



Ministry of Housing,
Communities &
Local Government

David Seaton
Managing Director
PCL Planning
13a-15a Old Park Avenue
Exeter
Devon
EX1 3WD

Our ref: APP/P1133/W/18/3205558
Your ref: -

3 June 2020

Dear Sir,

**TOWN AND COUNTRY PLANNING ACT 1990 – SECTION 78
APPEAL MADE BY ANTHONY, STEVEN & JILL REW
LAND AT WOLBOROUGH BARTON, COACH ROAD, NEWTON ABBOT TQ12 1EJ
APPLICATION REF: 17/01542/MAJ**

1. I am directed by the Secretary of State to say that consideration has been given to the report of Frances Mahoney MRTPI IHBC, who held a public local inquiry between 26 March 2019 and 10 July 2019 into your client's appeal against the failure of Teignbridge District Council to determine your client's application for planning permission for a hybrid proposal for the following development:

- Outline proposal for mixed use development comprising circa 1210 dwellings (C3), a primary school (D1), up to 12650 sq m of employment floorspace (B1), two care homes (C2) providing up to 5,500 sq m of floorspace, up to 1250 sq m of community facilities (D1), a local centre (A1/A3/A4/A5) providing up to 1250 sq m of floorspace, open space (including play areas, allotments, MUGA) and associated infrastructure (Means of Access to be determined only); and
- Full proposal for a change of use of existing agricultural buildings to hotel (C1), restaurant (A3) and bar/drinking establishment (A4) uses, involving erection of new build structures, construction of an access road and parking, plus other associated conversion and minor works.

in accordance with application ref: 17/01542/MAJ, dated 9 June 2017.

2. On 3 July 2018, this appeal was recovered for the Secretary of State's determination, in pursuance of section 79 of, and paragraph 3 of Schedule 6 to, the Town and Country Planning Act 1990.

Inspector's recommendation and summary of the decision

3. The Inspector recommended that the appeal should be allowed and planning permission granted, subject to conditions.
4. For the reasons given below, the Secretary of State agrees with the Inspector's conclusions, and agrees with her recommendation. He has decided to allow the appeal

and grant planning permission, subject to conditions. A copy of the Inspector's report (IR) is enclosed. All references to paragraph numbers, unless otherwise stated, are to that report.

Environmental Statement

5. In reaching this position, the Secretary of State has taken into account the Environmental Statement which was submitted under the Town and Country Planning (Environmental Impact Assessment) Regulations 2017 and the environmental information submitted during and after the inquiry. Having taken account of the Inspector's comments at IR397, the Secretary of State is satisfied that the Environmental Statement and other additional information provided complies with the above Regulations and that sufficient information has been provided for him to assess the environmental impact of the proposal.

Procedural matters

6. As set out at IR5, the proposal has been amended since the original planning application was submitted, with a decrease in the number of proposed dwellings and an increase in the amount of employment floorspace. The development description at paragraph 1 of this Decision Letter reflects this revised description, and the Secretary of State has made his decision based on this.
7. The Secretary of State notes that these alternative plans were available to all the main parties, including those who addressed the Inquiry (IR5). Given this, he does not consider that the revised description of development raises any matters that would require him to refer back to the parties for further representations prior to reaching his decision on this appeal, and he is satisfied that no interests have thereby been prejudiced. He agrees with the approach of the Inspector as set out in IR11 in respect of the plans produced for illustrative purposes.

Matters arising since the close of the inquiry

8. The following applications for an award of costs were made (IR3):
 - An award of full of partial costs made by the appellants against the Council;
 - An award of full costs made by a Rule 6 Party against the appellants;
 - An award of partial costs made by the appellant against the Torbay and South Devon NHS Trust; and
 - An award of partial costs made by the Torbay and South Devon NHS Trust against the appellants

These applications are the subject of separate decision letters issued at the same time as this Decision Letter.

Policy and statutory considerations

9. In reaching his decision, the Secretary of State has had regard to section 38(6) of the Planning and Compulsory Purchase Act 2004 which requires that proposals be determined in accordance with the development plan unless material considerations indicate otherwise.
10. In this case, relevant elements of the development plan include the Teignbridge Local Plan 2013-2033, adopted 2014 (TLP), and the Abbotskerswell Neighbourhood Plan

2016-2033, made October 2017 (ANP). The Secretary of State considers that relevant development plan policies include those set out at IR15-18.

11. The Secretary of State notes that part of the appeal site is also covered by the Newton Abbot Neighbourhood Development Plan 2016-2033, made June 2016, but that no conflict with this plan was suggested (IR18).
12. Other material considerations which the Secretary of State has taken into account include the National Planning Policy Framework ('the Framework') and associated planning guidance ('the Guidance').
13. In accordance with section 66(1) of the Planning (Listed Buildings and Conservation Areas) Act 1990 (the LBCA Act), the Secretary of State has paid special regard to the desirability of preserving those listed buildings potentially affected by the proposals, or their settings or any features of special architectural or historic interest which they may possess.
14. In accordance with section 72(1) of the Planning (Listed Buildings and Conservation Areas) Act 1990 (the LBCA Act), the Secretary of State has paid special attention to the desirability of preserving or enhancing the character or appearance of conservation areas.

Emerging plan

15. The emerging plan comprises the Local Plan Review 2020 - 2040. A draft version was published for public consultation on 23 March 2020 until 15 June 2020. Paragraph 48 of the Framework states that decision makers may give weight to relevant policies in emerging plans according to: (1) the stage of preparation of the emerging plan; (2) the extent to which there are unresolved objections to relevant policies in the emerging plan; and (3) the degree of consistency of relevant policies to the policies in the Framework. As this emerging plan is still at a very early stage, with adoption not expected until summer 2021, the Secretary of State considers it can carry no weight in the decision making process for this appeal.

Main issues

16. The Secretary of State notes that the element of this proposal seeking full planning permission for the conversion of the agricultural buildings into hotel/restaurant/bar uses, does not raise opposition in policy terms that would lead to a conclusion of refusing permission, but that it does require consideration against statutory heritage duties (IR368). This will be returned to in the "Heritage" section of this Decision Letter at paragraphs 19-24. For this reason, unless specified, this Decision Letter will primarily consider the impacts of the outline part of the proposal.

Suitability of the location

17. The Secretary of State notes (IR369) that the principle of the outline element was not a disputed matter between the parties. TLP policy NA3 Wolborough allocates around 120ha of land for a sustainable extension for Newton Abbott, of which the appeal site makes up a large part (IR372).
18. For this reason, he agrees with the Inspector (IR374) that the determination of this appeal should not question the principle of a mixed-use development in this location, but, as the proposal contains a considerable outline element, it is necessary to consider the impacts

of the proposal in order to make a meaningful assessment of the proposal against LP Policy NA3 a) (IR373-375).

Heritage

19. The Secretary of State has carefully considered the Inspector's analysis of the impacts on the proposal on the heritage assets identified at IR376-388.
20. The Wolborough Hill Conservation Area (WHCA) lies to the east of the appeal site. For the reasons given at IR383, the Secretary of State agrees with the Inspector that the proposal would have a neutral impact on the character and appearance of the WHCA.
21. The Grade-II listed St Augustine's Priory lies to the south of the appeal site. For the reasons given at IR384, the Secretary of State agrees with the Inspector that the significance and setting of the Priory would be preserved.
22. The Grade-I listed parish church of St Mary the Virgin lies to the north of the appeal site, and directly opposite the agricultural buildings that would be converted to hotel and restaurant uses in the full element of the proposal. With regards to the full element, the Secretary of State agrees with the Inspector at IR382 that the removal of unsympathetic modern buildings, alongside the preservation and enhancement of the agricultural buildings, would preserve and enhance their relationship with the church.
23. With regards to the outline element, the Secretary of State agrees with the Inspector for the reasons given at IR380-382 that the outline element, and therefore the appeal proposal overall, would erode the setting of the church, and to a lesser extent its significance, by diminishing the association of the pastoral land upon which the appeal development would be built (IR385). He agrees with the Inspector that, when taking all the identified evidence into account, there would not be a total loss of the church's significance, and so the appeal proposal, as a totality, would lead to a less than substantial harm, albeit on the mid to upper level of a sliding scale (IR387).
24. As set out at Paragraph 196 of the Framework, where a development proposal will lead to less than substantial harm to the significance of a designated heritage asset, this harm should be weighed against the public benefits of the proposal. This will be returned to in the Planning Balance section of this Decision Letter.

Greater Horseshoe Bats and impact on the South Hams Special Area of Conservation (SAC)

25. The proposal is for a large mixed use development, with up to 1210 homes, employment space, ancillary development and supporting infrastructure including a new connecting road. Article 6 of the Habitats Directive, which has been transposed into UK law through the Conservation of Habitats and Species Regulations 2017 and the Conservation of Offshore Marine Habitats and Species Regulations 2017 (for plans and projects beyond UK territorial waters (12 nautical miles)), requires that where a plan or project is likely to result in a significant effect on a European site either alone or in combination with other plans or projects, and where the plan or project is not directly connected with or necessary to the management of the European site, a competent authority (the Secretary of State in this instance) is required to make an Appropriate Assessment of the implications of that plan or project on the integrity of the European site in view of the site's conservation objectives. The Secretary of State is the Competent Authority for the purposes of the Conservation of Habitats and Species Regulations 2017.

26. For the reasons set out at IR432 he agrees with the Inspector that he is required to make an Appropriate Assessment of the implications of the proposal on the integrity of any affected European site in view of each site's conservation objectives.
27. The proposal site is located to the south of Newton Abbott, and close to the the South Hams Special Area of Conservation (SAC). The SAC consists of five sites dispersed across South Devon, namely the Berry Head to Sharkham Point SSSI (14km from the appeal site), Buckfastleigh Caves SSSI (11km), the Bulkamore Iron Mine SSSI (12km), Chudleigh Caves and Woods (7.2km), and the Haytor and Smallacombe Iron Mines SSSI (10km) (IR415). All distances to the appeal site are as the crow flies.
28. This SAC's designation is in part due to the hosting of Greater Horseshoe Bats (GHBs), a qualifying Annex II species and one of the rarest and most threatened bats in Europe. The appeal site and the wider NA3 allocation have relevance to the South Hams SAC due to the regular use of the site by GHBs likely to comprise part of the wider SAC population (IR413-414). The component parts of the SAC include significant GHB roosts for summer maternity colonies and winter hibernation. The GHBs for the SAC form part of a larger meta-population, and their long-term survival is dependent on genetic flows between colonies (IR415-416).
29. GHBs feed in different habitats across the year as prey availability changes, and foraging habitats can include grazed pastures, the edges of woodland, stream corridors, tree lines, thick tall hedges, and wetlands. Adult GHBs usually forage within 4km of their roost, with juveniles mainly within 1km, but longer ranges have been recorded (IR417).
30. The proposed development will change land that is currently in agricultural use to residential. This will impact on the GHBs, as they use a complex network of commuting routes to travel between roost sites and feeding groups across the South Devon countryside, and this is likely to be the main value of the appeal site for them (IR417; 421-422).
31. As set out at paragraph 27, the appeal site is located some distance from the SAC components, and beyond the typical foraging ranges of GHBs of 1-4km. The Secretary of State considers it reasonable to assume that the appeal site does not fall within any defined sustenance zone in relation to any designated European site. However, as set out at paragraph 30, it is likely the GHBs use the site as part of their complex network of commuting routes, which could include journeys to and from the five component parts of the SAC from more distant roosts (IR422). For this reason there is a general need to ensure landscape permeability, and the Secretary of State notes that at the time of the inquiry, guidance was being revised to reflect this (IR421). Adopting a precautionary stance, and in the absence of avoidance or mitigation measures, he considers there is potential for the development proposals to contribute towards a significant effect on the South Downs SAC. He therefore concludes that an Appropriate Assessment is required
32. The relevant conservation objective in the case of this SAC relates to the GHBs, one of the rarest and most threatened bats in Europe. The SAC represents an international stronghold for them, in the context of decline elsewhere (IR414). The conservation objectives of the SAC include maintaining the population of Greater Horseshoe Bats, and maintaining both the extent and distribution of supporting habitats, and their structure and function.
33. As part of his Appropriate Assessment, the Secretary of State has taken into account the GHB Mitigation Plan, which will establish networks of connected and continuous habitat corridors extending across the appeal site and the wider landscape, preserving

permeability across the landscape and allowing GHBs to continue commuting between parts of the SAC and outlying roosts. The corridors within the scheme will include reinforced hedgerows, which provide foraging grounds. There would also be a wetlands SUDS habitat that would provide further foraging habitats. A detailed lighting strategy to be delivered as part of a Reserved Matters applications would ensure minimal disturbance from light spill (IR428). The Secretary of State is content that these would all be secured by planning conditions.

34. At the time of the Inquiry, Natural England considered some comparison work necessary between the bat surveys from 2013-2014 and that of 2019 to ascertain whether the mitigation measures proffered in the GHB Mitigation Plan would still stand as being relevant. The Inspector records at IR427 that variations in the survey protocol/analysis between the surveys would make such a comparison of limited value, and considered that the overall results of the 2019 survey, in the context of the results from the 2013-2014 survey would be sufficiently robust to inform an AA and mitigation at outline stage.
35. The 2019 survey was not published until November of that year, after the close of the Inquiry. In making this assessment, the Secretary of State has consulted Natural England on the up to date survey, and on the reasons for any comparison being of limited value. Natural England have now confirmed that it is satisfied that the further and up-to-date GHB survey provides a suitable evidence base to inform a Habitats Regulations Assessment. They consider that the Secretary of State as the competent authority has sufficient information to be satisfied that no development likely to adversely affect the integrity of the South Hams SAC can be carried out under the outline permission consistent with the provisions of the Habitats Regulations.
36. The Secretary of State therefore concludes, in his role as the Competent Authority on this matter, that there would be no adverse effect on the integrity of the South Downs SAC.

Other ecological issues

37. For the reasons given at IR398-403, the Secretary of State agrees with the Inspector that the imposition of a condition in relation to the design and securing of the SUDS would be sufficient at this stage of the evolution of the strategic, policy committed development to safeguard the well-being of the Wolborough Fen SSSI (IR403).
38. For the reasons given at IR404-412, the Secretary of State agrees that the proposal would overall serve to minimise harm to public health and improve the air of the District, and that the terms of LP Policies EN6 and S11 would not be offended (IR412). He attaches limited weight to this benefit.

Highways

39. For the reasons given at IR389-396, the Secretary of State agrees with the Inspector that there is no evidenced suggestion that the proposal would result in residual cumulative impacts on the road network which could be considered severe (IR395) and that the LP Examining Inspector's report gives some confirmation that resultant traffic generated by the new development would be tempered by the number of residents using the new bus service as well as walking/cycling into town (IR396).

Public benefits

40. The proposal would deliver 1210 new homes, including a policy-compliant level of 20% affordable housing (IR437-439). TLP policy NA3 is a major plan allocation, and this

appeal represents the bulk of the total number of homes it seeks to deliver. The Secretary of State agrees with the Inspector that this must carry significant weight in favour of the proposal (IR437), and that delivering a policy compliant affordable housing provision also adds considerably to the positive side of the balance (IR439). The Secretary of State considers that taken together, these carry very significant weight in favour of the proposal.

41. The proposal would provide two care homes (IR440), helping to diversify the local accommodation options and respond to the needs of people at different stages of their life. The Secretary of State considers that this attracts moderate weight in favour.
42. The proposal would provide a youth centre, local shops, a primary school. The Secretary of State agrees (IR441) that these primarily are to mitigate the needs of future residents, but agrees with the Inspector that there will be some benefits to existing residents as well. Consequently he considers that these attract moderate weight in favour.
43. There would be economic benefits from the construction and occupation of the new homes, and from the employment opportunities offered by the employment land, local shops, the school and care homes. The Secretary of State agrees with the Inspector that these benefits, plus possibilities for new businesses to become established or existing businesses to relocate with the possibility of growth represent a weighty benefit and he affords them significant weight in favour (IR442).
44. As set out at IR443, the appeal site is in a location accessible to services and facilities described as “highly sustainable”, and the encouragement of cycling, walking, implementation of the Travel Plan, along with the provision of the new circular bus route, would provide options for other modes of transport other than the car. The Secretary of State agrees that while highway improvements would mainly serve as mitigations for the effects of the proposal, they would benefit the wider population in respect of improving highway safety. Overall, the Secretary of State considers this attracts moderate weight in favour of the proposal.

Planning conditions

45. The Secretary of State has given consideration to the Inspector’s analysis at IR290-320, the recommended conditions set out at the end of the IR and the reasons for them, and to national policy in paragraph 55 of the Framework and the relevant Guidance. He is satisfied that the conditions recommended by the Inspector comply with the policy test set out at paragraph 55 of the Framework and that the conditions set out at Annex B should form part of his decision.

Planning obligations

46. A planning obligation was sought by the Torbay and South Devon NHS Foundation Trust (IR321), to mitigate the short-term impact of the additional residents on healthcare services (IR323; IR355). The Secretary of State has carefully considered the Inspector’s analysis of this obligation at IR322-353, and her conclusions at IR354-365. For the reasons given there, the Secretary of State agrees with the Inspector that in the circumstances of a ‘known’ development within an adopted Development Plan document which had been the subject of consultation with relevant health providers at the time of production, it can not be justified to require a developer to plug a gap in funding essentially to pay staff wages, which is brought to the appeal at the eleventh hour, even though that may, in part, be due to some element of new population which may move into the Newton Abbot area as a result of the building of the new homes (IR361). For this

reason he considers that the provision obligation fails to meet the tests of Regulation 122 of the Community Infrastructure Levy Regulations 2010 (as amended) and is not therefore enforceable, in line with clause 4.2 of the Unilateral Undertaking to Teignbridge District.

