved landscaping details, a further condition (8) is necessary requiring that landscaping takes place at an appropriate part of the year and that there is an appropriate mechanism to replace tree or plant specimens where necessary within a prescribed timeframe. In terms of achieving well-designed places a condition (9) requiring a design code is necessary and would accord with the objectives of NDTLP Policies ST04 and DM04 and NPPF paragraph 129 to create high quality, beautiful and sustainable places. As submitted the condition contains 18 details expected to be covered by the Code. A number of these details replicate, albeit in a design context, various technical matters that are addressed through separate conditions. To be effective and to not unduly delay

or complicate the discharge of the condition, the required design code should be a relatively simple, concise document geared principally to securing greater design quality, character and sense of place. Accordingly, I have streamlined the list of details to be covered by the design code, in large part to avoid duplication, and ensure that the Code focuses on, amongst other things, architectural and design principles, materials and finishes, street hierarchy, design and character, movement within the site, key spaces and open space and boundary treatments. To ensure good design is embedded at the outset, condition (9) is necessarily a pre-commencement condition. To further secure good design and a satisfactory appearance, a separate condition (10) requiring samples of materials and finishes is necessary. So as not to delay construction, this condition is triggered once development has reach slab level.

101. Given the appeal site is close to existing and prospective residential areas, the presence of individual residential properties at the appeal site and the local highway network, the submission and approval of a Construction Environmental Management Plan (CEMP Highways) prior to any construction work is necessary in order to maintain residential amenity and public safety. Condition (11) would reasonably secure this. I also impose a separate condition (13) in the interests of the living conditions of residents living adjacent to the appeal site that construction only takes place within reasonable working hours. The proposed condition suggests a 07:00 to 19:00 period for construction works for Mondays to Fridays. That is too long and so I reduce the period on these days to 18:00 hours to give local residents reasonable respite from noise and disruption towards the end of the day. Additionally, in the interests of public health and environmental safeguarding, a precautionary condition (12) is necessary requiring a risk assessment and remediation scheme to be submitted and approved were construction work to identify an unanticipated contamination issue.
102. A condition (14) requiring a comprehensive waste audit statement is necessary so that as major development, the appeal proposal deals appropriately with the reuse and recovery of construction waste in accordance with Policy W4 of the Devon Waste Plan and the Devon Waste Management & Infrastructure Supplementary Planning Document. For effectiveness this is necessarily a pre-commencement condition. Whilst the appellant has undertaken an initial Archaeological and Heritage Assessment, including geophysical survey work in 2017, a condition (21) requiring a programme of archaeological work is necessary to ensure a comprehensive record is made of any evidence found on the site. This is justifiably a pre-commencement condition in order that the permission accords with Policy DM07 of the NDTLP and with paragraph 205 of the NPPF.
103. To ensure highway safety, conditions (15 -17) are all necessary to ensure that appropriate access is implemented before construction work takes place at the site. Furthermore, prior to the commencement of construction a condition (18) requiring submission of internal highway details is necessary for highway safety and ensuring quality of place. Associated conditions (19 & 20) are both necessary to ensure that the approved details are implemented prior to the phased occupation of the dwellings and that the internal highway layout is maintained free of obstruction. Again, these conditions are necessary for the highway safety of all users. In terms of ensuring safe and sustainable access to the site condition (34) is necessary to ensure that off-site enhancements are implemented prior to first occupation. A further condition (35) on requiring the

implementation of specific highway works within any agreed phase prior to first occupation is necessary to ensure highway safety and quality of place.