47. Having had regard to the Inspector's analysis of the other obligations at IR366-367, the planning obligations dated 27 June 2019 (although without Schedule 7 of the undertaking to Teignbridge District Council, as detailed above), paragraph 56 of the Framework, the Guidance and the Community Infrastructure Levy Regulations 2010, as amended, the Secretary of State agrees with the Inspector's conclusion for the reasons given in IR367 that the obligation complies with Regulation 122 of the CIL Regulations and the tests at paragraph 56 of the Framework.

Planning balance and overall conclusion

48. For the reasons given above, the Secretary of State considers that the appeal scheme is in accordance with TLP Policies S4 and NA3 of the development plan, and is in accordance with the development plan overall. He has gone on to consider whether there are material considerations which indicate that the proposal should be determined other than in accordance with the development plan.

49. The proposal would provide 1210 new homes, which attracts significant weight in favour. This includes a policy-compliant level of affordable housing, which adds further weight. Taken together, this attracts very significant weight in favour. There would be new community facilities, commercial space, and a primary school, attracting moderate weight. There would be economic benefits from the construction and occupation of the homes, also attracting significant weight when considered together with the various employment opportunities offered by the proposal. The proposal would deliver a new road link that would help improve air quality in the wider district, attracting limited weight. There would be no adverse effect on the integrity of the South Downs SAC.

50. The Secretary of State has considered whether the identified 'less than substantial' harm to the significance of the Grade-I listed St Mary the Virgin church is outweighed by the public benefits of the proposal. In accordance with the s.66 duty, he attributes considerable weight to the harm. The public benefits of the proposal are set out at paragraphs 40-44 of this Decision Letter.

51. Overall the Secretary of State agrees with the Inspector at IR445-446 that the benefits of the appeal scheme are collectively sufficient to outbalance the identified 'less than substantial' harm to the significance of the Grade-I listed St Mary the Virgin church, particularly taking into account the importance of the NA3 allocation to the Council's strategy for future growth and economic prosperity. He considers that the balancing exercise under paragraph 196 of the Framework is therefore favourable to the proposal.

52. The Secretary of State considers that the material considerations in this case indicate a decision in line with the development plan. The Secretary of State therefore concludes that the appeal should be allowed and planning permission granted, subject to conditions.

Formal decision

53. Accordingly, for the reasons given above, the Secretary of State agrees with the Inspector's recommendation. He hereby allows your client's appeal and grants planning

permission, subject to the conditions set out in Annex B of this Decision Letter, for a hybrid proposal for the following development:

- Outline proposal for mixed use development comprising circa 1210 dwellings (C3), a primary school (D1), up to 12650 sq m of employment floorspace (B1), two care homes (C2) providing up to 5,500 sq m of floorspace, up to 1250 sq m of community facilities (D1), a local centre (A1/A3/A4/A5) providing up to 1250 sq m of floorspace, open space (including play areas, allotments, MUGA) and associated infrastructure (Means of Access to be determined only); and
- Full proposal for a change of use of existing agricultural buildings to hotel (C1), restaurant (A3) and bar/drinking establishment (A4) uses, involving erection of new build structures, construction of an access road and parking, plus other associated conversion and minor works.

in accordance with application ref: 17/01542/MAJ, dated 9 June 2017, as amended (see paragraph 7).

54. This letter does not convey any approval or consent which may be required under any enactment, bye-law, order or regulation other than section 57 of the Town and Country Planning Act 1990.

Right to challenge the decision

55. A separate note is attached setting out the circumstances in which the validity of the Secretary of State's decision may be challenged. This must be done by making an application to the High Court within 6 weeks from the day after the date of this letter for leave to bring a statutory review under section 288 of the Town and Country Planning Act 1990.

56. An applicant for any consent, agreement or approval required by a condition of this permission for agreement of reserved matters has a statutory right of appeal to the Secretary of State if consent, agreement or approval is refused or granted conditionally or if the Local Planning Authority fail to give notice of their decision within the prescribed period.

57. A copy of this letter has been sent to Teignbridge District Council and the Abbotskerswell Parish Council & Wolborough Residents' Association, and notification has been sent to others who asked to be informed of the decision.

Yours faithfully

Andrew Lynch

Andrew Lynch
Authorised by the Secretary of State to sign in that behalf

Annex A – Schedule of representations

Annex B – List of conditions

ANNEX A - SCHEDULE OF REPRESENTATIONS

Representations received in concerning the ecological information (see paragraphs 34-35)

Party	Date
Planning Inspectorate, to Natural England	7 April 2020
Natural England, to the Planning Inspectorate	8 April 2020
Planning Inspectorate, to Natural England	14 April 2020
Natural England, to the Planning Inspectorate	27 April 2020

ANNEX B – LIST OF CONDITIONS

Full Permission

Full proposal for a change of use of existing agricultural buildings to hotel (C1), restaurant (A3) and bar/drinking establishment (A4) uses, involving erection of new build structures, construction of an access road and parking, plus other associated conversion and minor works.

- 1) The development hereby permitted must be begun not later than the expiration of three years from the date on which this permission is granted.
- 2) The development hereby permitted shall be carried out in accordance with the following approved plans:
 - Site Location Plan (160107 L 01 01)
 - Proposed General Arrangement Plan (160107 L 02 01 A + Rev C)
 - Proposed floor plans – Buildings 2 and 4 (160107 L 04 01 A)
 - Proposed floor plans – Buildings 3, 5 and 6 (160107 L 04 02 A)
 - Proposed elevations – Buildings 2 and 4 (160107 E 05 01 A)
 - Proposed elevations – Building 5 (160107 E 05 02)
 - Proposed elevations – Buildings 3 and 6 (160107 E 05 03)
 - Proposed sections (160107 Se 02 01)
 - Building retention and demolition plan (160107 L 06 01)
 - External works (160107 L 07 01 B)
 - Timber pergola detail (160107 DE 05 01)
 - Farm buildings parking layout (4035-021 Rev B)
- 3) No development shall take place until details of sustainable surface and ground water drainage have been submitted to and approved in writing by the local planning authority (such details to be in general conformity with the submitted Flood Risk Assessment). Development shall be carried out in accordance with the approved details and the surface water drainage infrastructure shall be retained and maintained in functioning order as such thereafter.
- 4) No windows, doors and other glazed or timber panels shall be installed until details of joinery have been submitted to and approved in writing by the Local Planning Authority. Such details shall include cross sections, profiles, reveal, surrounds, materials, finish and colour in respect of new windows and doors. The work shall thereafter be carried out and retained in accordance with the approved details.
- 5) Notwithstanding the details of the materials shown on the submitted drawings, the roofing materials to be used in the development shall be submitted to and approved in writing by the local planning authority prior to their installation. The work shall then be carried out and retained in accordance with the agreed details.
- 6) Any areas identified as stonework on the approved plans shall be constructed of a natural stone, a sample of which including construction details and mortar specification shall be submitted to and agreed in writing by the local planning authority, prior to works to any

areas of stonework commencing. The stonework shall thereafter be carried out as approved.

- 7) No building shall be constructed above damp proof course until details of the proposed render type and colours have been submitted to and approved in writing by the local planning authority. The work shall then be carried out in accordance with the agreed details.
- 8) Prior to the laying of setts/paviours and other surface materials to be used as part of the hard-surfacing scheme, precise details of the form and colour shall be submitted to and approved in writing by the local planning authority and shall thereafter be laid out on site in accordance with the agreed details.
- 9) No building shall be constructed above damp proof course until details of the external colour and finish of the timber to be used have been submitted to and agreed in writing with the local planning authority. The work shall then be carried out in accordance with the agreed details.
- 10) No building shall be constructed above damp proof course until details of both hard and soft landscape works have been submitted to and approved in writing by the local planning authority and these works shall be carried out as approved.

These details shall include proposed finished levels or contours; means of enclosure; car parking layouts; other vehicle and pedestrian access and circulation areas; hard surfacing materials; minor artefacts and structures (e.g. furniture, refuse or other storage units, signs, lighting etc.); proposed and existing functional services above and below ground (e.g. drainage power, communications cables, pipelines etc. indicating lines, manholes, supports etc.); retained historic landscape features and proposals for restoration, where relevant.

Soft landscape works shall include planting plans; written specifications (including cultivation and other operations associated with plant and grass establishment); schedules of plants (noting species, plant sizes and proposed numbers/densities); implementation and management programme.

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

- 11) No development shall take place until highway details have been submitted to and approved in writing by the local planning authority. These shall include details of the proposed road(s), cycleways, footways, 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. Development shall be carried out in accordance with the approved details.
- 12) Prior to the installation of any external lighting a lighting strategy, including details of all external lighting, shall have been submitted to and approved in writing by the local planning authority. Development shall be carried out in accordance with the approved details. No external light sources shall be installed other than those external light sources permitted by the local planning authority.
- 13) No development shall take place until a Construction Environmental Management Plan (CEMP) has been submitted to and approved in writing by the local planning authority. The CEMP shall include a summary of the work to be carried out; a description of the site layout and access including proposed haul routes and parking facilities and the location of site equipment including the supply of water for damping down; an inventory and timetable of all dust generating activities; a list of dust and emission control methods to be used; the identification of an authorised responsible person on site for air quality; a summary of monitoring protocols and an agreed procedure for notification to the local authority Environment & Safety Services Department; a site log book to record details and action taken in response to incidences of the air quality objectives being exceeded and any exceptional incidents; proposed hours of work (including construction, piling, deliveries and other movements to and from the site). All vehicles leaving the site must be wheel-washed if

there is any risk of affecting nearby properties. There should be a paved area between the wheel-wash and the main road. The development shall be carried out in accordance with the approved CEMP.

- 14) No building shall be occupied until works for the disposal of foul sewage have been provided in accordance with details submitted to and approved in writing by the local planning authority for the relevant building.
- 15) No development shall take place, or any equipment, machinery or materials be brought onto the site for the purpose of development until fencing to delineate a Protection Zone to protect retained hedges has been constructed in accordance with location and construction details shown on plans and particulars including in relation to retention and removal timetables that have been submitted to and approved in writing by the local planning authority. Within the Protection Zone nothing shall be stored or placed, nor any works take place, nor shall any changes in ground levels or excavations take place unless a method statement for such works has also been submitted to and approved in writing by the local planning authority.
- 16) No development shall take place until the applicant has secured the implementation of an agreed programme of archaeological work in accordance with a written scheme of investigation which has been submitted and approved in writing by the local planning authority. The development shall be carried out at all times in strict accordance with the approved scheme.
- 17) No development other than that required to be carried out as part of an approved scheme of remediation shall take place until sections 1 to 3 of this condition 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 section 4 of this condition has been complied with in relation to that contamination.

Section 1. Site Characterisation

An investigation and risk assessment, in addition to any assessment provided with the planning application, shall 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 competent persons 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:
 - o human health
 - o property (existing or proposed) including buildings, crops, livestock, pets, woodland and service lines and pipes
 - o adjoining land
 - o groundwaters and surface waters
 - o ecological systems
 - o 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'.

Section 2. 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 shall 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.

Section 3. Implementation of Approved Remediation Scheme

The approved remediation scheme shall be carried out in accordance with its terms prior to the commencement of the development other than that required to carry out remediation, unless otherwise agreed in writing by the local planning authority. 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 the replaced 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.

Section 4. 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 shall be reported in writing immediately to the local planning authority. An investigation and risk assessment must be undertaken in accordance with the requirements of section 1 of this condition, and where remediation is necessary a remediation scheme must be prepared in accordance with the requirements of section 2, 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 section 3.

- 18) No building comprised shall be built above damp-proof course unless and until details of the proposed finished floor levels of each building have been submitted to and approved in writing by the local planning authority. The development shall be carried out in accordance with the approved details.
- 19) No development shall take place until an ecological mitigation strategy, in so far as it relates to this proposal, has been submitted to, and approved in writing by, the local planning authority. The strategy shall be based on the proposed mitigation in the Chapter 8 of Volume 2 of the Environmental Statement submitted as part of the planning application and the submitted GHB mitigation plan (and addendum dated 8 March 2019). The Development shall be carried out and maintained in accordance with the approved strategy.

Outline Permission

Outline proposal for mixed use development comprising circa 1210 dwellings (C3), a primary school (D1), up to 12650 sq m of employment floorspace (B1), two care homes (C2) providing up to 5,500 sq m of floorspace, up to 1250 sq m of community facilities (D1), a local centre (A1/A3/A4/A5) providing up to 1250 sq m of floorspace, open space (including play areas, allotments, MUGA) and associated infrastructure (Means of Access to be determined only)

- 1) Details of the appearance, layout, scale and landscaping (hereinafter called "the reserved matters") for each phase shall be submitted to and approved in writing by the local planning authority before any development takes place on the relevant phase and the development shall be carried out as approved.
- 2) Application for approval of the reserved matters for the first phase approved pursuant to condition 5 shall be made to the local planning authority not later than three years from the date of this permission. Application for approval of all of the reserved matters shall be made to the local planning authority not later than 12 years from the date of this permission.
- 3) The development of each phase hereby permitted shall take place not later than two years from the date of approval of the last of the reserved matters to be approved for the relevant phase.
- 4) Outline planning permission is hereby granted for no more than:
 - a. 1,210 dwellings (including custom build), house and flats and other uses within Class C3
 - b. A Primary School
 - c. 12,650 sq m gross of Employment floorspace within Use Class B1
 - d. 5,500 sq m gross of Care Home floorspace within Use Class C2 in no more than two individual facilities
 - e. 1,250 sq m gross of community facilities floorspace within Use Class D1
 - f. 1,250 sq m gross of Retail / Local Centre floorspace within Use Classes A1/A3/A4 and/or A5 (cumulative)
 - g. Car parking and other miscellaneous uses including public bicycle interchange / storage facilities, substations, waste storage and recycling facilities

The development hereby permitted shall be carried out in accordance with the following approved plans:

- Site Location Plan (Reference:141204 L01 01 G)
- Proposed access drawings (References: 4035-010 D; 4035-011 E – 4035-018 Rev B; 4035-012 C - 4035-017 Rev B)

- 5) As part of the first application for the approval of reserved matters, a detailed phasing plan shall be submitted to and approved in writing by the local planning authority. The phasing plan shall specify the proposed timing for the delivery of the areas of public open space/green infrastructure on each phase as well as the construction programme for the housing (including self or custom build housing) and other built elements of the development. The development hereby approved shall be carried out in accordance with the approved phasing plan.
- 6) Prior to the submission of any reserved matters application in relation to any phase, a Masterplan and Design Code shall be submitted to and approved in writing by the Local Planning Authority. The Masterplan and Design Code shall be formulated broadly in accordance with the submitted Design and Access Statement and Illustrative Masterplan (141204 L02 02 k) and Parameter Plan (14 204 P01 rev B) and shall include the following details:
 - (a) The proposed movement network delineating the primary, secondary and tertiary streets and pedestrian and cycleway connections, setting out the approach to estate design, treatment of non-vehicular routes and car and cycle parking including connection into the existing pedestrian and cycleway routes shown on drawing no 4035 020 Rev A. These details shall include and take account of design principles to be agreed with the local planning authority in respect of crossing points of bus commuting routes in relation to the road network.

- (b) The proposed layout use and function of all open space within the development.
- (c) The approach to and design principles applied to car parking (on street and off-street).
- (d) Phased layout principles to include urban structure, form and layout of the built environment, building heights, densities, legibility, means of enclosure, key gateways, landmark buildings, key frontages and key groups.
- (e) The design approach for areas within the public realm including landscaping and hard surface treatments, lighting, street trees, boundary treatments, street furniture and play equipment including an explanation of how the design approach and layout will achieve the proposed mitigation as set out in the Chapter 8 of Volume 2 of the Environmental Statement submitted as part of the planning application and the submitted Greater Horseshoe Bat (GHB) Mitigation Plan (and addendum dated 8 March 2019)
- (f) Servicing, including utilities, design for the storage and collection of waste and recyclable materials.
- (g) External materials, to include a palette of wall and roof finishes, windows, doors, porches, heads, cills, chimneys, eaves and verges and rainwater goods.
- (h) The design principles that will be applied to the development to encourage security and community safety.
- (i) The specific design principles that will be applied to the Local Centre.
- (j) The design principles for the incorporation of a Sustainable Urban Drainage System (SUDS) throughout the development. This should include the defining of the Wolborough Fen catchment area and the results of a detailed hydrological and hydrogeological investigation (covering seasonal fluctuations) which should inform the design of the SUDS.
- k) The location and accommodation of existing GHB corridors which cross the site along with the creation of additional GHB habitat with linkages to existing GHB routes shall form part of the general design code.

Thereafter any application for the approval of reserved matters shall comply with the approved Design Code.

- 7) No development shall take place within an approved phase of the development hereby permitted until an ecological mitigation strategy for that phase has been submitted to, and approved in writing by, the local planning authority. The strategy shall be based on the proposed mitigation in the Chapter 8 of Volume 2 of the Environmental Statement submitted as part of the planning application and the submitted GHB mitigation plan (and addendum dated 8 March 2019). The Development shall be carried out and maintained in accordance with the approved strategy.
- 8) No development shall take place on any phase of the development until a Landscape and Ecology Implementation and Management Plan (LEMP) for that phase has been submitted to and approved in writing by the local planning authority. The LEMP shall include a timetable for implementation of the landscaping and ecology work and details of the management regime. The LEMP shall be implemented in accordance with the approved details.
- 9) No development shall commence on any phase until a low emissions strategy for mitigating the air quality impacts of the relevant phase (including the construction of the relevant phase) has been submitted to and approved in writing by the local planning authority. The approved strategy shall be implemented in accordance with the timescales set out therein. Any measures which are required to be retained shall be maintained throughout the life of the development.
- 10) No development shall take place until details of a strategy for sustainable surface water and ground water drainage (SUDS) (including temporary drainage provision during construction)

including mechanisms for ongoing management has been submitted to and approved in writing by the local planning authority. No development on any individual phase shall take place until details of sustainable surface water and ground water drainage (including temporary drainage provision during construction) for that phase to accord with the submitted Flood Risk Assessment have been submitted to and approved in writing by the local planning authority. Development shall be carried out in accordance with the approved details and the surface water drainage infrastructure shall be retained and maintained in operational order thereafter.

- 11) The delivery of the spine road through the site shall be provided to the eastern boundary of the site at a location to be agreed with the local planning authority (to enable its continuation through to Kingskerswell Road and the A380) prior to the occupation of the 500th dwelling.
- 12) Prior to the installation of any external lighting on the site, within any phase of development, a lighting strategy for that particular phase, including full details of all external lighting (heights, mounting, cowling, and lamp bulb details should be included), including that serving individual plots (non-domestic), must be submitted to and approved in writing by the local planning authority. A dark areas/corridor map where lighting levels of less than 0.5 lux would persist shall be included within the details to be agreed by the local planning authority (GHB commuting routes). The impact of house height, orientation and screening of roads and turning heads to retain darkness in corridors shall be considered and incorporated in the lighting strategy. The detailed assessment shall include contour lux modelling. No external light sources shall be permitted on those areas shown coloured green on Drawing 141204 P 01 Rev D. No external light sources shall be installed at the site other than those external light sources permitted by the local planning authority.
- 13) No building in any phase shall be occupied until works for the disposal of foul sewage from that phase have been provided, in accordance with details first submitted to and approved in writing by the local planning authority.
- 14) No development shall take place on any phase of the development until a Construction Environment Management Plan (CEMP) has been submitted to and approved in writing by the local planning authority for that phase. The CEMP shall include a summary of the work to be carried out; a description of the site layout and access including proposed haul routes and parking facilities and the location of site equipment including the supply of water for damping down; an inventory and timetable of all dust generating activities; a list of dust and emission control methods to be used; details of timetabling for movements of construction vehicles to avoid the AQMA during peak traffic periods; details of timetabling or means for construction vehicles to visit the construction site to avoid queuing traffic; the identification of an authorised responsible person on site for air quality; a summary of monitoring protocols and an agreed procedure for notification to the local authority Environment & Safety Services Department; a site log book to record details and action taken in response to incidences of the air quality objectives being exceeded and any exceptional incidents; proposed hours of work (including construction, piling, deliveries and other movements to and from the site); and an Ecological Construction Method Statement including how GHB identified corridors will be protected during the construction phase as well minimising light spill (no more than 0.5 lux in corridors). Construction vehicles must be low emission which comply with current Euro emission standards. All vehicles leaving the site must be wheel-washed if there is any risk of affecting nearby properties. There should be a paved area between the wheel-wash and the main road. The development shall be carried out in accordance with the approved CEMP.
- 15) No development shall take place on a phase of the development until full highway details for that phase have been submitted to and approved in writing by the local planning authority. These shall include details of the proposed estate road(s), cycleways, footways, 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. Development shall be carried out in accordance with the approved details.

- 16) No development shall take place on any phase, or any equipment, machinery or materials be brought onto any part of the relevant phase for the purpose of development until fencing to delineate a Protection Zone to protect retained hedges has been constructed in accordance with location and construction details shown on plans and particulars including in relation to retention and removal timetables that have been submitted to and approved in writing by the local planning authority. Within the Protection Zone nothing shall be stored or placed, nor any works take place, nor shall any changes in ground levels or excavations take place unless a method statement for such works has also been submitted to and approved in writing by the local planning authority.
- 17) Notwithstanding the Arboricultural Impact Assessment (ES Technical Appendix 8.6) no development shall take place on any phase of the development until a detailed tree survey has been carried out on that phase and a plan submitted and approved by the local planning authority that clearly identified those trees to be retained and those removed. In relation to those trees identified to be retained no development shall take place within an approved phase of the development hereby permitted until details of tree and hedgerow protection measures for that phase during construction have been submitted to, and approved in writing by, the local planning authority. The measures shall accord with BS 5837:2012 Trees in relation to design, demolition and construction – Recommendations and shall indicate exactly how and when the trees will be protected throughout the construction period. The measures shall include provision for the supervision of tree protection works by a suitably qualified arboricultural consultant. The development shall be carried out in accordance with the approved details and protection measures.
- 18) No development shall take place on a phase of the development until the applicant has secured the implementation of a programme of archaeological work in accordance with a written scheme of investigation for that phase, which has been submitted by the applicant and approved in writing by the local planning authority. The development shall be carried out at all times in strict accordance with the approved scheme.
- 19) Unless otherwise agreed by the local planning authority, development on any phase of the development other than that required to be carried out as part of an approved scheme of remediation shall not take place until sections 1 to 3 of this condition have been complied with in respect of that phase of the development. 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 section 4 of this condition has been complied with in relation to that contamination.

Section 1. Site Characterisation

An investigation and risk assessment, in addition to any assessment provided with the planning application, shall 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 competent persons 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:
 - o human health
 - o property (existing or proposed) including buildings, crops, livestock, pets, woodland and service lines and pipes
 - o adjoining land
 - o groundwaters and surface waters

- o ecological systems
 - o 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'.

Section 2. 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 shall 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.

Section 3. Implementation of Approved Remediation Scheme

The approved remediation scheme shall be carried out in accordance with its terms prior to the commencement of any phase of the development other than that required to carry out remediation, unless otherwise agreed in writing by the local planning authority. 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 the replaced 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.

Section 4. 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 shall be reported in writing immediately to the local planning authority. An investigation and risk assessment must be undertaken in accordance with the requirements of section 1 of this condition, and where remediation is necessary a remediation scheme must be prepared in accordance with the requirements of section 2, 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 section 3.

- 20) No development shall take place within the Wolborough Fen SSSI hydrological catchment unless and until a Scheme (based upon an evidence base agreed with the local planning authority in consultation with Natural England) has been submitted to and approved by the local planning authority in consultation with Natural England which sets out detailed measures to ensure that the development does not have an adverse impact on the integrity of the Wolborough Fen SSSI during the construction or operation of the development. The development shall thereafter proceed in accordance with the approved details.
- 21) No commercial buildings shall be occupied or otherwise brought into use until provision for the loading and unloading of goods vehicles for that building has been made in accordance with details which shall have been submitted to and approved in writing by the Local Planning Authority.
- 22) The total use class A (A1/A3/A4/A5) (as defined in the Town and Country Planning (Use Classes) Order 1987 (as amended) or any other instrument that replaces it words) floorspace hereby approved shall not exceed 1,250 sq.m gross external area. No more than 100 sq.m gross external area of the total floorspace approved shall be used for hot food takeaway

purposes (use class A5) and no single unit of A1 use shall exceed 500 sq.m (gross external area) floor area.

- 23) No more than 300 of the dwellings permitted hereby shall be occupied unless and until the works to the Ogwell Cross Roundabout (shown on drawing nos 4035-012 E, 4035-017 B) and Firestone Lane (shown on drawing no 4035-011 E) have been completed.
- 24) No more than 600 dwellings to be occupied until the further works to the improvement of the Ogwell Roundabout (shown on drawing number drawing 4035 003 Rev B) have been fully implemented.
- 25) A design code for the custom build dwellings within each relevant phase shall be submitted to and approved by the local planning authority prior to the submission of the first reserved matters application for any phase including a custom build dwelling. The reserved matters applications for the custom-build dwellings shall accord with the requirements of the approved design code.
- 26) The Community Building shall be completed prior to the occupation of more than 50% of the Dwellings comprised in Area 2 in accordance with a specification which shall include details of the size (which shall be no less than 500m² Gross External Area), location and proposed range of uses of a Community Building which has first been submitted to and approved by the local planning authority. The Community Building shall be considered to have been completed when it meets the following criteria:
 - a. The building is wind and water tight which may include temporary provision/arrangement pending finally agreed fit out works
 - b. All services have been provided to the boundary and/or the external envelope of the building and there is proper and safe access to the building
 - c. In respect of those parts of the building which are to be fitted by a tenant the relevant parts of the building are ready for the tenant to fit out
 - d. In respect of those parts of the building which are not to be fitted out by a tenant the relevant parts of the building are ready for beneficial use and occupation
 - e. The building has been constructed and substantially completed in all respects to shell standard
- 27) A building located in Neighbourhood Area 2 to provide floorspace of not less than 500sqm (Gross Internal Floor Area) for Use Class A retail purposes shall be constructed to shell and core specification prior to the occupation of 50% of the dwellings in Neighbourhood Area 2. The building shall be marketed for such purposes in accordance with a strategy to be submitted to and approved in writing by the local planning authority prior to any such marketing commencing. For the avoidance of doubt, this may comprise multiple lettable units.
- 28) 1.8 hectares of land to be used for the provision of education shall be serviced, accessible and made available prior to the occupation of no more than 400 dwellings. The land shall be provided in the location shown on the submitted illustrative framework plan (141204 L02 02 J) or other such location as may be first submitted to and approved in writing by the local planning authority. The serviced land shall be kept available solely for education purposes for 10 years from the date of planning approval or the Occupation of the 600th Dwelling, whichever is the later.
- 29) No building comprised in any phase shall be built above damp-proof course unless and until details of the proposed finished floor levels of each building comprised in that phase have been submitted to and approved by the local planning authority. The development shall be carried out in accordance with the approved details.



Report to the Secretary of State for Housing, Communities and Local Government

by **Frances Mahoney MRTPI IHBC**
an Inspector appointed by the Secretary of State

Date 4 March 2020

TOWN & COUNTRY PLANNING ACT 1990

TEIGNBRIDGE DISTRICT COUNCIL

APPEAL BY ANTHONY, STEVEN & JILL REW

Inquiry commenced on 26 March 2019

File Ref: APP/P1133/W/18/3205558

File Ref: APP/P1133/W/18/3205558**Land at Wolborough Barton, Coach Road, Newton Abbot TQ12 1EJ**

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a failure to give notice within the prescribed period of a decision on an application for outline planning permission in respect of the mixed use development and full planning permission relating to change of use of agricultural buildings (see below).
- The appeal is made by Anthony, Steven & Jill Rew against Teignbridge District Council.
- The application Ref 17/01542/MAJ is dated 9 June 2017.
- This is a hybrid proposal for the following development:

Outline proposal for mixed use development comprising circa 1210 dwellings (C3), a primary school (D1), up to 12650 sq m of employment floorspace (B1), two care homes (C2) providing up to 5,500 sq m of floorspace, up to 1250 sq m of community facilities (D1), a local centre (A1/A3/A4/A5) providing up to 1250 sq m of floorspace, open space (including play areas, allotments, MUGA) and associated infrastructure (Means of Access to be determined only); and

Full proposal for a change of use of existing agricultural buildings to hotel (C1), restaurant (A3) and bar/drinking establishment (A4) uses, involving erection of new build structures, construction of an access road and parking, plus other associated conversion and minor works.

Summary of Recommendation: The appeal should be allowed in both instances.

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Preliminary matters

1. The Inquiry sat from the 26 – 28 March, 11 - 13 June, with a site visit¹ on the 13 June 2019. The Inquiry closed in writing on 10 July 2019.
2. This appeal was recovered on the 3 July 2018 under Section 79 and paragraph 3 of Schedule 6 of the above Act by the Secretary of State (SoS), because the appeal involves proposals which would significantly impact on the Government's objective to secure a better balance between housing demand and supply and create high quality, sustainable, mixed and inclusive communities².
3. At the Inquiry applications for costs were as follows:
 - Appellants' costs application against the Council;
 - Rule 6 Party costs application against the appellants;
 - Appellants' cost application against the Torbay and South Devon NHS Trust; and
 - The Torbay and South Devon NHS Trust cost application against the appellants.

These applications are the subject of a separate Report.

4. The appeal proposal includes two distinct elements of development. One an outline for the mixed-use development and a full proposal for a part conversion of agricultural buildings to a hotel and restaurant. I have considered these proposals separately unless otherwise indicated.
5. The description of the proposed mixed-use development set out above in the bullet points is an amended version of the original description which appears on the planning application form³. In essence there was a decrease of the number of proposed dwellings and an increase in the amount of employment floorspace⁴. This changed over the life of the planning application before the appeal was lodged. All the main parties, along with those who addressed the Inquiry were aware of the alternative plans and made comment in the context of them where appropriate. As such I am satisfied that there has been no prejudice to any interested party in the change in the description of development. Therefore, the consideration of this appeal should be based on the description reflected in the bullet points above.
6. I am also conscious that other than the location plan and site access plan, all other plans are purely for illustrative purposes only and whilst they may not be determinative, they have informed my reasoning. That notwithstanding I have

¹ Both accompanied and unaccompanied (site and its environs also visited on an unaccompanied basis on 26 March 2019).

² Direction of recovery letter dated 3 July 2018.

³ Outline proposal for mixed use development comprising circa 1275 dwellings (C3), a primary school (D1), up to 3500 sq m of employment floorspace (B1), two care homes (C2) providing up to 5,500 sq m of floorspace, up to 1250 sq m of community facilities (D1), a local centre (A1/A3/A4/A5) providing up to 1250 sq m of floorspace, open space (including play areas, allotments, MUGA) and associated infrastructure (Means of Access to be determined only).

⁴ To reflect the level of employment provision on the appellants' land as shown on the Proposals Map.

been asked to consider the broad approach to the development of the appeal site as set out on the Illustrative Masterplan⁵.

7. The Abbotskerswell Parish Council & Wolborough Residents' Association (Rule 6 Party) were granted Rule 6 party status on the 19 February 2019. They subsequently took a full and active part in the presentation and testing of evidence at the Inquiry. Their case is reflected within this Report.
8. The Torbay and South Devon NHS Foundations Trust (NHSFT) was not a rule 6 party but, in respect of seeking a significant S106 planning obligation to, in their view, mitigate the impact of the development on the health of the local population, they produced both written and oral evidence at the Inquiry in this regard. This was subject to the testing of that evidence and the appellants' produced written and oral rebuttal evidence. A summary of the NHSFT case has also been produced within the Report.
9. Following the close of the Inquiry the 2019 Housing Delivery Test results were published on 13 February 2020. It is noted that Teignbridge District Council is identified as being a 'no consequence' authority. Comments received from the parties have been reflected within the rehearsal of their individual cases below.

Appeal proposal

10. The appeal proposal is in a hybrid form seeking full planning permission for a change of use of agricultural buildings⁶ and outline planning permission for the mixed-use development with all matters reserved for future consideration except for the means of access.
11. In respect of the outline proposal, other than the location plan and site access plans⁷, all other plans are purely for illustrative purposes only⁸. However, I have considered them on the basis of a promoted design/layout approach and whilst they may not be determinative, they have informed my reasoning⁹.

Site and surroundings

12. The appeal site lies on the southern fringe of Newton Abbot, partly bounded by the A381 Totnes Road to the west and Coach Road to the north. The Town Centre lies just to the north¹⁰. The site of some 66 hectares includes several farm buildings adjacent to and accessed from Coach Road, land in active agricultural use, both arable and pasture and dense woodland. The appeal site and its immediate environs are characterised by rolling Devon pastureland where the change in levels is marked, and the undulating land rises up from Coach Road towards the south west corner of the appeal site, to a ridge at Stonemans Hill, marking the high point in this part of the landscape setting of the Town.

⁵ Dwg No 141204 L 02 02 Rev K.

⁶ Referred to sometimes as the farmyard.

⁷ CDs CD2g, 2h, 2i.

⁸ CD2f – Illustrative Masterplan.

⁹ I have noted that the appellant company has suggested the broad perimeters of the illustrative material could be secured through the use of conditions.

¹⁰ Approximately 1 kilometre away.

13. To the north the land rises from Coach Road and the characterising urban residential development of Newton Abbot spills down this opposing slope. The Town in general is characterised by the undulations of the river valleys and intervening hills, with a convergence flowing into the River Teign and then out to the sea. Newton Abbot has developed regardless of any challenges in the topography of its location and the townscape is dominated by urban, mainly residential development of a variety of designs, types, ages and densities, hugging valley slopes and covering high points within the Town as well as the river side plains. The Town is punctuated in pockets by well treed spaces, the green nature of which reflects the broadleaf and mixed woodland within the landscape surroundings, along with the characterising field and roadside hedgerows. The Wolborough and Decoy Country Park, including the Wolborough Fen (to the east) accentuates the valley slope down from Stonemans Hill to Decoy Road.
14. The acceptance and accommodation of the local topography is a dominant characterising visual feature of the development of Newton Abbot in the wider landscape context. That context similarly reflects the undulating topography as does the appeal site itself.