104. Small parts of the site are at risk of fluvial flooding. Accordingly, conditions (22 & 23) are both necessary to ensure development does not encroach into this area and that an appropriate easement for future maintenance is secured. Both conditions are necessarily pre-commencement to ensure that the function and capacity of the watercourse on the site is maintained so as not to increase flood risk on the site and elsewhere. Further conditions (24-26) regarding the details of any proposed new culverting, positioning of the proposed attenuation basins of the SuDS relative to the adjacent Kenwith Valley floodplain, and detailed designs of the drainage proposals for the site, including replacement of existing culvert with open channel are all required as pre-commencement conditions to ensure that the site can be developed and appropriately drained in a way which reduces the risk of flooding over the lifetime of the development. Furthermore, given the site is located in the Bideford Critical Drainage Area and is directly adjacent to areas of high and medium flood risk it is essential that that the proposed development does not result in an increase in flood risk on adjacent land or further downstream in the Kenwith Valley. In terms of the attainment of the proposed conditions, they are sufficiently detailed following the assessment of the appellant's Flood Risk Assessment and further technical work, all of which has been considered by the Environment Agency and the Local Lead Flood Authority. Consequently, I am satisfied that the proposed conditions dealing with flood risk would be effective and meet the tests of necessity and reasonableness at paragraph 56 of the NPPF.
105. As set out above the site has notable biodiversity value and hosts protected species and so it is critical that prior to commencement of any works the baseline conditions are reassessed so that badger setts and bat corridors and potential bat tree roosts are either reconfirmed or changes identified and so can therefore be appropriately protected through the following: (i) the layout and design of the detailed reserved matters; (ii) during construction works; and (iii) the provision of mitigation and ongoing maintenance to enhance habitats of value on the site (woodland and hedgerows), create new beneficial habitats and maintain connectivity through the site, including for protected species, so as to result in meaningful biodiversity net gain. A number of conditions are proposed and included in the schedule below (conditions 27-31). All of these conditions are necessarily pre-commencement given measures need to be identified and where necessary put in place prior to works beginning. They are all fully justified by the ecological evidence available (including the Phase 1 survey work) and necessary to ensure the development would mitigate any potentially minor harmful impacts and overall secure appreciable biodiversity enhancement.
106. Conditions (27 & 29) would require a Construction and Environmental Management Plan (Ecology) and secure a Landscape and Ecological Management Plan (LEMP) as part of the reserved matters including woodland management measures for Badgershill Wood including measures to protect the area of possible Ancient Woodland as well as details regarding the long-term management of existing and proposed habitats on the appeal site. These would be comprehensive requirements necessary to ensure the development accorded with Policies ST14 and DM08 of the NDTLP and paragraph 174 d) of the NPPF. A specific condition (28) would require further and ongoing badger survey and monitoring work, details of protection measures where necessary

and a requirement that any works resulting in a direct impact on a badger sett are carried out in accordance with the required licencing regime and standing advice. The condition is necessary to ensure legal compliance with the Protection of Badgers Act 1992. A further condition (31) is necessary to ensure that external lighting on the site does not disturb or prevent protected bat species using their territory, including for foraging along hedgerows.

107. The evidence shows that Japanese Knotweed, a non-native invasive species, is present at the site. A condition (30) requiring details and a method statement for controlling and removing the plant rhizomes and thereafter preventing further spread prior to commencement is required to protect the environment and ensure controlled disposal. Furthermore, a condition (32) requiring details of tree protection measures prior to construction commencing is necessary as a separate condition in order to ensure trees to be retained on the site are suitably conserved during the construction phases as recommended in the appellant's Arboricultural Assessment.

108. A specific condition requiring details of the housing mix and housing unit sizes would not be necessary given these are separately sought as part of conditions 7 and 9. Additionally, the District Valuer's latest viability appraisal (5 September 2022) advises at paragraph 14.2 that consideration be given to a viability review mechanism, principally by way of a condition. The appeal proposal has been subject to a reasonably long period of scrutiny and assessment between the submission of the application and the LPAs determination during which time various parties including DCC transport and education and Torridge's Strategic Housing Enabling officer have had input, generally on more than one occasion. Iterative viability appraisal has also been undertaken, including of the revised development of no more than 215 dwellings. As such I am satisfied that the appeal proposal, including those necessary obligations identified to have met the relevant tests, is viable and capable of substantive delivery within the next 5 years. There are standard time limits to submit the reserved matters and commence the scheme, which would sufficiently incentivise implementation within an expedient timeframe. Taking this all together I do not consider imposing a viability review condition would be necessary or reasonable in all other respects.