Planning Policy

15. The Development Plan includes the Teignbridge Local Plan 2013-2033 (LP)¹¹. This seeks to cluster its main future development needs into its main towns. Newton Abbot¹² is the largest of the main towns within Teignbridge District providing a broad range of services, facilities and employment. LP Policy S4 establishes a clear principle for growth in the Heart of Teignbridge that contributes towards 50% of the District's future housing needs over the plan period. That need is expressed in Policy S4 as being an average of 620 dwellings per year to 2033. Through the monitoring of the housing market the Council will seek to proactively ensure that this level of provision is brought forward.
16. LP Policy NA3 promotes the allocation of 120 hectares at Wolborough of a sustainable, high quality mixed-use development to deliver at least 1500 homes, with a target of 20% affordable homes. It is the second largest proposal within the Heart of Teignbridge.
17. The Abbotskerswell Neighbourhood Plan 2016-2033 (NP) was made on 31 October 2017. The cases of the parties based on planning policy did not promote the NP to the decision-maker as being compromised by the proposed development. The NP accepts the principle of the NA3 allocation, but highlights concerns in respect of the protection of the natural environment and the setting of Abbotskerswell in the landscape. The establishment of green infrastructure to address these matters is identified in NP Policy PH2 which seeks to minimise the impact of the LP allocation NA3¹³.

¹¹ CD8a. Other components of the Development Plan such as the Newton Abbot Neighbourhood Plan 2016-2033 (made June 2016), Abbotskerswell Neighbourhood Plan 2016-2033 (made 31 October 2017), Devon Waste Plan (adopted 2014) and Devon Minerals Plan 2011-2033 (adopted February 2017) are not relied upon in the opposition to this proposal.

¹² Population of some 25,000.

¹³ CD 8b).

18. Similarly, the Newton Abbot Neighbourhood Development Plan 2016-2033 (final version June 2016 (CD8c)) was brought to my attention, but it was not suggested that a conflict with the plan arose through the appeal proposal bearing in mind the context of the adopted Development Plan policy¹⁴.

Matters not in dispute between the Council and the appellants¹⁵

19. The principle of development is not a matter of dispute between the Council and the appellants¹⁶. It is also accepted that the appeal site forms the largest part of the mixed-use allocation NA3 in the adopted Teignbridge Local Plan (2014)¹⁷. Two small areas of land project beyond the LP allocation boundaries. This is to accommodate a realignment of the access and link road and to respect an existing field boundary¹⁸. These extensions are considered to be minor and uncontroversial. The NA3 Wolborough Masterplan within the LP stemmed from stakeholder engagement, including workshops to which the appellants were a party.

20. The Examining Inspector in his report on the LP¹⁹ in relation to the NA3 allocation specifically considered:

- Landscape and visual impacts²⁰;
- Impacts upon the setting of listed buildings²¹;
- Ecological and drainage impacts²²; and
- Infrastructure provision²³.

21. Following the completion of the Examination of the LP it was adopted in May 2014, including the NA3 allocation.

22. The LP projects delivery of 1500 dwellings by 2033 from the NA3 allocation. The Annual Monitoring Report 2017-18 suggests delivery from the appeal site by 2020/2021. A significant proportion of the 1500 dwelling target from this allocation would be proposed to be delivered from the development of the appeal site. Clearly slippage is inevitable.

Arboricultural

23. The tree survey and tree constraints plans have informed the approach to the proposed development of the site and the Illustrative Masterplan. The overall

¹⁴ I am also aware of the Ogwell Neighbourhood Plan made on the 5 April 2018, but this too does not present any policy barrier to the appeal proposal.

¹⁵ Statement of Common Ground (SofCG) – January 2019 CD15a and Additional SofCG June 2019 CD29.

¹⁶ Inquiry Doc 8 para 1.

¹⁷ Both the Council and Devon County Council supported the allocation at the LP stage.

¹⁸ Statement of Common Ground (SofCG) dated January 2019 page 13 Developing the Plan shows the two areas in the context of the allocation.

¹⁹ CD9k.

²⁰ Para 70.

²¹ Para 71.

²² Para 72 & 73.

²³ Para 74.

impact on existing hedgerows and trees on the appeal site is agreed as being limited and any limited losses would be compensated for with new planting and habitat creation.

Landscape

24. The evaluation of landscape matters made by the Examining Inspector in his report on the LP (LPIR) is relied upon, particularly paragraphs 70 and 75. The site has neither national nor local designation. The Illustrative Masterplan shows how the site can be developed in an appropriate manner and the detail of layout and landscaping would be agreed at the reserved matters stage²⁴.

Flood risk

25. The Flood Risk Assessment²⁵ concludes that the proposed development is within Flood Zone 1 and consequently has a low probability of flooding from fluvial and tidal sources. There would be no increase in flood risk to the proposed development or the area surrounding the site²⁶. The revised FRA and detailed drainage strategy for the element of the proposal requiring full planning permission was submitted and agreed.

Surface water drainage and the Wolborough Fen SSSI

26. The Examining LP Inspector was satisfied that a suitably designed Sustainable Urban Drainage Scheme (SUDS) could regulate all surface water within the development site, thereby preserving and protecting the environment²⁷. The control of the surface drainage outflow by a SUDS would control the amount of water feeding into the SSSI thus preserving this environmental asset²⁸. This matter can be dealt with by means of planning conditions and the terms of the S106 agreement which provides for the opportunity for the inputs to the Fen to be managed by a management body for the Fen. This matter will be returned to in Inspector's reasons.

Impact on Heritage Assets

27. There is no objection to the conversion of the agricultural buildings into a hotel and restaurant use²⁹, including from Historic England (HE).

28. The Examining LP Inspector in his report at paragraph 71 dealt with the impact of the NA3 allocation, and concluded he did not see why the setting of the Grade I Church could not be protected through the detailed master planning process. This is the position of the Council but not of HE who maintained an objection to the outline proposal. The Report will return to this matter.

²⁴ The Design and Access Statement (DAS) considers impacts of the proposed development within the surrounding landscape context and adjoining residential areas. A Landscape and Visual Impact Assessment (LVIA) is also included within the Environmental Statement (Binder 4 ES Volume 3(A)).

²⁵ Binder 4 ES Volume 3 (A).

²⁶ FRA page 37, paras 6.1 & 6.2.

²⁷ CD9k para 73.

²⁸ CD9k para 75.

²⁹ Verbally confirmed in Opening by the Council.

*Highways*³⁰

29. It is the agreed position of the Highway Authority, Devon County Council (HA) and the appellants that the proposed means of access are suitable to serve the appeal proposal³¹. The off-site improvements to pedestrian and cycle connectivity at Coach Road and Newton Abbot footpaths are to be dealt with by means of a contribution secured through the S106 agreement.
30. Subject to a condition precluding the occupation of more than 500 dwellings until the Spine Road has been delivered to the eastern boundary of the site, the HA considers the proposal acceptable in planning terms.
31. Whilst there is much agreement between the Council and the appellants on the above topics the Rule 6 Party was not a signatory to the SofCGs, and maintain objections to the proposal, including an in-principle objection to the development of the site. These matters will be returned to.

In the absence of reasons for refusal the Council's position

32. The Council's concerns centre on constraints placed upon the development of the appeal site by reason of its relationship to the South Hams Special Area of Conservation (SAC) which is designated, in part, because it hosts an important population of Greater Horseshoe Bats (GHBs). That constraint is identified in LP Policy NA3 n). When the site was considered at the LP Examination stage it was accepted that, in principle, it should be possible to develop the site in a way which would be compatible with the constraint. However, this would need to be demonstrated at the project stage when the site was put forward for planning permission.
33. The LP was the subject of legal challenge in respect of the allocation of site NA3, which was unsuccessful, partly on the basis that there would be further, more detailed assessment material of GHB impacts at the planning application stage. The issue for the Council is whether the appellants have provided such information as the competent authority³² may reasonably require for the purposes of undertaking an Appropriate Assessment (AA) prior to any planning permission being granted. This matter will be returned to.

Rule 6 Party position

34. The position of the Rule 6 Party differs from the Council in that they maintain an in principle objection to the proposal, including objections on the basis of the site being an unsustainable development, likely to have unacceptable adverse effects on the locality, including on local health services, traffic, air pollution and heritage. They also support the Council's concern relating to the impact of the proposal on GHBs.

³⁰ This is the agreed position between Devon County Council as Highway Authority and the appellants as set out in the Highways SofCG March 2019 and the Additional SofCG June 2019 CD29.

³¹ Design of the access has been the subject of negotiations with HA and a Stage 1 safety audit.

³² In this case the Secretary of State as decision-maker.

The Case for the appellants³³

35. The appeal scheme is not some speculative proposal on an unallocated greenfield site. It forms the lion's share of one of the most significant allocations in the Council's Development Plan, Policy NA3 of the Teignbridge District Local Plan (adopted May 2014). The proposal does go beyond the allocation in two respects which were not opposed by the Council. Firstly, the application for full permission for the redevelopment of the existing farmyard, and secondly, the proposed means of access to the appeal scheme³⁴. Other than the change of use of agricultural buildings, the appeal proposals are outline in nature, simply seeking confirmation of the allocation, with the details to be the subject of reserved matters applications in accordance with any conditions imposed on the outline permission sought.
36. The alleged impacts of the LP Policy NA3 allocation were given careful consideration by the Local Plan Examining Inspector's Report which was detailed and informed by a Sustainability Appraisal (plus addenda) which must be taken to have been fully compliant with the requirements of the Strategic Environmental Assessment Directive 2001/42/EC³⁵. The Examining Inspector considered that the site was in a highly sustainable location and that heritage and ecological considerations (including in relation to GHB) did not undermine the principle of development but went to the details. Those details are not the subject of the application to which this appeal relates. What is at issue is the principle of development which the Examining Inspector, and Policy NA3, have endorsed.
37. A High Court challenge to the adoption of the Local Plan and Policy NA3, in particular by Abottskerswell Parish Council (part of Rule 6 Party), was rejected by the High Court; permission to appeal was refused by the Court of Appeal on the basis that there was no realistic prospect of the challenge succeeding.
38. It would have been anticipated that in these circumstances progress of the appellants' application would have been straightforward. However, the Council failed to comply with its duty to determine the application within the prescribed statutory timetable. It was not clear what were the Council's putative reasons for refusal nor what matters could be dealt with by means of conditions/obligations.
39. A duplicate planning application was submitted by the appellants to the Council in the hope of avoiding the need for appeal or at least getting some clarity. Officers recommended that Members resolve to grant conditional permission subject to provision of further information in relation to GHB; Members were warned of the possible costs consequences if they did not follow that professional advice. They nonetheless resolved to refuse permission. The appellants then sought confirmation from the Council that the reasons for refusal on the duplicate

³³ Based on appellants' Closing Submissions Inquiry Doc 55.

³⁴ Which is the subject of a SOCG with the local highway authority, Devon County Council.

³⁵ There is authority at the highest level to the effect that a public law decision, including in the planning context and in the context of EU environmental law, is to be treated as having all the effects in law of a valid decision unless and until it is quashed by the High Court or the appellate court; its legality cannot be collaterally challenged in a claim for judicial review of some subsequent decision relying upon it. See the lengthy discussion of this principle in the judgment of Auld LJ in *R (Noble) v. Thanet District Council* [2006] 1 P.& C.R. 13 (CA) at paras. 42-61 and the House of Lords case-law cited therein.

scheme stood as the putative reasons for refusal on the appeal scheme. The Council did not provide that confirmation, instead saying that whilst the refusal of the duplicate application was a material consideration, "*it is not the Council's intention to introduce new evidence which is not set out in our Statement of Case*" (Ian Perry email, CD15d, 20 February 2019).

40. The evidence of the Rule 6 Party, the NHSFT and of the Council, to a lesser degree, present an underlying desire to re-open arguments that were resolved in the Local Plan process and in that context to throw everything possible at the appeal scheme irrespective of the quality of their arguments and irrespective of their procedural responsibilities. It would make a mockery of the planning system and of the Government's stated commitment to boosting the supply of housing in order to address the national housing crisis, if the Secretary of State's decision gave any credence to this approach.
41. Save possibly for a S106 issue about bus contributions, the Council does not now part from the appellants, in terms of what the Secretary of State is asked to decide, on any of these issues other than the first: GHBs and impact on the SAC. It is agreed with the Council that, if the Secretary of State finds for the appellants on the GHB/SAC issue, the appeal scheme is in accordance with the Development Plan for the purposes of s.38(6) of the Planning and Compulsory Purchase Act 2004 (PCPA 2004).
42. Even on the GHB/SAC issue, it has not been made clear during the Inquiry whether the Council are asking the Secretary of State to dismiss the appeal and refuse permission or, as officers recommended to the Council's Planning Committee on the duplicate application, allow the appellants an opportunity to undertake the additional work which the Council says is necessary before permission can be granted (or before development can commence).³⁶ The final paragraph of the Council's closing is the first time during the Inquiry it has been said explicitly that they wish to see the appeal for this allocated site dismissed.

Greater Horseshoe Bats & impact on the SAC

43. There is no dispute that the appeal scheme requires appropriate assessment. Therefore, the recent case-law regarding the approach to determining whether appropriate assessment is required is not relevant.
44. Regulation 70(3) of the Conservation of Habitats and Species Regulations 2017 (the Habitats Regulations) provides, consistently with Article 6(3) of the Habitats Directive, that:

Where the assessment provisions apply, outline planning permission must not be granted unless the competent authority is satisfied (whether by reason of the conditions and limitations to which the outline planning permission is to be made subject, or otherwise) that no development likely adversely to affect the integrity of a European site or a European offshore marine site could be carried out under the permission, whether before or after obtaining approval of any reserved matters.

³⁶ There is no reason why this could not be the Secretary of State's decision in the event that, contrary to the appellants' case, he agrees with the Council on the GHB/SAC issue.

45. The role of conditions and other limitations (such as S106 obligations) in contributing to the avoidance of adverse effects must be taken into account. Where planning conditions on an outline planning application require the local planning authority's future approval of specified reserved matters and other details of the development, and in so doing enables the local authority to avoid adverse effects by scrutinising the details at that future approval stage and only granting approval if satisfied that the details would not lead to adverse effects, then those conditions provide sufficient safeguards to enable the conclusion to be reached at the stage of granting planning permission that Regulation 70(3) and thus Article 6(3) are complied with.
46. There is no support in the wording of the legislation or in the case-law for the proposition that all details of matters which may affect site integrity have to be provided and assessed at the outline stage. Indeed, if that were the case, then there would be no place for outline planning permission in relation to development requiring appropriate assessment. Details can be left over by an outline planning permission for subsequent approval, provided there are effective safeguards built into the permission to enable the decision-maker to ensure that when the details are provided, they demonstrate that harm to site integrity will not be caused.
47. It is through this prism that the precautionary principle must be applied. The precautionary principle does not require you to assume that the Council will not do its job properly at the reserved matters / discharge of conditions stage³⁷.
48. The Council through Mrs Mason failed to grasp this. Putting to one side her desire for more survey work, all the matters, which in Section 7 of her proof she said more detail was needed to be provided, now relate to details which are left to the reserved matters stage and/or approval of conditions precedent, and which will require the Council's approval at that stage (meaning that consistently with *Holohan* there are adequate safeguards in place to ensure the Council has the power to prevent the details coming forward in a manner that would adversely affect site integrity). For example, paragraphs 6.16-6.16 and 7.4 require an assessment of collision impacts and severance impacts, and mitigation thereof, in relation to the internal roads of the development; paragraph 7.5 requires mapping and assessment of lighting within the site, the location and details of which is inextricably linked to the final layout; and the details referred to at paragraphs 7.6(a)-(k) also all relate to matters left over for subsequent approval by the Council, as she accepted in cross-examination (XX). In XX she said that she wanted to know now, at this outline stage, "*the details of how adverse effects can be ruled out at the reserved matters stage*". That is simply not a requirement of the Habitats Directive or Regulations. It would require the submission of a full planning permission in all but name, rendering the concept of outline planning permission serving no practical purpose.

³⁷ The CJEU's judgment in Case C-461/17 *Holohan* ECLI:EU:C:2018:883, to which the Council has repeatedly referred, is entirely consistent with the above analysis – for full text of legal principles see Inquiry Doc 55 paras 19-27. *Holohan* is perfectly consistent with the proposition that details can be left over by an outline planning for subsequent approval, provided there are effective safeguards built into the permission to enable the decision-maker to ensure that when the details are provided they demonstrate that harm to site integrity will not be caused.

49. Further, at times it has appeared that the Council and/or others have overstated the precautionary principle. The appellants have also always acknowledged that the application of the precautionary principle means that the appropriate assessment must enable the Secretary of State to conclude that (having regard to the safeguards within the planning conditions that can be attached to any grant of planning permission) it is necessary to be certain *beyond reasonable scientific doubt* that the grant of planning permission would not lead to any adverse effect on site integrity. However, *beyond reasonable scientific doubt* in this context does not mean *absolute certainty* or *zero risk*³⁸.
50. The precautionary principle, therefore, does not require the Secretary of State to abstain from subjecting the competing evidence to proper scrutiny before reaching a conclusion, and instead treat the mere existence of disagreement between the appellants on the one hand and the Council and NE on the other hand (whose representations were not able to be tested in XX at the Inquiry and therefore must carry less weight) as automatically meaning that there is *reasonable scientific doubt*. The test can be satisfied where the decision-maker is subjectively certain even where others disagree. See also *Holohan* at paragraph 52 of the CJEU's judgment, which makes clear that the decision-maker can, consistently with the precautionary principle, depart from the findings of an expert, provided sufficient reasons are given.

The relationship between the appeal site and the SAC

51. The appeal site is not in any of the five SSSI component parts of the SAC, the nearest of which is over 7.2km away (the remainder are all over 10km away).
52. The Habitats Directive, therefore, does not protect the appeal site (or the nearby roost at Conitor Copse) for its own sake.
53. The appeal site is also well outside the 4km 'sustenance zone' surrounding each of the component parts of the SAC on which the GHB population within the SAC rely for their essential food sources. As Mr Holloway (proof paragraph 4.13) and Mrs Mason in XX both agreed, the appeal site is outside the normal foraging range of the GHB population within the SAC.
54. The appeal site is instead part of a much broader area of land over which the GHB population within the SAC will travel from one component part of the SAC to another (occasionally foraging en-route but doing so incidentally to their travel

³⁸ See eg Case C-102 *Waddenzee* [2005] 2 C.M.L.R. 31, per Advocate General Kokott at paragraph AG107:

However, the necessary certainty cannot be construed as meaning absolute certainty since that is almost impossible to attain. Instead, it is clear from the second sentence of Article 6(3) of the Habitats Directive that the competent authorities must take a decision having assessed all the relevant information which is set out in particular in the appropriate assessment. The conclusion of this assessment is, of necessity, subjective in nature. Therefore, the competent authorities can, from their point of view, be certain that there will be no adverse effects even though, from an objective point of view, there is no absolute certainty.

- between component parts of SAC as opposed to this being a critical foraging resource). This too was agreed with Mrs Mason (XX).
55. It is also common ground that, the nature of how GHB travel over this broader area of land within which the appeal site lies is that they are "*widely dispersed across the landscape*" (Mason proof paragraph 6.12 and XX), "*in low numbers*" (Mason XX; South Hams SAC draft SPD Feb 2018, CD8e, p24). The consensus of scientific evidence before the Inquiry is therefore that the former theory of "strategic flyways" within this wider landscape, providing critical corridors through which GHB travel between component parts of the SAC is concentrated, has been disproved (Holloway main proof paras. 4.25-4.29). Certainly, there is consensus that the appeal site "*is not a critical route corridor but is part of a much broader landscape in which GHB movements are widely dispersed*" (Mrs Mason accepted this in XX) and that, consistent with their use of that broader landscape, GHB movements over the site are at "*low levels*" (see Holloway rebuttal paragraph 3.18; agreed by Mrs Mason in XX).
56. The critical question for the purposes of Regulation 70(3) and Article 6(3) is whether, having regard to the safeguards that can be imposed by way of planning conditions and the ability of the Council to scrutinise the details of the development at the reserved matters stage, can the Secretary of State be satisfied beyond reasonable scientific doubt that the appeal scheme would not harm the ability of GHB to continue to travel "*at low levels*" in a "*broadly dispersed*" manner across the wider landscape within which the appeal site lies?
57. There is sufficient information for the Secretary of State to answer this question in the affirmative.
58. First - once the question for the Secretary of State is properly defined, it is obvious that further surveys are not necessary to provide an answer. The functional link between the appeal site and the SAC is already known, as described above, as part of a wider landscape beyond the SAC and the sustenance zones, within which GHB travel from one part of the SAC to another in a manner that is "*widely dispersed*" and "*at low levels*". The agreed certainty that this is the site's function, and the ability of the Council at the reserved matters stage to ensure that the final form of the development will enable this function to continue, is what matters, not the precise number of bats using the site on any particular survey day(s) or the precise part(s) of the site that they used on those day(s). For this overarching reason, as elaborated by Section 3 of Dr Holloway's rebuttal, further survey work is not necessary. It does not matter *where* the bats traverse the site, or the precise quantum of the agreed "*low level*", provided that they can continue to do so in future (Holloway Re-examination (RX)). The Council and Mrs Mason have failed to give proper consideration to whether the 'unknowns' to which they refer actually bear upon the critical question to be addressed for the purposes of the Habitats Regulations

and Directive³⁹. Mr Seaton's criticisms at paragraphs 2.13-2.14 of his first rebuttal are well founded.

59. Secondly - the GHB/SAC issue has already been considered at the plan-making stage. Informed by the Habitats Regulations Assessment for the Council undertaken by Mike Oxford of Kestrel Wildlife Ltd (CD 9f) and Kestrel's supplementary report (CD9g), as well as the evidence provided to the Local Plan Examination, the LPIR at paragraph 72 concluded that *even on the now-discredited assumption that there was a 'strategic flyway' critical route corridor running along the southern boundary of the site*, the principle of the development enshrined in the allocation was capable of avoiding harm to the SAC subject in particular to (i) *"a buffer to be retained in the form of a green space along a ridge"*, (which the appeal scheme provides notwithstanding the subsequent evidence discrediting the 'strategic flyway theory'⁴⁰) and (ii) scrutiny over the specific details of the development (which the Council would have at the reserved matters / discharge of conditions stage).
60. Thirdly - as noted by LPIR paragraph 72, the evidence of Mr Oxford to the LP Examination was the buffer did not need to be 500m wide (again, even on the disproved assumption that it was a 'strategic flyway' critical route corridor). As Dr Holloway observed at paragraph 4.35-4.38 of his proof, and elaborated in oral evidence, a 10-15m flyway corridor was found to be sufficient even within the sustenance zone in the *Devon Wildlife Trust/ Chudleigh* case (see also the plan at CDR7 and Mr Seaton's first rebuttal at paragraphs 2.7-2.9). At its narrowest the buffer that the appeal scheme will provide for is 250m wide; Mrs Mason offered no evidential basis for disagreeing with Dr Holloway's analysis that this would be more than ample to allow the aforementioned function of the appeal site in relation to the SAC to continue.
61. Fourthly - as Dr Holloway outlined at paragraphs 4.38 and 5.17-5.13 of his proof, as elaborated in Evidence in Chief (EiC), the appeal site's contribution to GHBs would be enhanced; the GHB Mitigation Plan (Appendix 3 to CD1b) as supplemented by the Addendum appended to Dr Holloway's Rebuttal proof, contains a number of measures to ensure that the development which comes forward at the reserved matters stage (which must be consistent with the GHB Mitigation Plan & Addendum) would contain, in addition to the principal green buffer along the south of the site as envisaged by LPIR paragraph 72, significant additional new foraging habitats for GHBs, including approximately 3km of new 'Devon Hedges', the creation of a community orchard, a mosaic of marsh/meadow grassland and a wetland SUDS habitat, internal green corridors linking the principal 'green buffer' with the new and retained on site habitats, and the sowing of the fields within the green corridors with a species-rich grassland mix. This compares favourably to the current state of the appeal site which is primarily comprised of agricultural fields principally used for intensive farming

³⁹ The point made by Mr Bedford in XX of Dr Holloway about the LP not having been informed by on-site surveys contradicts, rather than supports, the Council's case in this appeal since it shows that the LP Examination Inspector and the Council's own expert Mr Oxford (whose expertise Mr Bedford himself stressed in XX) must both have considered that on-site surveys were not necessary to address the critical question for the purposes of the Habitats Regulations and Habitats Directive.

⁴⁰ As Mr Seaton notes at para. 2.2 of his rebuttal, this is if anything a generous approach by the appellants.

which, as Dr Holloway explained at paragraph 5.8 of his main proof and in EiC, are not high-quality foraging habitats for GHBs. As well as being prescribed in the GHB Mitigation Plan and Addendum, these features are also depicted on the framework plan in the appellants' Design and Access Statement (DAS) at pp 54-55.

62. Fifthly - a newcomer to this case would assume from much of the Council's evidence and XX of the appellants' witnesses on the subject of Policy NA3(n) that the appellants had not provided a GHB Mitigation Plan. One has been provided, and indeed supplemented through the Addendum, and for the reasons outlined above it is plain that a form of development which complies with it (as would be a requirement of the conditions to any grant of outline planning permission) would more than merely avoid adverse effects on site integrity of the SAC, (which is the overarching objective of Policy NA3(n)) but would lead to the appeal site performing an enhanced role for GHBs.
63. Sixthly - Dr Holloway's evidence and the Environmental Statement (ES) has assumed conservatively that the Conitor Copse roost is functionally linked with the SAC (and therefore any doubt as to whether or not it is in fact functionally linked does not need to be resolved - the appropriate assessment can proceed on the 'worst case' scenario that it is). There would be no direct impacts on the roost. The highest the Council relied upon was that the appeal site might provide foraging habitat for the roost; but for the reasons outlined above, the foraging quality will be substantially enhanced under the appeal scheme pursuant to the GHB Mitigation Plan and Addendum. Further, and in any event, the evidence demonstrates the Conitor Copse site is used only by a low level of GHBs who are separated from the appeal site by the A381 and other roads (Seaton First Rebuttal paragraphs 2.4-2.6).
64. Seventhly - the stance of Natural England (NE) should not alter the above analysis. As recorded at LPIR paragraph 72, NE did not object to the principle of the allocation and considered that "*the Plan proposals would provide for satisfactory protection of the bats*". No explanation has been offered by them as to why they take a different stance now. NE declined to attend the Inquiry at the behest of the appellants. Therefore, their position has not had the advantage of being informed or tested by the oral evidence, thereby reducing the weight which can be ascribed to it.
65. Eighthly - none of the above is affected by Mr Bedford's submissions on behalf of the Council on the *Proberun* judgment (paragraph 47 of the Council's closing submissions), which reaffirmed the proposition that a local planning authority may not refuse to approve reserved matters on grounds going to the *principle* of the development itself and which are therefore already implicit in the grant of outline planning permission. Here, as Mr Bedford himself confirmed in opinion, the Council is not opposed to the *principle* of the development, which is of course enshrined in an up to date Development Plan allocation. The issue is about ensuring that the details of the development come forward in a manner that would not harm the ability of GHBs to continue to travel "*at low levels*" in a "*broadly dispersed*" manner across the wider landscape within which the appeal site lies (there being no sensible doubt that, in principle this would be achievable). The Council's case on GHB/the SAC is not about *if* the development should come forward but *how*, which is squarely within the remit of reserved matters.

Heritage, highways and other matters raised by the Council

Heritage

66. The impact of the principle of the development on the listed buildings in the vicinity, including the Grade I St Mary's Church, was expressly addressed in the LPIR at paragraph 71.
67. Save for the two exceptions⁴¹ already highlighted, the appeal proposal is outline in nature, simply seeking confirmation of the allocation, with the details to be the subject of reserved matters applications in accordance with the conditions imposed on the outline permission sought.
68. The first exception is the application for full permission for the redevelopment of the existing farmyard. Neither the Council nor Historic England (HE) take any issue in relation to the impact of that aspect of the appeal scheme from a heritage perspective. This part of the appeal scheme is consistent with the Local Plan allocations map which was before the Examining Inspector, and which envisaged community uses in this part of the site⁴². As Mr Seaton explained the application for full rather than outline permission for this element of the appeal scheme was intended to provide certainty that the development in closest proximity to the Church and other associated heritage assets would have an acceptable relationship with them. It is also important to note that the adjacent "green buffer" between the Church and the nearest housing, which the LP Inspector at LPIR paragraph 71 clearly thought was an important consideration in this context, would be provided under the appeal scheme⁴³.
69. The second exception is the proposed means of access to the appeal scheme, which is not a reserved matter on the outline element of the application. As to this:
- a) The access points are not fixed by Policy NA3 (as Ms Rhys of HE agreed in XX). Nor is the alignment of the link road, which is to some extent influenced by the access points: paragraph 7.28 of the LP (CD8a, p 87) expressly describes the illustrative depiction of the link road on the Proposals Map as "*indicative*".⁴⁴
 - b) The access points are agreed with the HA.
 - c) No-one has suggested any candidate alternative access points during the Inquiry.
 - d) An Options Appraisal for the points of access was provided to HE⁴⁵ and they have not responded to or commented on it. In XX Ms Rhys confirmed that she did not "*contradict or gainsay*" this Options Appraisal.
 - e) Accordingly, the proper conclusions should be that (i) the access points, and any effect they have on the alignment of the Spine Road are consistent with Policy NA3, and thus within the parameters of what the Examining Inspector found to

⁴¹ Full application for change of use of agricultural buildings and secondly the access details.

⁴² Compare the LP proposals map on pp.20-21 of the appellants' DAS with the appeal scheme framework plan at pp 54-55.

⁴³ Compare pp 20-21 of the DAS (LP Proposals Map) and pp 54-55 (Framework Plan) + Design/Master planning statement at Appendix 1 to Seaton's Proof.

⁴⁴ See further Mr Seaton's proof at paras 5.50-5.51.

⁴⁵ Inquiry Doc 16.

- be acceptable in principle, including from a heritage perspective, and (ii) that there is no obvious alternative that the evidence before the Inquiry shows would be acceptable in highways terms, deliverable and preferable in heritage terms.
70. In all other respects, the details of the development are a matter for reserved matters, governed by the various conditions imposed on any planning application granted by the Secretary of State. The Council rightly accepts that the considerations they have raised in relation to heritage can appropriately be dealt with at that stage, subject to the agreed (as between the Council and the appellants) conditions on the outline planning permission that is sought now.
71. As Mr Seaton noted in EiC, appended to the Planning Statement (CD1d) submitted with the planning application for the appeal scheme is a Heritage Appendix. This acknowledges that there would be a limited degree of less than substantial harm from the development to the wider setting of the Church, principally due to the development of the farmland associated with Wolborough Barton, but that this would be limited for the reasons given at paragraphs 5.6-5.8 on p16. Further, this impact is an inherent consequence of the allocation, not of anything particular about how the appeal scheme gives effect to the allocation. It is a matter which has already been considered at the plan-making stage.
72. As paragraph 6.9 of the Heritage Appendix concludes, the less than substantial harm can be minimised, in particular because the considerations of LPIR paragraph 71 seen as being most important, in this context, apply with equal force here. There are clear 'public benefits' as summarised at paragraph 6.3 of the Heritage Appendix (pp 17-18). The consequence is that the 'heritage balance' in National Planning Policy Framework (Framework) paragraph 196 falls firmly in favour of the appeal scheme.
73. It is agreed with the Council that, if the Secretary of State finds for the appellants on the GHB/SAC issue, the appeal scheme is in accordance with the Development Plan for the purposes of s.38(6) PCPA 2004. Therefore, in the 'planning balance' under s.38(6), the question in relation to heritage is whether there would be heritage impacts that are material considerations of sufficient force to justify a decision to refuse planning permission despite the Development Plan accordant (see paragraph 6.9 of the Heritage Appendix to the Planning Statement⁴⁶). The conclusion should be that there are not, for the same reasons as the heritage balance falls in favour of the appeal scheme and/or in any event because:
- a) The heritage issues have already been considered in the context of the allocation of the site for development. Having been taken into account in the formulation of the LP, they cannot then sensibly lead to a subsequent conclusion that there should be a departure from the LP. That would undermine the planned system. The proper approach in this context is that set out by the Secretary of State in the Whitehill DL (appended to CD1d) at paragraph 14: *... this (heritage) impact must be seen in the context of the allocation of the appeal site for development as part of LP Policy NA2. As such he has gone on to consider whether there is something about the design of the scheme that makes*

⁴⁶ CD1d.

it more harmful than it needs to be and paragraph 17: the Secretary of State agrees that the LA policy NA3 allocation means that the appearance of housing on the appeal site, which would be visible from Church Path, is an expectation of the plan. Ms Rhys confirmed in XX that she accepted that this was a valid approach for the Secretary of State to take and that it should be taken in this case too.

- b) In considering this issue the outline nature of the element of the appeal scheme (save for the two exceptions already dealt with above) must be borne in mind. If in relation to any 'variables' left to the reserved matters stage, the Secretary of State does not like what is shown on the Illustrative Masterplan (whether in relation to heritage or any other issue), that is not a basis for refusing permission; it can be addressed at the reserved matters stage. This is consistent with the approach taken in the Rowtree Road appeal decision (also appended to CD1d) at Inspector's Report paragraphs 282-28 with which the Secretary of State agreed.
- c) Subject to the agreed conditions, the evidence demonstrates that the heritage impact of the appeal scheme will not be any more harmful than the principle of the allocation; such impacts as there are expectations of, and attributable to, the LP. Notably in XX, Ms Rhys herself eventually accepted that there was no evidence for concluding that the appeal scheme is more harmful than the principle of the allocation.
74. For these reasons, the Council's and the appellants' joint position that there are no heritage grounds for refusal and that the issues in this context are a matter for conditions (the wording of which is agreed) should be preferred to that of HE.

Highways

75. The HA⁴⁷ accepted a 500 dwelling trigger for the provision of the Spine Road. That is now reflected in the additional Highways SOCG with Devon County Council (DCC) dated 4th June and in the S106 obligations.
76. An issue arose near the very end of the S106 session, relating to whether the S106 obligations should include a subsidy towards the bus service that is to serve the Spine Road, once the Spine Road and thus the bus service becomes operational at the 500-dwelling trigger point. The purported rationale for this was to ensure the bus service would be viable in its early years.
77. It is for those seeking planning obligations to make their case. If DCC wanted to seek a contribution of this nature, the onus rested on them to provide evidence that, without a subsidy, the bus service would not be viable (and for how long that situation would prevail before the service became viable). No such evidence was provided.
78. The Council's early position was that following the provision of the Spine Road a bus service running through the Spine Road is likely to be commercially viable without a S106 contribution.

⁴⁷ Ms Taylor Devon County Council (DCC) in oral evidence.

79. There is therefore no evidential basis for DCC / the Council subsequently to have suggested at the S106 session that such a contribution was necessary.