Conclusion

109. In applying section 38(6) of the Planning and Compulsory Purchase Act (2004), I have found that the proposal would not accord with the development plan as a whole. However, I find that the presumption in favour of sustainable development is a material consideration that indicates that the decision should be taken otherwise than in accordance with the development plan. Therefore, for the reasons given and having regard to all relevant matters raised, I conclude that the appeal should succeed.

David Spencer

Inspector.

APPEARANCES

FOR THE APPELLANT:

Zack Simons, Of Counsel

Instructed by Stuart Carvel of
Gladman Developments Ltd

He Called

Clive Self DipLA, MA (Urban Design), CMLI
Managing Director of CSA Environmental

Dr Suzanne Mansfield BSc (Hons), Ph.D, CMLI, MCIEEM
Senior Ecology Director, FPCR Environment & Design Ltd

Stuart Carvel MTCP (Hons) MRTPI
Planning Director, Gladman Developments Ltd

Victoria Richardson
Gladman Developments Ltd – assisted for the proposed conditions and planning
obligations sessions

FOR THE LOCAL PLANNING AUTHORITY:

Nina Pindham, Of Counsel

Instructed by Tope Ojikutu, Legal
Services Manager, Torridge District
Council

She was assisted for the proposed conditions and planning obligations sessions by:

Mark Reynolds BSc (Hons), MSc MRTPI
Managing Director, Context Planning Limited

INTERESTED PERSONS:

Philip Marlow – Local resident
Ken Richardson – Local resident
Stephen Prust – Local Resident
Alison Evans – Local Resident
Michael Newcombe – Devon County Council Transport & Highways (for the Planning
Obligations discussion).

Inquiry Documents (IDs) submitted at the event

- 1 Appellant Opening Statement
- 2 Local Planning Authority Opening Statement
- 3 Statement submitted by Philip Marlow

Inquiry Documents (IDs) submitted after the event

- 4 Signed and Dated Unilateral Undertaking
- 5 Closing Submissions for the Local Planning Authority
- 6 Closing Submissions for the Appellant

Schedule of Conditions

1. The development hereby permitted shall be begun either before the expiration of three years from the date of this permission, or before the expiration of two years from the date of approval of the last of the reserved matters to be approved, whichever is the later.
2. Prior to the commencement of each phase of the development details of the following matters for that phase (in respect of which approval is expressly reserved) shall be submitted to, and approved in writing by, the Local Planning Authority:
 - a) The scale of the development;
 - b) The layout of the development;
 - c) The external appearance of the development;
 - d) The landscaping of the site.
3. Application for approval of the reserved matters shall be made to the local planning authority not later than 3 years from the date of this permission.
4. For those matters not reserved for later approval, the development hereby approved shall be carried out in accordance with the approved plans:
 - Site Location Plan CSA/4846/106
 - Proposed Access Plan P20034-001A
 - Proposed Footway Widening to 2m between Osborne Lane and Lane Field Road P20034-002A
5. The development hereby approved shall be for no more than 215 dwellings.
6. No development shall take place in the area hatched green on the Retained Agricultural Use Plan Drawing No. 2020-013 501 Rev A
7. As part of the first reserved matters application a detailed phasing plan for the whole site shall be submitted to the local planning authority for approval in writing. The phasing plan shall include details of:
 - a) the intended number of market and affordable dwellings for each phase;
 - b) the general locations and phasing of key infrastructure including, surface water drainage, green infrastructure, and access for pedestrians, cyclist, buses and vehicles; and
 - c) the timing and delivery of the highway and footway improvements.The development shall be carried out in accordance with the approved phasing plan.

8. All planting, seeding or turfing comprised in the approved details of landscaping shall be carried out in the first planting and seeding seasons following the completion of the development. In the event that the development hereby approved is phased, the required details shall be carried out on the completion of any such phase. Any trees or plants which within a period of 5 years from the completion of the development die, are removed or become seriously damaged or diseased shall be replaced in the next planting season with others of similar size and species.

9. The reserved matters shall be carried out in accordance with a Design Code which shall be submitted before or at the same time as the first reserved matters application and shall provide details of the following:
 - a) architectural and design principles;
 - b) the identification of character areas including street types, street materials and street furniture;
 - c) landmark buildings;
 - d) housing unit sizes and mix;
 - e) boundary treatments;
 - f) roofscapes;
 - g) the road hierarchy type and standard;
 - h) car and cycle parking;
 - i) footpath and cycleway networks including any internal/external links;
 - j) existing landscape features to be retained;
 - k) types and location of areas of open space; and
 - l) proposed landscape framework, including structural planting;

The development shall be carried out in accordance with the agreed details.