Planning

80. Before the Inquiry, and certainly before the exchange of proofs, there was considerable uncertainty as to whether the Council's case was that, irrespective of GHBs, heritage and highways, there was an in-principle planning objection based upon an interpretation of Policy NA3(a) to the effect that a Council-approved development framework plan needed to be in place before permission should be granted.

81. The Council make no case of an in-principle planning objection to the proposal based upon the interpretation of LP Policy NA3(a) to the effect that a Council-approved development framework plan needed to be in place before permission should be granted⁴⁸. Mr Perry⁴⁹ accepted that, save in relation to the GHB/SAC issue, the Council accepted that the appeal scheme was in accordance with the Development Plan for the purposes of s.38(6) PCPA 2004. The Council's evidence did not identify any material considerations indicating otherwise than a decision allowing the appeal, in the event that it is found to accord with the Development Plan.

Additional points made by the Rule 6 Party and other Third Parties⁵⁰

Wolborough Fen SSSI

82. Both the Council and NE have now withdrawn their previous objection in relation to impact on Wolborough Fen SSSI and agree that this issue can appropriately be dealt with by planning condition. Appendix 2 of Mr Seaton's main proof, entitled 'Wolborough Fen Position Statement', provided expert evidence on this issue and explains that, subject to conditions, the effect of the development on the SSSI will in fact be beneficial. Mr Seaton's first rebuttal proof contained planning evidence as to why the imposition of a condition would be an appropriate way of dealing with this issue. This was not challenged in XX of Mr Seaton by Dr Stookes on behalf of the Parish Council (or by anyone). Dr Watson provided no convincing response. His evidence on this issue was founded on (i) a misconceived in principle objection to the use of negatively worded conditions of the nature proposed in this context (ii) a failure to ask the right question in this context, namely is there some, as opposed to no, prospect of the negatively-worded condition being discharged within the lifetime of the planning permission (see e.g. PPG 21a-009, first paragraph, final sentence) and (iii) allegations that the ES contained 'gaps' in respects relevant to the SSSI, which in XX were shown to be ill-founded and as a result of Dr Watson not having read all the relevant parts of the ES.

⁴⁸ Mr Seaton's main proof covered this issue at paras.5.33 to 5.41 which were not challenged in XX or rebutted in the written or oral evidence of any other party. The point has been resurrected in the Parish Council's closing submissions at paras. 115-119 but the Parish Councils called no evidence on the point nor did they challenge Mr Seaton on it in XX. His uncontested evidence should therefore be preferred.

⁴⁹ Council's planning witness.

⁵⁰ Points extended beyond the Council's case. It is noted that some of the points made were merely an attack on the allocation of the site by LP Policy NA3.

Alleged deficiencies in the ES, including in relation to air quality

83. The Parish Council's broader complaints about the ES and addenda are without merit.
84. Under Regulation 2(1) of the Town and County Planning (Environmental Impact Assessment) Regulations 2011 ("the EIA Regulations") (which, we agree with the Parish Council, apply to the appeal application and not the replacement 2017 Regulations due to the latter's transitional provisions), an 'Environmental Statement' is defined as a statement:
- "(a) that includes such of the information referred to in Part 1 of Schedule 4 as is reasonably required to assess the environmental effects of the development and which the applicant can, having regard in particular to current knowledge and methods of assessment, reasonably be required to compile, but
- (b) that includes at least the information referred to in Part 2 of Schedule 4."
85. The provisions to the original ES and any addenda have to be taken as a whole. The ES covers the mandatory topics in Part 2 of Schedule 4.
86. Where the Local Planning Authority or, on appeal the Secretary of State consider that an ES needs to contain more information "*in order to be an environmental statement*" as defined in Reg. 2(1) they have power to request further information under Regulation 22 of the 2011 Regulations.
87. In essence the question is whether the appellants have provided all the information in Part 1 of Schedule that "*is reasonably required to assess the effects on the environment*".
88. Save on the GHB/SAC issue dealt with above, the Council has plainly considered itself to have sufficient information to reach a view on environmental effects of the appeal scheme. There has been no indication from any other party that they need anything more to be able to understand the likely significant environmental effects of the development. It must follow that both levels of decision maker consider that the ES does provide the information reasonably required to make an informed decision.
89. In *R (Spurrier and others) v. Secretary of State for Transport* [2019] EWHC 1070 (Admin), the Divisional Court (Hickinbottom LJ and Holgate J.) held at para 434 that, in the SEA context which at paragraph 418 the Court had found to be analogous with EIA:
- "Where an authority fails to give any consideration at all to a matter which it is explicitly required by the... Directive to address... the court may conclude that there has been non-compliance with the Directive. Otherwise, decisions on the inclusion or non-inclusion in the environmental report of information on a particular subject, or the nature or level of detail of that information, or the nature or extent of the analysis carried out, are matters of judgment for the plan-making authority. Where a legal challenge relates to issues of this kind. [t]he established principle is that the decision-maker's judgment in such circumstances can only be challenged on the grounds of irrationality."

90. The Parish Council's criticisms are of the second kind. The evaluative judgment of the decision-making bodies⁵¹ is that sufficient information has been provided (given the context of the LP, LPIR and SA/SEA work underpinning the adopted Policy NA3 allocation to which the appeal scheme would give effect). As the Court made clear, a party's disagreement with such a judgment does not equate to a legal objection.
91. In any event, as became clear in Mr Watson's XX, those acting for the Parish Council who were criticising the ES for failing to deal with certain points had not read the relevant parts in full. Points in relation to the impact on Wolborough Fen SSSI, which he said had not been covered in the ES, were in fact covered as he accepted when taken to the references in XX. It was also clear that his approach had been to try to 'pick holes' in the ES rather than to consider it fairly and respond constructively. In doing so he and the Parish Council failed to heed the observation of Sullivan LJ in *R (Hart DC) v. Secretary of State for Communities and Local Government* [2008] EWHC 1204 (Admin) at paragraph 72 that EIA "is intended to be an aid to effective decision making, not a legal obstacle course".
92. On air quality, the late evidence of Dr Holman is inadmissible and should be disregarded. It was not a response to the recent ES Addendum (which was directed at the potential or otherwise for cumulative effects with the scheme which is the subject of the recent Langford Bridge Farm application) but to the original ES.
93. The Council withdrew their evidence dealing with air quality⁵².
94. In any event, at the air quality round table session Dr Holman made clear that her critical departure from the ES and Ms Kirk's analysis (contained in Appendix 3 to Mr Seaton's main proof and elaborated by Ms Kirk at the air quality round-table session) was in relation to the prospect of the Low Emission Strategy (LES) which can be conditioned into any grant of permission being able to achieve the mitigation identified in the ES. Dr Holman's evidence was that this was very unlikely, but she did not say there was no prospect of it happening. Therefore, even taking her case at its highest, her evidence is not inconsistent with a conclusion that there is some prospect of the relevant negatively-worded condition being successfully discharged within the lifetime of the planning permission, and therefore there can be no objection to the use of a negatively worded condition (see eg PPG 21a-009, first paragraph, final sentence). Dr Holman was also unfamiliar with the LP Policy NA3 context of the appeal and what the accompanying SA/SEA had said in relation to air quality.
95. The points made at paragraphs 64-73 of the Rule 6 Party's closing submissions in relation to climate change are unsupported by any evidence presented by them or anyone else to the Inquiry. They also conspicuously fail to recognise the allocated status of the appeal scheme in the up to date Local Plan which enshrines the principle of the development and which as noted above was itself subject to an SA/SEA assessment which must be taken to have complied fully with the requirements of the SEA Directive.

⁵¹ The Council at the stage of the Inquiry.

⁵² Within Taylor proof.

The evidence offered on behalf of Mr Glyn (adjacent landowner)

96. As noted above, in XX Mr John and Mr Lloyd on behalf of Mr Glyn confirmed that they were not actually asking the Secretary of State to refuse permission or impose any particular conditions. Subsequent correspondence from them appeared to row back from this concession. Section 1 of Mr Seaton's Further Rebuttal Proof (pp 2-5), provides a comprehensive response to Mr John's and Mr Lloyd's proofs. Mr Seaton's evidence was not challenged.

NHSFT obligation requirements

97. The case in respect of the NHSFT obligation requirements is dealt with in the Planning Obligation section of the Report.

Conclusion

98. The appeal scheme is in accordance with the Development Plan for the purposes of s.38(6) PCPA 2004. Save in relation to the GHB/SAC issue, the Council agrees. For the reasons outlined above, their reservation on that single issue is without merit. There are no material considerations indicating that the Secretary of State's decision should be taken other than in accordance with the Development Plan.

99. Under Framework paragraph 11(c), the presumption in favour of sustainable development means *approving development proposals that accord with an up-to-date development plan without delay*. Thus, the appeal scheme can be treated as sustainable development within the meaning of the Framework and its approval is supported by national planning policy.

100. The appellants submitted further comment on the submission by the Council of the Bat Survey 2019⁵³, submitted following the close of the Inquiry. They concluded that there are no GHB roosts on the appeal site and it is not proximate to a designated SAC roost site. Further there can be no harmful impact upon the successful foraging of GHBs that roost at the SAC sites.

101. In respect of the Housing delivery Test Results 2019 the appellants do not consider these materially affect their case, the proposal still being subject to the presumption in favour of sustainable development⁵⁴.

The case for the Council⁵⁵

102. At the outset in respect of any of the statutory heritage duties that arise in this case the Council are satisfied that, provided appropriate conditions are imposed, the proposal would not compromise those duties.

103. The Council's position is that a grant of planning permission for the development of the site would be contrary to Regulation 63(5) of the Conservation of Habitats & Species Regulations 2017 (SI 2017/1012) (the Habitats Regulations) and in breach of Article 6(3) of Council Directive 92/43/EEC (the Habitats Directive).

⁵³ Inquiry Doc 58.

⁵⁴ Inquiry Doc 65.

⁵⁵ Inquiry Doc 52.

Appropriate Assessment

104. Regulations 3(1) and 7(1) of the Habitats Regulations make it clear that the Secretary of State is a *competent authority* for the purpose of the duties imposed by those Regulations. In accordance with Regulations 3(1) and 5(1)(b) of the Habitats Regulations Natural England (NE) is the *appropriate nature conservation body* in this case (which concerns a European site and a development project in England). Regulation 61(1) of the Habitats Regulations provides that *the assessment provisions* means Regulations 63 and 64⁵⁶.
105. In *R(Mynydd y Gwynt Ltd) v Secretary of State for Business Energy & Industrial Strategy* [2018] EWCA 231 a recent summary of the operation of the principal requirements of Regulation 63 of the Habitats Regulations (which transposed Article 6(3) of the Habitats Directive into domestic law), was provided by the Court of Appeal.
106. Peter Jackson LJ said that *the task of the decision-maker is first to consider whether the risk of the project having a significant effect on the site's conservation objectives can be excluded. If it cannot, an assessment must be undertaken to ascertain the impact of the project and identify whether it is consistent with maintaining the site's conservation status. Mitigation measures must be taken into account and considerable weight should be attached to the views of the nature conservation body. Once the assessment has been carried out, approval can only be given if the authority is convinced that the project will not adversely affect the integrity of the site concerned. Absolute certainty is not required, and where it cannot be achieved after all scientific efforts, the decision-maker must work with reasoned probabilities and estimates; but where doubt remains, authorisation will be refused.*
107. Since the *Mynydd y Gwynt Ltd* decision (in February 2018) the Court of Justice of the European Union (CJEU) has issued several key decisions on proper interpretation and application of the Habitats Directive. It is now established that, contrary to the views previously expressed by the UK's domestic courts, mitigation measures which are proposed as part of a project cannot be taken into account when making the initial threshold (or screening) decision as to whether it is necessary to undertake an Appropriate Assessment in relation to that project's potential effects on a European site: *People Over Wind v Coillte Teoranta* (Case C-323/17, 12 April 2018); followed by *Dove J in Canterbury City Council v SoSHCLG* [2019] EWHC 1211 (Admin), 14 May 2019, at paragraph 77. In the present case, it is not suggested by the appellants that it is possible to avoid the requirement to carry out an Appropriate Assessment, on the basis that all risk of a significant effect on the European site from the development can be excluded by reference to objective information, so this aspect does not require greater discussion. The appellants have not sought to challenge the consistent view of NE and the Council that an Appropriate Assessment is required⁵⁷.

⁵⁶ For definitions of regulations see Inquiry Doc 52 paras 5-8 which also includes the provisions of Regulation 70 and case law in respect of the operation of the principal requirements of Regulation 63.

⁵⁷ Natural England letter dated 17 November 2017 (Mason App.2); Policy NA3(n) and para 7.30 of the Teignbridge Local Plan (CD8a); Mason POE, paras 6.2, 6.3, 6.6, and 6.7;

108. In the case of *Holohan v An Bord Pleanala* (Case C-461/17, 7 November 2018) the following findings were made. *In the light of the foregoing, the answer to the first three questions is that Article 6(3) of the Habitats Directive must be interpreted as meaning that an 'appropriate assessment' must, on the one hand, catalogue the entirety of habitat types and species for which a site is protected, and, on the other, identify and examine both the implications of the proposed project for the species present on that site, and for which that site has not been listed, and the implications for habitat types and species to be found outside the boundaries of that site, provided that those implications are liable to affect the conservation objectives of the site*⁵⁸
109. In the *Holohan* case the CJEU also dealt with the relationship between the adequacy of the available information to carry out an Appropriate Assessment and the views expressed by those with expertise in relation to the potential effects of a development on a European site. This sets out that the competent authority should be in a position to state to the requisite legal standard the reasons why it was able, prior to the granting of development consent, to achieve certainty, that there is no reasonable scientific doubt with respect to the environmental impact of the work envisaged on the site concerned.
110. Article 6(3) of the Habitats Directive must be interpreted as meaning that, where the competent authority rejects the findings in a scientific expert opinion recommending that additional information be obtained, the 'appropriate assessment' must include an explicit and detailed statement of reasons, capable of dispelling all reasonable scientific doubt concerning the effects of the work envisaged on the site concerned⁵⁹.
111. The European site which requires consideration in the present case is the South Hams Special Area of Conservation (the SAC). The Citation for the SAC⁶⁰ is clear that the GHB is a *Qualifying Species* of the SAC and the fact that the SAC *hosts* that species is one of the reasons for designation of the SAC. The GHB is an Annex II species in the Habitats Directive (but not a priority species).
112. The Conservation Objectives for the SAC⁶¹ make it clear that the GHB is a *Qualifying Feature* of the SAC and that, subject to natural change, the Conservation Objectives are to *...ensure that the site contributes to achieving the Favourable Conservation Status of its Qualifying Features by maintaining or restoring... the structure and function of the habitats of qualifying species, the supporting processes on which... the habitats of qualifying species rely, [and] the populations of qualifying species...*
113. Regulation 63(1) of the Habitats Regulations is explicit that the Appropriate Assessment of the implications of a development for a European site must be made *in view of that site's conservation objectives*. As noted by the CJEU in *Holohan*, consideration of whether the favourable conservation status of a

Council's Stage 1 screening assessment on the appellants' duplicate application (Mason App.7); Appellants' Appropriate Assessment Considerations report, para 4.2 (CD1b).

⁵⁸ Para 40 of the judgement. Paras 33, 34, 35, 39 and 40 are relevant and reproduced in Inquiry Doc 52 para 12.

⁵⁹ Inquiry Doc 52 para 13 for full judgement text.

⁶⁰ Mason, App.5.

⁶¹ Mason, App.4.

European site will be preserved is a component element of considering whether there will be an adverse effect on the integrity of the European site⁶², that this too will require consideration of the conservation objectives for the site⁶³, and where those conservation objectives are liable to be affected by the implications of a development for habitats and species found outside of the boundaries of the European site, those implications must be included within the Appropriate Assessment⁶⁴.

114. It is clear therefore that the Conservation Objectives which have been established for the SAC are a critical component to any Appropriate Assessment.
115. Subsequent to the publication of the Conservation Objectives, NE published its Conservation Objectives: Supplementary Advice on Conserving and Restoring Site Features for the SAC⁶⁵. The Supplementary Advice is not itself part of the Conservation Objectives, but those Objectives do require that where supplementary advice is available, the Conservation Objectives *should be read in conjunction with the accompanying Supplementary Advice document, which provides more detailed advice and information to enable the application and achievement of the Objectives set out above*⁶⁶. Whilst the appellants have been critical of the timing of the publication of the Supplementary Advice, it is clear that it represents the considered views of NE, and that it was produced after a process of engagement with relevant stakeholders⁶⁷. The Supplementary Advice *presents attributes which are ecological characteristics of the designated species and habitats within a site and its tables bring together the findings of the best available scientific evidence relating to the site's qualifying features... Where evidence and references have not been indicated, NE has applied ecological knowledge and expert judgment*⁶⁸. There is no reason for doubting these statements by NE about the scientific underpinnings of the Supplementary Advice. Specific aspects of the Supplementary Advice are considered below
116. However, firstly the characteristics of the SAC with reference to how it *hosts* its population of GHBs are considered. The position was described as follows by the High Court in R (Devon Wildlife Trust) v Teignbridge District Council [2015] EWHC 2159 (Admin),⁶⁹ per Hickinbottom J at paragraphs 4 and 5:

Para 4 - The GHB is one of Britain's largest and rarest bats, with a total national population of 5,500 individuals of which about one-third are believed to be within the South Hams SAC. The SAC is unusual, in that it comprises five separate but interconnected nationally designated Sites of Special Scientific Interest which include significant roosts for hibernating in the winter and summer roost sites where the females gather to give birth and rear their young. However, in addition to those specific sites within the notified SAC, GHBs use the wider countryside of South Devon for the majority of their activities including commuting, foraging, roosting and mating. Within that

⁶² Para 35.