10. No development above damp proof course level, in a particular phase, shall commence until full details/samples of the materials to be used in the construction of the external surfaces of the buildings in that phase have been submitted to and approved in writing by the local planning authority. Development shall be carried out in accordance with the approved details/samples.

11. Prior to the commencement of development in an agreed phase, including any site clearance, groundworks or construction within each sub-phase (save such preliminary or minor works that the Local Planning Authority may agree in writing), a Construction Environmental Management Plan (CEMP Highways) to manage the impacts of construction during the life of the works, shall be submitted to and approved in writing by the Local Planning Authority. For the avoidance of doubt, the CEMP shall include:-
 - a) measures to regulate the routing of construction traffic;
 - b) the times within which traffic can enter and leave the site;
 - c) the importation of spoil and soil on site;
 - d) the removal /disposal of materials from site, including soil and vegetation;
 - e) the location and covering of stockpiles;

- f) details of measures to prevent mud from vehicles leaving the site and must include wheel washing facilities;
- g) control of fugitive dust from demolition, earthworks and construction activities; dust suppression;
- h) mitigation measures in relation to noise, vibration, dust and lighting;
- i) details of any site construction office, compound and ancillary facility buildings;
- j) specified parking arrangements for vehicles associated with the construction works and the provision made for access thereto;
- k) a point of contact (such as a Construction Liaison Officer/site manager) and details of how complaints will be addressed.

The details so approved and any subsequent amendments, as shall be first submitted to and agreed in writing by the Local Planning Authority, shall be complied with in full and monitored by the applicants to ensure continuing compliance during the construction of the development.

12. Development other than that required to be carried out as part of an approved scheme of remediation in an agreed phase must not commence until conditions a) to e) have been complied with. If unexpected contamination is found after development has begun, development must be halted on that part of the site affected by the unexpected contamination to the extent specified by the Local Planning Authority in writing until condition d) has been complied with in relation to that contamination.

a) Site Characterisation

An investigation and risk assessment, in addition to any assessment provided with the planning application, must be completed in accordance with a scheme to assess the nature and extent of any contamination on the site, whether or not it originates on the site. The contents of the scheme are subject to the approval in writing of the Local Planning Authority.

The investigation and risk assessment must be undertaken by a competent person(s) and a written report of the findings must be produced. The written report is subject to the approval in writing of the Local Planning Authority. The report of the findings must include:

(i) a survey of the extent, scale and nature of contamination;

(ii) an assessment of the potential risks to:

- human health,
- property (existing or proposed) including buildings, crops, livestock, pets, woodland and service lines and pipes,
- adjoining land,
- groundwaters and surface waters,
- ecological systems,
- archaeological sites and ancient monuments;

(iii) an appraisal of remedial options, and proposal of the preferred option(s). This must be conducted in accordance with DEFRA and the Environment Agency's 'Model Procedures for the Management of Land Contamination, CLR 11'. Approval by the Local Planning Authority of the report submitted at this stage will confirm whether there is a need to undertake remediation measures under conditions b), (c) and (e) below.

b) Submission of Remediation Scheme

A detailed remediation scheme to bring the site to a condition suitable for the intended use by removing unacceptable risks to human health, buildings and other property and the natural and historical environment must be prepared and is subject to the approval in writing of the Local Planning Authority. The scheme must include all works to be undertaken, proposed remediation objectives and remediation criteria, timetable of works and site management procedures. The scheme must ensure that the site will not qualify as contaminated land under Part 2A of the Environmental Protection Act 1990 in relation to the intended use of the land after remediation.

c) Implementation of Approved Remediation Scheme

The approved remediation scheme must be carried out in accordance with its terms prior to the commencement of development other than that required to carry out remediation. The Local Planning Authority must be given two weeks written notification of commencement of the remediation scheme works.

Following completion of measures identified in the approved remediation scheme, a verification report (referred to in PPS23 as a validation report) that demonstrates the effectiveness of the remediation carried out must be produced and is subject to the approval in writing of the Local Planning Authority.

d) Reporting of Unexpected Contamination

In the event that contamination is found at any time when carrying out the approved development that was not previously identified it must be reported in writing immediately to the Local Planning Authority. An investigation and risk assessment must be undertaken in accordance with the requirements of condition a), and where remediation is necessary a remediation scheme must be prepared in accordance with the requirements of condition b), which is subject to the approval in writing of the Local Planning Authority. Following completion of measures identified in the approved remediation scheme a verification report must be prepared, which is subject to the approval in writing of the Local Planning Authority in accordance with condition c).

e) Long Term Monitoring and Maintenance

Where an approved remediation scheme includes a requirement for a monitoring and maintenance scheme to ensure the long-term effectiveness of the proposed remediation over time, a report setting out monitoring and maintenance requirements must be submitted in writing for the prior approval of the Local Planning Authority. Following completion of the measures identified in that scheme and when the remediation objectives have been achieved, reports that demonstrate the effectiveness of the monitoring and maintenance carried out must be produced and submitted to the Local Planning Authority.

This must be conducted in accordance with DEFRA and the Environment Agency's 'Model Procedures for the Management of Land Contamination, CLR 11'.

13. Construction works shall not take place other than between 0700 and 1800 hours on Monday to Fridays, Saturdays between 0800 and 1300 hours and no time on Sundays and Bank Holidays.

- 14.A Waste Audit statement shall be submitted as part of the first reserved matters application for each phase of the development. This statement should include all information outlined in the waste audit template provided in the Devon County Council's Waste Management and Infrastructure Supplementary Planning Document. The development shall be carried out in accordance with the approved statement.
- 15.The vehicular site accesses and visibility splays shall be constructed, laid out and maintained for that purpose at the site accesses in accordance with the Proposed Access Plan P20034-001A prior to the commencement of onsite work.
- 16.Visibility splays shall be provided, laid out and maintained for that purpose at the site access in accordance with submitted drawings where the visibility splays provide intervisibility between any points on the X and Y axes at a height of 1.05 metres above the adjacent carriageway level and the distance back from the nearer edge of the carriageway of the public highway (identified as X) shall be 2.4 metres and the visibility distances along the nearer edge of the carriageway of the public highway (identified as Y) shall be 90 metres in both directions.
- 17.No part of the development hereby approved within an agreed phase shall be brought into its intended use until the access, parking facilities, visibility splays, turning areas, parking spaces and garage/hardstanding, access drives and surface water drainage serving that phase have been provided and maintained in accordance with details that shall have been submitted to, and approved in writing by, the Local Planning Authority and retained for that purpose at all times.
- 18.Any proposed estate road, cycleways, footways, footpaths, verges, junctions, street lighting, sewers, drains, retaining walls, service routes, surface water outfall, road maintenance/vehicle overhang margins, embankments, visibility splays, accesses, car parking and street furniture shall be constructed and laid out in accordance with details to be approved by the Local Planning Authority in writing before their construction begins. For this purpose, plans and sections indicating, as appropriate, the design, layout, levels, gradients, materials and method of construction shall be submitted to the Local Planning Authority.
- 19.No part of the development hereby approved shall be commenced until:
- a) The access road has been laid out, kerbed, drained and constructed up to base course level for the first 20 metres back from its junction with the public highway
 - b) The ironwork has been set to base course level and the visibility splays required by this permission laid out
 - c) The footway on the public highway frontage required by this permission has been constructed up to base course level