⁶³ Para 36.

⁶⁴ Para 40.

⁶⁵ Mason, Replacement App. 6 (20 March 2019).

⁶⁶ Mason, App.5.

⁶⁷ See in particular Replacement App. 6, p.2, under the heading 'About this document'.

⁶⁸ Also p.2.

⁶⁹ CD14c.

countryside, as well as other roosts, there are vital flyways and sustenance zones recognised as critical in the Natural England document, South Hams SAC – GHB Consultation Zone Planning Guidance (June 2010) (the 2010 Guidance). Natural England is an independent executive non-departmental public body, created by section 1 of the Natural Environment and Rural Communities Act 2006, which acts as an adviser to the Government on all aspects of the natural environment in England, with the role of protecting nature and landscape within the various statutory protective schemes including those set up as a response to European obligations.

Para 5 - As to flyways, GHBs require linear features in the landscape to navigate, feed and access key foraging grounds. They generally fly close to the ground up to a height of only about 2m, and mostly beneath vegetation cover. GHBs are extremely sensitive to light and will avoid lit areas: lighting renders areas inhospitable and practically inaccessible to them. The interruption of a flyway by light disturbance has a similar effect to a physical obstruction, and will force GHBs to find an alternative route that will at least add to the bats' energy burden and may ultimately threaten the viability of a colony and/or lead to fragmentation of GHB population and isolation from key foraging areas and roosts.

117. The appellants have been critical of the South Hams SAC GHB Consultation Zone Planning Guidance (the 2010 Guidance), especially with regard to its identification of *strategic flyways*, as referred to by Hickinbottom J. Nonetheless, the 2010 Guidance remains in place and it is quite clear from the Supplementary Advice that NE has not, as asserted by Dr Holloway, *abandoned the concept of strategic flyways as being flawed*⁷⁰, with the strategic flyways and the 2010 Guidance being relied on within that Supplementary Advice⁷¹. It is correct that relevant local planning authorities (including the Council) are in the process of producing revised planning guidance for developments within a revised consultation zone that may have implications for the SAC, and that draft planning guidance has been the subject of discussion with NE. The draft guidance proposes to replace the strategic flyways with a landscape connectivity zone (which is more extensive), in recognition of the fact that *The new evidence base [since the 2010 Guidance] shows that outside Sustenance Zones greater horseshoe bats are dispersed widely and in low numbers using a complex network of commuting routes rather than a few key Strategic Flyways*⁷². This statement about dispersed flightpaths does not mean that there is evidence to show that the areas of the strategic flyways are not used by GHBs for commuting across the wider countryside of South Devon (outside of the SAC) but rather than their commuting routes are not confined to those flyways⁷³. There is, therefore, no good reason for departing from the general description given by Hickinbottom

⁷⁰ Holloway POE, para 4.20. Indeed, in XX Dr Holloway confirmed that NE *have not abandoned flyways*. He also accepted (in cross-examination (XX)) that *the strategic flyways would be part of the routes used [by GHBs] but not the only routes*.

⁷¹ Mason, Replacement App. 6, see in particular pp. 58 and 61.

⁷² Mason, App. 14, p24.

⁷³ Mason in chief: *Now become apparent that away from the main sustenance zones, the actual flight paths do go wider- a landscape approach... we are not saying the strategic flyways are not used, but that other areas [are] used too*.

J of the inter-relationship between the SAC and the wider countryside in terms of accommodating movements of GHBs.

118. The appellants have focused on the separation distance between the SAC and the site and have compared that with the usual range of foraging activity undertaken by GHBs in seeking to justify the contention that *the appeal proposals cannot impact on the [Favourable Conservation Status] of any of the component sites of the SAC due to the distance of the appeal site from each of the SSSIs and the absence of any pathway by which the appeal proposals could produce an impact on the habitats at the protected sites...*⁷⁴.
119. Dr Holloway has conceded in XX that he was wrong to claim that *None of the qualifying habitats/features listed in the citation for the South Hams SAC... are found within the appeal site*⁷⁵ because the GHB was listed as a *qualifying species* (in the Citation) and as a *qualifying feature* (in the Conservation Objectives), and the GHB has clearly been found to be present at the appeal site. This is not simply a matter of a minor correction to Dr Holloway's evidence, because what it reveals is a misunderstanding of the relationships between the SAC and the GHB, and between the GHB and the wider countryside.
120. It is important to be clear that for the Conservation Status of a European site (including this SAC) to be *favourable*, Article 1(e) of the Habitats Directive makes it necessary to consider not merely the habitats within the European site but also whether *the conservation status of its typical species is favourable as defined in (i)*. Article 1(i) of the Habitats Directive then identifies that the Conservation Status of a species will be *favourable* when:
- *population dynamics data on the species concerned indicate that it is maintaining itself on a long-term basis as a viable component of its natural habitats, and*
 - *the natural range of the species is neither being reduced nor is likely to be reduced for the foreseeable future, and*
 - *there is, and will probably continue to be, a sufficiently large habitat to maintain its population on a long-term basis.*
121. The habitats which are relevant for the purposes of Article 1(i) in terms of supporting the favourable conservation status of a species are not limited only to habitats within the SAC. What are relevant are the natural habitats of the species, across its natural range, wherever they happen to be, and they need to be large enough to allow for the population of the species to be maintained on a long-term basis. If areas of habitat are used by a species as part of its life cycle, whether for shelter, for feeding, or for mating, it is necessary to consider whether development impacts on those areas could then affect the favourable conservation status of the species concerned. If they could (or that conclusion cannot be excluded on the basis of the available evidence), then, there will be an inability of the European site itself to achieve or maintain favourable conservation status.

⁷⁴ Holloway POE, para 4.12.

⁷⁵ Holloway POE, para 4.11, last bullet point.

122. Dr Holloway sought to argue that, for the purposes of Article 1(i), the GHB was not a *typical species* of the SAC on the basis that *it is not part of the eco-systems that maintains the habitats of the SAC*⁷⁶. This was an untenable position. There is nothing in Article 1(i) of the Habitats Directive to limit *typical species* of a habitat to those species which *maintain* the habitat. Nor is there anything in Article 1(i) to suggest that a species which is prevalent within a particular habitat is not a *typical species* because it may also be prevalent elsewhere on other habitats. The GHB is undoubtedly a *typical species* of this particular SAC, which it relies on for essential activities in its life cycle, including hibernation and the rearing of young.
123. Where a typical species of a European site (and all the more the case for a typical species which is a *Qualifying Feature* of the European site) does not confine itself in terms of its natural range only to habitats which exist within the European site, it is necessary to consider how any changes to the wider habitat used by that species could affect the population dynamics of the species, natural range of the species, and extent of the habitat needed to maintain its population for the long-term, in order to assess whether the habitat of the European site itself will be maintained at Favourable Conservation Status.
124. In other words, the pathways between a development site and the European site are not limited to direct pathways such as watercourses but can also include pathways which are material to the long-term maintenance of the population and range of the typical species of the European site. In the case of GHBs this could potentially include commuting routes, or satellite roosts used for mating purposes, or sustenance areas that support those roosts. The importance of any such features for the GHBs *hosted* by the SAC, and so for the Favourable Conservation Status of the SAC, will depend on reliable and up-to-date information on those features and on GHB activity relating to them.
125. It is correct that the site lies between 7.2km and 14km from the various component parts of the SAC and that the typical range for foraging of an adult GHB is about 4km to 6km from a roost site (there is a lesser distance for juveniles)⁷⁷. Thus, a GHB roosting at the SAC is unlikely to forage at the site, if that foraging activity is undertaken as part of nocturnal feeding trips from the SAC and returning to the same roost. However, not all commuting activity by GHBs associated with the SAC is confined to foraging, and not all foraging occurs when GHBs are coming from and returning to the same roost. Dr Holloway acknowledged⁷⁸ that the 4km to 6 km distances were *for day to day visits* rather than the *natural range* of GHBs.
126. The evidence shows that GHBs will travel *greater distances* (than 4km to 6km) for particular purposes and at particular times of the year⁷⁹. They can travel up to 30km⁸⁰ to 60km⁸¹ between hibernation roosts and maternity roosts. They

⁷⁶ In XX.

⁷⁷ The 4km distance is in the 2010 Guidance, p.6, item (5): Mason, App. 9. The 6km distance is at Holloway POE, para 4.13.

⁷⁸ In XX.

⁷⁹ 2010 Guidance, p.5, item (2): Mason, App. 9.

⁸⁰ Supplementary Advice, pp.7-8: Mason, Replacement App. 6.

⁸¹ BCT Bat Survey Guidelines, p.25, Table 3.2: Mason, App.15.

also travel further afield than 4km to 6km for mating⁸². They also make use of satellite roosts away from the main roost sites, including for mating purposes⁸³. Dr Holloway accepted⁸⁴ that *the appeal site lies within these distances, and that the bats utilising the appeal site are capable of being bats that are part of the SAC population. I have never denied that.*

127. These characteristics of GHB behaviour are reflected in the Supplementary Advice. In relation to the distribution of *supporting habitats* the Supplementary Advice recognises that *GHBs also use a range of transitional roosts in spring and autumn in addition to their summer and winter roosts* but notes that *the use of transitional roosts by the South Hams metapopulation is not well understood*⁸⁵. In relation to the extent of *supporting habitat* the Supplementary Advice recognises that *it is also essential to protect key flightpaths between roosts and between roosts and foraging areas*⁸⁶. In relation to supporting off-site habitat (flight lines), the Supplementary Advice recognises that *Flight lines will extend beyond the designated site boundary into the wider local landscape*⁸⁷. In relation to supporting processes, the Supplementary Advice identifies that *The current understanding of critical foraging areas and strategic flyways is shown in Annex 1 (taken from Natural England (2010) and advises that a range of management measures are required in the wider countryside, such as maintaining and restoring... commuting routes*⁸⁸. It also notes that *the concentration of the population in very few roost sites leaves the bats vulnerable...*⁸⁹.

128. In fairness, the appellants' evidence does recognise that the GHB population of the SAC is not limited only to activity which takes place within the SAC and within the foraging areas up to 4km to 6km from the SAC. The ES drew the following conclusions from the bat surveys that were undertaken in 2013/2014:

*It is likely that the majority of greater horseshoe activity within the application site originated from local roosts such as Conitor Copse, although periodic seasonal use of the site from bats associated with the SAC cannot be discounted. In taking a metapopulation approach, impacts on greater horseshoe bats recorded within the application site could transpose to effects on the greater horseshoe population status associated with the SAC where commuting was hampered by the proposed development*⁹⁰.

129. The summary conclusion of the appellants' bat survey report was that:

Although no significant concentration of activity was identified within the strategic flyway, the woodland edge and hedgerow habitats together with areas of grazed pasture are likely to be used on occasion as commuting and foraging habitat by individual greater horseshoe bats. The bats present are

⁸² 2010 Guidance, p.5 item (2): Mason, App.9; HRA of the NA3 Wolborough DFP by Greenbridge Ltd, p.11, para 4.6.1: Mason, App. 13.

⁸³ HRA of the NA3 Wolborough DFP, p11, para 4.6.2.

⁸⁴ In XX.

⁸⁵ Supplementary Advice, p.56.

⁸⁶ Supplementary Advice, p.57.

⁸⁷ Supplementary Advice, p. 58

⁸⁸ Supplementary Advice, p. 61.

⁸⁹ Supplementary Advice, p. 62.

⁹⁰ ES, Vol. 2, para 8.5.24.

*likely to form part of the meta-population for which the South Hams SAC has been designated*⁹¹.

130. Ultimately, Dr Holloway's evidence was to the same effect. He did not seek to distance himself from these findings in the ES and in the Bat Survey Report. He acknowledged that it is possible that the roost at Conitor Copse was *a mating roost and a satellite roost for the SAC* and that the appeal site was *clearly within the foraging/sustenance zone of that roost and contained suitable habitat for GHB foraging*. He accepted⁹² that *we need to ensure sufficient permeability and also foraging to maintain that roost*. Dr Holloway also agreed⁹³ with the conclusion that followed from these points, which was that *impacts on the GHBs using the site therefore have the potential to impact on the integrity of the SAC by affecting one of its designated Qualifying Features, the GHB population of the SAC*.
131. It is in the light of this evidence that it is then necessary to consider whether the available evidence on GHB activity at the site is sufficient to *ascertain* to the requisite standard that there will not be any adverse impacts on the integrity of the SAC arising from the proposed development by reason of its impacts on the GHBs using the site.
132. There is no dispute that the bat surveys undertaken in 2013/2014 accorded with best practice guidance at the time and represented a reasonable degree of survey effort. To that extent they were fit for purpose at that time. However, the decision maker is not now considering the position in 2013/2014 but some 5 or 6 years later. The age of a survey does not necessarily make it out-of-date, but the passage of time can increase the risk of changes of circumstance meaning that a survey no longer provides a reliable baseline for assessment.
133. In part of his evidence, Dr Holloway sought to suggest that bat surveys were of limited value and provided nothing more than the confirmation of presence or absence of a particular species on a site⁹⁴. However, he did not seek to maintain that position, and even his own evidence acknowledged that survey results can provide *evidence of the spatial and temporal distribution of GHB presence within the appeal site*⁹⁵. He recognised⁹⁶ that *surveys tell us how, where, when, GHBs are using the site*. This reflects the advice in the BCT guidelines on survey purposes. The BCT guidelines are clear that surveys can be used to provide information on *What are the activity levels of bats on the site and can this tell us anything about the abundance (number) of bats using the site*, and *What are the bats using the site for*, and *What is the temporal (both seasonally and in relation to time of night) and spatial distribution of recorded bat activity on site*⁹⁷.
134. It is obvious that GHB is a mobile species and will react to changes in its environment. The BCT Guideline recommend that *ideally, the survey data should be from the last survey season before a planning application is submitted* but

⁹¹ ES, App.8.2, Executive Summary, p.21.

⁹² In XX.

⁹³ In XX.

⁹⁴ Holloway POE, para 7.22.

⁹⁵ Holloway POE, para 7.23.

⁹⁶ In XX.

⁹⁷ Mason, App. 15, section 8.1, p.54 of the BCT Guidelines.

recognises that a case-by-case assessment is needed as to whether older data remains valid, including consideration of *Has the nature of the site or the surroundings changed since the original surveys* and *Are additional surveys likely to provide information that is material to a decision (such as a planning consent), the design of mitigation measures...*⁹⁸.

135. Clearly, some 5 or 6 survey seasons have passed since the survey evidence in this case. A walkover habitat survey in 2017 showed that the habitats on the site itself have not materially changed, but the wider context has. Since those surveys the South Devon Link Road has opened to traffic and this lies only a short distance to the east of the site. Dr Holloway accepted that the presence of traffic on the road is a *further barrier* to the passage of GHBs and a *material change* but in his view, it was not a *significant change regarding GHBs using the site*. There is no evidential basis for the assertion that the change is not significant. There is very limited data on how GHBs are using the wider landscape affected by the provision of the new road (and its opening to traffic). The culverts provided as part of the link road are effective pinch points for bat movements, and it is unclear whether the barrier effect of the link road has served to contain GHBs to the west of it, so potentially making more concentrated use of the appeal site, or whether the culverts have shifted the pattern of movements away from the previously used flightpaths to new or different routes within the site, or whether GHB activity has continued much as before. It is simply not robust, or in any way scientific, in the face of knowledge that there has been a material change in the external environment which at the very least has the potential to affect GHB movement patterns, to blithely assume that there has been no change in the spatial distribution of GHBs at the site or in their abundance within the site and so that up-to-date information is simply not required.
136. The appellants have also sought to rely on the site's inclusion within⁹⁹ the NA3 allocation in the Local Plan combined with the outline status of the main part of the appeal proposal to argue that there is no need for further surveys at this stage. However, this contention is based on a misunderstanding of both the LP's consideration of the site and of the nature of matters that are settled by the grant of outline planning permission.
137. Starting with the LP, it is clear that its identification of the site as suitable in principle to accommodate residential (and other) development without detriment to the SAC was not based on any site surveys of GHBs at that time¹⁰⁰. The issue was dealt with by establishing a policy requirement for a bespoke GHB mitigation plan at the planning permission stage¹⁰¹ which needed to be informed by *appropriate and adequate ecological surveys*¹⁰². That requirement for bespoke mitigation plans was carried forward into the LP¹⁰³ and was relied on by both the

⁹⁸ Mason, App. 15, section 2.6.3, pp.20-21.

⁹⁹ A small part of the appeal site lies outside of the allocation but for present purposes that is not material to the arguments.

¹⁰⁰ Paras 3.1 and 3.2, p.23, Supplementary HRA report, CD9g.

¹⁰¹ Pp.28-29 of Supplementary HRA, CD9g.

¹⁰² Para 9.4.11, p.40 of the HRA, CD9f; see also item 2, p.18 of CD9g.

¹⁰³ Policy NA3(n) and para 7.30.

LP Inspector¹⁰⁴ and by the High Court¹⁰⁵ in concluding that the LP was not in breach of the requirements of the Habitats Regulations.