- d) A site compound and car park have been constructed to the written satisfaction of the Local Planning Authority
20. When once constructed and provided in accordance with the conditions above, the carriageway, vehicle turning head, footways and footpaths shall be maintained free of obstruction to the free movement of vehicular traffic and pedestrians and the street lighting and nameplates maintained to the satisfaction of the Local Planning Authority.
21. No development shall take place within an agreed phase until the developer has secured the implementation of a programme of archaeological work in accordance with a written scheme of investigation (WSI) which has been submitted to and approved in writing by the Local Planning Authority. The development shall be carried out at all times in accordance with the approved scheme, or such other details as may be subsequently agreed in writing by the Local Planning Authority.
22. The development hereby permitted shall not be commenced until such time as a scheme to show that there will be no development within the mapped extents of fluvial flooding has been submitted to and approved in writing by the local planning authority. The scheme shall be fully implemented and subsequently maintained in accordance with the agreed details.
23. The development hereby permitted shall not be commenced until such time as a scheme to show that there will be a 4 metres easement on both sides of the watercourses has been submitted to and approved in writing by the local planning authority. The scheme shall include details of ownership and long term maintenance of the easement. The scheme shall be fully implemented and subsequently maintained in accordance with the agreed details.
24. The development hereby permitted shall not be commenced until such time as a scheme detailing the plans for all culverts within the site has been submitted to and approved in writing by the local planning authority. The scheme shall include details of ownership and long term maintenance of the easement. The scheme shall be fully implemented and subsequently maintained in accordance with the agreed details.
25. The development hereby permitted shall not be commenced until such time as a scheme showing the final site levels and finished floor levels of the development has been submitted to and approved in writing by the local planning authority. The development, including SuDS features, shall all be sited 1.5m above the Kenwith stream floodplain. The scheme shall be fully implemented and subsequently maintained in accordance with the agreed details.
26. Prior to, or as part of the Reserved Matters, the following information shall be submitted to and approved in writing by the Local Planning Authority:
- a) A detailed drainage design based upon the approved Flood Risk Assessment land North of Abbotsham Road Bideford

SHF.1132.078.HY.R.001.G & Technical Note dated 12th August 2021
SHF.1132.078.HY.L.003.A

- b) Detailed proposals for the management of surface water and silt run-off from the site during construction of the development hereby permitted.
- c) Proposals for the adoption and maintenance of the permanent surface water drainage system.
- d) A plan indicating how exceedance flows will be safely managed at the site.
- e) Detailed plans for the new channel to replace the majority of the length of the 600 mm culvert.
- f) A detailed assessment of the condition and capacity of the 350 mm culvert to the north of the site.

No building hereby permitted shall be occupied until the works have been approved and implemented in accordance with the details under (a) - (f) above.

27. Prior to or as part of the Reserved Matters, a Construction and Environmental Management Plan (CEMP: Ecology) shall be submitted to, and be approved in writing by, the local planning authority. It will follow the appointment of an Ecological Clerk of Works (ECoW) to manage the on-site ecology works, and a walkover survey by a qualified ecologist prior to the detailed design to reassess baseline conditions, check the status of previously identified ecological features such as badger setts and bat tree roost potential, and assess for potential new signs of protected or notable species. The CEMP: Ecology shall include:

- a) An Ecological Construction Mitigation Plan identifying all sensitive habitats including all hedges and watercourses, and the locations of important features such as badger setts. It will show appropriate protection zones and widths, where temporary fencing and signage is required, and details of any specific protection requirements for a given feature if necessary. It will also include any ecology specific detail in relation to pollution prevention and control.
- b) All the Primary Bat Corridors (minimum 10m), all other retained hedges (minimum 3m), the woodland (possible AWI area 15m, other minimum 10m) and retained grassland areas to be fenced with temporary fencing to protect them from construction effects and maintain their ecological function.
- c) The retained features in b) shall not be lit during construction, and there shall be no night time works except in exceptional circumstances.
- d) Protected Species Method Statements (PSMS) for each legally protected and notable species as follows:
 - Bats in Trees
 - Nesting Birds
 - Badgers
 - Reptiles
 - Japanese knotweed
 - Other species – relevant NERC Section 41 species that may be encountered e.g., hedgehog & common toad

Development shall proceed in accordance with the approved details.

28. Prior to or as part of the Reserved Matters, a badger survey update shall be conducted to inform the detail design process. This shall be submitted to and approved by the local authority, to include:

- a) Both a construction and an operational "Badger Mitigation, Movement and Sett Protection" drawing, based on the detail landscape design and recommendations in the Badger Report (FPCR, 2020), shall be submitted and approved by the LPA prior to the commencement of works.
- b) A Method Statement following the recommendations outlined within the Badger Report (2020) and the standing Natural England advice on www.gov.uk shall be submitted to and approved by the LPA prior to any vegetation clearance and groundworks (can be included within the wider CEMP Ecology document).
- c) Any works that will result in a direct impact on a badger sett shall be appropriately assessed by a class licenced badger person, and the necessary best practice avoidance measures, monitoring, precautionary supervision and either low impact class licence or full mitigation licence works identified and carried out according to standing advice and legal compliance.
- d) Monitoring: update badger survey in years one, two, three and five of LEMP to record number of active, partially active and inactive holes, by an appropriately qualified badger class-licenced holder, and submitted to the LPA. Should there be evidence of disturbance, either noted from the monitoring or after investigation following reports of disturbance, further mitigation measures shall be actioned as appropriate to ensure the badgers benefit from the woodland management and enhancements.

Development shall proceed in accordance with the approved details.

29. Prior to, or as part of the Reserved Matters, a Landscape and Ecological Management Plan (LEMP) shall be submitted to, and be approved in writing by, the local planning authority. The LEMP shall have a chapter dedicated to the management of Badgershill Wood that is based on the approved outline Woodland Management Plan, and fully account for Biodiversity Net Gain.

The content of the LEMP shall make specific reference to include the following:

- a) Description and evaluation of features to be managed. This will include all existing and newly created landscape and ecology features which shall be in general accordance with those identified in drawing Mitigation and Enhancement Plan Figure 19 Rev 7473-E-19B (19th May 2021), including (but not exclusively):
 - All retained and newly created hedgerows and trees (e.g., eastern boundary (H2) hedge maintenance).
 - Primary Bat Corridor enhancements.

- Badgershill Wood Management Plan.
 - All Biodiversity Net Gain habitats and condition targets.
 - The planting of a range of native standard trees (in bat corridors and informal POS), and non-native/cultivar flowering street tree species (in formal areas), to be planted in all areas of the site so they have a significant presence.
 - SUDs features – including demonstrating they are a “a multifunctional resource capable of delivering a wide range of environmental and quality of life benefits (ecosystem services) for local communities” in line with the NPPF, with the aim to maximise their wildlife value.
 - Wildlife Boxes and other enhancements.
 - NERC Section 41 Species enhancements including a hedgehog highway.
- b) Ecological trends and constraints on site that might influence management, primarily birds, bats in trees, bats foraging and commuting and badgers, but consideration will be given to other Priority Species and general wildlife.
- c) The area of possible Ancient Woodland shall be treated as such and requires a minimum 15m buffer and special management to reduce recreational impacts. The Woodland Management Plan submitted with the application outlines suitable management to achieve this, this or similar suitable management to be finalised within this LEMP.
- d) Aims and objectives of management. To include, but not exclusively:
- Appropriate management options for achieving aims and objectives.
 - Prescriptions for management actions.
 - Full BNG calculation
 - Details of the body or organization responsible for implementation of the plan.
 - Details of steps taken to create and support a “friends of” group to promote and secure community engagement with Badger’s Hill Wood.
 - Ongoing monitoring and remedial measures and agreed plan for submission to the LPA of significant changes or monitoring findings. Monitoring shall include repeat woodland condition assessments of Badgershill Wood.

The LEMP shall also include details of the legal and funding mechanism(s) by which the long term implementation of the plan will be secured by the developer with the management body(ies) responsible for its delivery. The plan shall also set out (where the results from monitoring show that conservation aims and objectives of the LEMP are not being met) how contingencies and/or remedial action will be identified, agreed and implemented so that the development still delivers the fully functioning biodiversity objectives of the originally approved scheme. The approved plan will be implemented in accordance with the approved details.

30. Prior to the commencement of development, an invasive non-native species protocol shall be submitted to and approved by the local planning authority, detailing the containment, control and removal Japanese Knotweed on site. The measures shall be carried out strictly in accordance with the approved scheme. The protocol will include:

- a) Before any works are undertaken, the site must be re-surveyed by an experienced ecologist for the presence of Japanese Knotweed. This survey must also note any Japanese knotweed adjoining the site.
- b) Full details of a Method Statement and management scheme for its eradication and/or control shall be submitted to and approved by the Local Planning Authority. The approved management scheme must be implemented before the commencement of works.
- c) The CEMP and LEMP shall appropriately make reference to and provide the relevant protocol information to ensure cross compliance.

31. Prior to or as part of the reserved matters application, a "lighting design for bats" shall be submitted to and approved in writing by the local planning authority. The strategy shall be drawn up in direct consultation with DCC lighting engineers, and shall:

- a) Identify with an ecologist those areas/features on site that are particularly sensitive for bats and that are likely to cause disturbance along important routes used to access key areas of their territory, for example, for foraging;
- b) Use the Bat Conservation Trust and ILP Guidance: Bats and artificial lighting in the UK.
- c) Ensure only minimal lighting on site where it is genuinely needed for H&S reasons.
- d) Amber (<3000K) lights to be used unless agreed with the LPA and DCC that a whiter light is needed for H&S reasons.
- e) Show how and where external lighting will be installed (through the provision of lighting contour plans and technical specifications) so that it can be clearly demonstrated that areas to be lit will not disturb or prevent the recorded species using their territory. This is to include light from properties.
- f) Where lighting is required along the site access, the strategy shall demonstrate that proper consideration was given to minimising the potential impact in this area.
- g) Where the road crosses H1 and H9, a detailed drawing showing how lighting impacts will be minimised, with use of screening if 0.5lux or less cannot be achieved and compliant with the LPA, will be submitted for reserved matters approval. The same applies to the crossing point to the north of Badgershill Wood as shown on the Mitigation and Enhancement Plan Figure 19 Rev 7473-E-19B (19th May 2021)

All external lighting shall be installed in accordance with the specifications and locations set out in the design, and these shall be maintained thereafter in accordance with the design. Under no circumstances should any other external lighting be installed without prior consent from the local planning authority.

32. Prior to the commencement of any development hereby granted planning permission and before any equipment, machinery or materials are brought onto the site for the purposes of the development hereby granted planning

permission, site specific details of the specification and position of fencing for the protection of any retained tree/group of trees, a tree constraints report and plan in accordance with the recommendations in BS5837:2021, together with a site specific arboriculture impact assessment and arboriculture method statement shall be submitted to and approved in writing by the Local Planning Authority. The works shall be carried out as approved and the fencing shall be erected prior to the commencement of any of the development hereby permitted and shall be maintained until the development, or particular phase, has been completed and all equipment, machinery and surplus material have been removed from the site.

33. The application(s) for the approval of the Reserved Matters required by condition 1 shall specify as (datum) the proposed finished floor levels of all dwellings together with finished levels of the surrounding amenity space to the proposed dwellings and other proposed site construction levels in relation to existing ground levels. The agreed construction levels shall be implemented as approved.
34. Prior to the occupation of the first dwelling, the Proposed Access arrangements shown on Plan P20034-001A shall be constructed and laid out in full and thereafter maintained in accordance with the approved details. The proposed Footway Widening to 2m between Osborne Lane and Lane Field Road P20034-002A shall also be constructed, laid out and maintained for those purposes in accordance with the approved plans.
35. The occupation of any dwelling in an agreed phase of the development shall not take place until the following works have been carried out to the written satisfaction of the Local Planning Authority:
- a) The spine road and cul-de-sac carriageway including the vehicle turning head within that phase shall have been laid out, kerbed, drained and constructed up to and including base course level, the ironwork set to base course level and the sewers, manholes and service crossings completed;
 - b) The spine road and cul-de-sac footways and footpaths which provide that dwelling with direct pedestrian routes to an existing highway maintainable at public expense have been constructed up to and including base course level;
 - c) The cul-de-sac visibility splays have been laid out to their final level;
 - d) The street lighting for the spine road and cul-de-sac and footpaths has been erected and is operational;
 - e) The car parking and any other vehicular access facility required for the dwelling by this permission has/have been completed;
 - f) The verge and service margin and vehicle crossing on the road frontage of the dwelling have been completed with the highway boundary properly defined;
 - g) The street nameplates for the spine road and cul-de-sac have been provided and erected.

Schedule Ends.