138. Thus, the appellants' references to the HRA and the Strategic Environmental Assessment that supported the LP are nothing to the point and do not provide a coherent basis for failing now to provide an adequate bespoke mitigation plan. Whilst a mitigation plan has been submitted¹⁰⁶ with the application, it cannot be regarded as adequate because its mitigation strategy has not been informed by appropriate survey evidence. It has only been informed by the results of the 2013/2014 surveys¹⁰⁷, which are no longer fit for purpose due to the passage of time and the changes in circumstance in the site's environs since they were undertaken. The mitigation plan does seek to be spatially specific about several of its proposed mitigation measures¹⁰⁸, but whether those measures are appropriately located within the site crucially depends on how GHBs are using the site, including for what purposes, where, and in what numbers. The proposed flyways and dark corridors to be safeguarded (or enhanced) may or may not be appropriately sited. Without up-to-date survey evidence that is fit for purpose, it is not possible to ascertain to any reasonable degree of scientific doubt, that the proposals will not adversely affect the GHBs using the site and so adversely affect the integrity of the SAC.
139. The requirement in Policy NA3(n) is quite clear that the bespoke mitigation plan *must demonstrate how the site will be developed* so as to avoid adverse effects on the integrity of the SAC. That requirement is not limited only to applications for full (or detailed) planning permission but also applies to outline permissions too. Thus, whatever may be the position in abstract terms that, as a generality, an outline permission is only seeking to establish the principle of development and it can leave all details to reserved matters, an outline permission on the allocated NA3 site is expected to settle, via its required bespoke GHB mitigation plan, *how* the site will be developed so as to avoid adverse effects on the integrity of the SAC. That policy requirement is not merely something that is needed to satisfy the statutory development plan. It is something that was necessarily required to be part of the LP in order for the LP to meet the requirements of the Habitats Regulations.
140. It is not therefore a policy requirement that can be side-lined or brushed aside. Policy NA3(n) therefore requires rather more specificity about the format of the development, and its associated mitigation, than would be achieved by an outline planning permission. In other words, more is expected to be settled at the outline stage than was considered necessary at the allocation stage. Whilst this does not require a fully detailed layout to be approved at the outline stage, it does require the key details of the fundamental elements of the GHB Mitigation

¹⁰⁴ Paras 15 and 72 of the Inspector's report, pp.7 and 21, CD9k

¹⁰⁵ Paras 62, 72, and 78 of Abbotskerswell Parish Council v Teignbridge District Council, per Lang J, CD14a.

¹⁰⁶ The main GHB Mitigation Plan is included within the Appropriate Assessment Considerations report, CD1b. There is a later Addendum but that is not relevant to the arguments here.

¹⁰⁷ See sections 2.2.1 to 2.2.3 of the Mitigation Plan.

¹⁰⁸ See in particular p.6 of the Mitigation Plan, concerning the proposed green corridors routed north from the strategic flyway to Decoy Woods, Wolborough Hill, Wolborough Fen, and along the eastern boundary.

Plan to be spatially identified, and for parameters used for the choice of those measures to be adequately informed by appropriate survey evidence, so as to demonstrate, in the light of the best available evidence that there will not be adverse effects on the integrity of the SAC.

141. Ms Mason explained what was needed in her evidence¹⁰⁹, with particular reference to the selection of where there would be dark corridors: *I am looking for more than just a concept. I am looking for dark routes so that bats can permeate across the site. I need sufficient detail so that dark corridors and hedges are secured so that bats can move across the site, based on up-to-date survey data.... Surveys- the objective is to inform the detailed mitigation in the list¹¹⁰, the technical details, once set the corridors at the outline stage, can come forward at the reserved matters stage. The purpose of the surveys being updated is to inform the outline GHB Mitigation Plan.*
142. She also gave further clarification¹¹¹: *I want assurances that the mitigation parameters and design principles are secured... for example, the principle of maximum light levels in hedgerows, at this stage I am looking for a lighting zone map so can be assured there are dark corridors across the site... I want to understand how the development will be designed to give the competent authority assurance that the qualifying feature won't be harmed... The details at outline stage should allow for a dark corridor across the landscape to be mapped, so it can be conditioned, with the details of the dark corridors at the detailed stage. I appreciate we cannot actually stipulate where they go but would like to see a parameters map.*
143. In other words, it will not be sufficient to simply propose that there should be dark corridors across the site as a matter of principle, or to show where, on an illustrative basis, such corridors could (but not necessarily would) be located. It is necessary to provide sufficient information on the choice of the locations for the dark corridors to ascertain that providing corridors in those locations (which would be designed in detail as part of the reserved matters) would not be subject to undue light from the development and that, having regard to how GHBs currently use the site to traverse the landscape, the choice of those locations would enable GHBs to continue to move across the site.
144. The appellants' contention that an outline planning application does not need to provide that level of information is inconsistent with the express policy requirement for a bespoke GHB mitigation plan at the planning permission stage. The appellants seek to support their position by an argument that an outline planning permission will not settle anything beyond the principle of development, but this is also mistaken. The planning permission that is sought is for a stated quantum of development (1,210 dwellings in the case of the residential element). Qualifying that quantum by the words *up to* does not give the local planning authority at the reserved matters stage the freedom to cut down the approved quantum of development. At the reserved matters stage the Council cannot refuse to approve the maximum quantum stated in the outline planning permission if that is the form of development that is put forward. The

¹⁰⁹ In XX.

¹¹⁰ Mason, POE, p.38.

¹¹¹ In re-examination.

acceptability of any particular reserved matters details has to be judged in the context that the outline permission will have established that 1,210 dwellings can be provided on the site. If that quantum of development can only be achieved by the provision of built form (or any associated roadways or lighting) in locations that would have detrimental impacts on GHBs using the site, the Council could not rely on its ability to approve (or not approve) reserved matters to achieve a lesser amount of development. The reserved matters stage cannot be used to retreat from matters which are established by the outline planning permission. A developer is entitled to insist on approval of reserved matters which deliver on what has been authorised by the outline permission, provided that the reserved matters put forward are the best that can be achieved within the confines of the site. This principle was set out by the Court of Appeal in *Proberun Ltd v Secretary of State for the Environment* [1990] 3 PLR 79 at 84D, 85F, and 87C.

145. It is for this reason that Policy NA3(n) requires at the planning permission stage details in the bespoke GHB mitigation plan of *how* the development will take place so as to avoid adverse effects on the integrity of the SAC.
146. It is no doubt in recognition of the basic principles applicable to outline planning permissions, that Regulation 70(3) Habitats Regulations requires the decision maker at the outline planning permission stage to be *satisfied (whether by reason of the conditions or limitations to which the outline planning permission is to be made subject, or otherwise) that no development likely to adversely affect the integrity of a European site... could be carried out under the permission...* Unless the decision maker can be so satisfied, Regulation 70(3) does not allow the grant of planning permission. In other words, the decision maker has to proceed on the basis of being satisfied that, whatever could lawfully come forward at the reserved matters stage, there is no prospect of detriment to the SAC.
147. The appellants have made reference to the facts concerning the development of the Chudleigh site which featured in the High Court case of *Devon Wildlife Trust v Teignbridge District Council*¹¹² and have sought to argue that the Council accepted that detailed GHB mitigation matters could be left to be resolved at the reserved matters stage on a site that was more sensitive than the appeal site because of its closer proximity to the SAC. However, the key points of difference in that case are (i) there was adequate and up-to-date survey evidence which was regarded as sufficient to inform the decision, and (ii) NE accepted that there was a sufficient mitigation strategy in place which was secured by the conditions of the outline permission, so its earlier objections were withdrawn¹¹³. Neither of those two factors is the case here. The case does not therefore provide any support for the stance taken by the present appellants of putting forward a Mitigation Plan without the appropriate degree of up-to-date survey information to inform its strategy.
148. The appellants have been critical of the decision of NE in this case to provide written representations¹¹⁴ setting out its objections, rather than attend the Inquiry and answer questions. Clearly, it is a matter for NE how it wishes to

¹¹² CD14c.

¹¹³ See paras 46, 50, 55, 59, 61 and 87 of the Judgment of Hickinbottom J.

¹¹⁴ Mason, App.2, NE letter dated 17 November 2017 on the appeal application; Mason App. 8, NE letter of 4 February 2019 on the HRA of the duplicate application.

pursue its objections, but its written objections are clear, coherent, and consistent. The fact that it did not object to the LP or to the Policy NA3 allocation is not evidence of any inconsistency of approach. It is quite clear both from the legal position¹¹⁵ and from the specific facts in relation to the formulation of Policy NA3 that the level of information needed to reach a reasoned judgment on Appropriate Assessment matters are different at the plan-making and the development management stages. It is clear that considerable weight should be given to the views expressed by NE,¹¹⁶ and in addition cogent reasons need to be given if their advice, that more information is needed in order to discharge the decision maker's duties as competent authority under the Habitats Regulations, is to be set to one side¹¹⁷.

The Council therefore suggests that the following key conclusions can be drawn:

- i. it is not in dispute that GHBs use the site to traverse the wider countryside, it is not possible to discount that the GHBs using the site are part of the population of GHBs hosted by the SAC,
- ii. it should be assumed that the nearby roost at Conitor Copse, which may be the immediate source of the GHBs using the site, is a satellite roost supporting the SAC,
- iii. it is not in dispute that impacts on the GHBs using the site could have potential implications for the integrity of the SAC,
- iv. to demonstrate there will be no such adverse effects there needs to be a bespoke GHB mitigation plan at the planning permission stage,
- v. such a plan needs to be informed by appropriate and adequate survey evidence. These matters are not, ultimately, controversial (albeit elements of Dr Holloway's written evidence seemed to suggest that they might be). The matters of dispute relate to whether there is appropriate and adequate survey data to inform the mitigation plan, notwithstanding changes of circumstance since the survey work was undertaken, and whether the proposals of the mitigation plan are sufficiently detailed to meet both the requirements of Policy NA3(n) and to demonstrate that there will be no adverse effects on the integrity of the SAC.

149. The Council suggests that, having due regard to the precautionary principle, and the need for matters to be ascertained so as to leave no reasonable scientific doubt, recognising also what will be settled by the grant of an outline planning permission, it is abundantly clear that there is an insufficient evidence base to allow the Secretary of State to conclude that the proposed development will (rather than might) come forward in a manner which will not adversely affect the integrity of the SAC by reason of the way in which it impacts on the ability of GHBs to traverse the site. It is for this reason that the Council considers that it is not possible to grant planning permission for the appeal proposal. Thus, in the absence of further information, there is no lawful option other than to dismiss the

¹¹⁵ See in particular the Abbotskerswell decision at para 72; see also the caselaw and good practice advice in Mason Note on References, Inq Doc 31.

¹¹⁶ See Mynydd y Gwynt at para 8(viii).

¹¹⁷ See Holohan at para 52.

appeal. The Inspector is invited to recommend accordingly. This conclusion is determinative of the appeal. However, for completeness, the Council also comments, briefly, on the other main issues.

Biodiversity and ecological connectivity

150. This issue is substantially subsumed within the Council's case above in relation to Appropriate Assessment. With the exception of the treatment of GHBs, the Council does not raise any other biodiversity or ecological concerns and notes that the issues in relation to Wolborough Fen SSSI have been resolved.

Effects on heritage assets

151. Whilst the Council does not share all of the conclusions put forward in the appellants' evidence on heritage matters, it is content that there is now a sufficient level of information available (including the Statement of Significance and Setting Assessment)¹¹⁸ to assess the effects on heritage assets, and that the imposition of the suggested conditions (in particular in relation to the masterplan and the design code) will enable the statutory duties in S66 Listed Buildings Act 1990 to be discharged. In policy terms, there would be less than substantial harm to the setting of the Grade I listed Church of St Mary the Virgin, but this is outweighed by the public benefits delivered by the development, especially in terms of the provision of housing and affordable housing to meet identified local needs¹¹⁹.

Infrastructure and mitigation

152. The Council's case on the inadequacies of the GHB mitigation are set out above as part of the Appropriate Assessment section. In relation to transport mitigation, it remains the Council's view (based on the evidence provided by the HA)¹²⁰ that a bus contribution for three years is required because there is no evidence to show that a service routed through the site would be financially self-supporting in its early years. Bus services are only provided by commercial operators without subsidy if they assess that there will be sufficient patronage to make the service viable. There can be no automatic assumption that viability will be achieved, and the appellants have put forward no evidence from a commercial operator to show that a service would be viable from the outset. However, if the service becomes viable, the planning obligation already provides that there is no requirement to then pay the contribution¹²¹. The appellants are not therefore at risk of having to make a contribution for a viable service. This matter is provisionally resolved by the terms of the Unilateral Undertaking, and the Secretary of State is invited to conclude that the clauses in Schedule 3 requiring the contribution should be found to be necessary to make the development acceptable in planning terms. Option 2 is preferable to Option 1 because it will provide the contribution at an earlier stage of the development.

¹¹⁸ Appendix 19 to the Written Statement of Maureen Pearce.

¹¹⁹ Para 6.51 of the POE of Ian Perry.

¹²⁰ Taylor Proof, paras 6.47 and 6.48; Ms Taylor (in XX).

¹²¹ Paras 11 and 14 of Schedule 3 to the Unilateral Undertaking to Devon County Council – Inquiry Doc 43.

153. Other matters of infrastructure and mitigation are resolved to the Council's satisfaction, in line with the respective Unilateral Undertakings. The Council remains unpersuaded that the contribution requested by the NHSFT meets the requirements of Regulation 122 of the CIL Regulations 2010, for the reasons set out in its Note¹²².

Traffic and highway matters

154. The Council is now satisfied that with the imposition of a condition to restrict occupation to no more than 500 units until the provision of the Spine Road through the site, there are no outstanding traffic issues¹²³.

Sustainable development and policy compliance

155. The Council's case on appropriate assessment is set out above. If the Secretary of State accepts that case, it will follow that an Appropriate Assessment undertaken would be unable to conclude that the development will not adversely affect the integrity of the South Hams SAC. That would result in a dismissal of the appeal. In addition, it would mean, in line with para 177 of the Framework (2019) that there is no scope to apply the presumption in favour of sustainable development¹²⁴. It would also mean that there would be non-compliance with Policy NA3 of the Local Plan, which is the site-specific policy for this site. The appellants accept that non-compliance with NA3(n) is a *show-stopper* and also accept that non-compliance with Policy NA3 means the proposal would not accord with the Development Plan¹²⁵. There are no material considerations that could *indicate otherwise* where the policy that is breached is intended to secure the protection of a European site.

156. Thus, whether the appeal is considered solely by reference to the requirements of the Habitats Regulations, or wider reference is made to the Framework and the LP, the result is the same: the appeal must be dismissed.

157. The Council submitted an up-dated Bat survey following the close of the Inquiry (Inquiry Doc 58).

158. The Council through Mrs Mason comments that it is considered, based on the analysis within Table 1 of Inquiry Doc 61, that, subject to recommended safeguards being in place, secured by condition and/or obligation, and supported by the updated survey data (Inquiry Doc 58) that the uncertainty of there being no adverse effect on the integrity of the SAC could be reduced to an acceptable level to conclude an Appropriate Assessment in accordance with LP Policies NA3, EN9, EN10 and the Framework.

The Case for Abbotskerswell Parish Council & Wolborough Residents Association (Rule 6 Party)¹²⁶

Environmental Impact

¹²² Inquiry Doc 27.

¹²³ See para 2.2 of the Additional SoCG, part of Inquiry Doc 29.

¹²⁴ Accepted by Mr Seaton (in XX).

¹²⁵ Both points accepted by Mr Seaton (in XX).

¹²⁶ Based upon Inquiry Doc 53 – Closings of Rule 6 Party.

-The EIA Directive 2011/92/EU

159. It is common ground that the proposal falls within the scope of the environmental impact assessment (EIA) provisions. It is governed by the Directive 2011/92/EU on the assessment of the effects of certain public and private projects on the environment (the EIA Directive). The Directive was amended in April 2014 by Directive 2014/52/EU: the amendments entered into force in May 2017 and apply to this proposal. The Town and Country Planning (EIA) Regulations 2017 sought to transpose the amendment, although the appellants' view on transposition of the Directive is that the EIA Regulations 2011 continue to apply: Reg. 76(2) provides that the 2011 Regulations continue to apply where an appellant has requested an EIA scoping opinion prior to the commencement of the 2017 Regulations, which was the case. The Rule 6 party agrees and simply adds that where the EIA Regulations 2011 does not cover certain points of the EIA Directive 2011/92/EU as amended, the Directive has direct effect. In the circumstances, it is relevant to refer to the provisions of the Directive and these are set out in Inquiry Document 53 paragraphs 3-11.
160. Article 2(1) of the EIA Directive requires that:
... before development consent is given, projects likely to have significant effects on the environment by virtue, inter alia, of their nature, size or location are made subject to a requirement for development consent and an assessment with regard to their effects on the environment. Those projects are defined in Article 4.
161. It appears common ground that project 17/01542/MAJ falls within Article 4 and that Article 2 applies. The grant of this hybrid application would be regarded as development consent.
162. There has been a failure to identify, describe and assess the significant effects of 17/01542/MAJ contrary to Article 3¹²⁷ and having regard to the information that must be provided under Article 5(1) of the Directive¹²⁸. The additional Annex IV information¹²⁹ is also found wanting.
163. The description of the likely significant effects on the factors specified in Article 3(1) should cover the direct effects and any indirect, secondary, cumulative, transboundary, short-term, medium term and long term, permanent and temporary, positive and negative effects of the project. This description should take into account the environmental protection objectives established at Union or Member State level which are relevant to the project.
164. Recital 2 of the EIA Directive provides that:

¹²⁷ EIA Directive Article 3 explains what the EIA should undertake – Inquiry Doc 53 para 6.

¹²⁸ Article 5 is defined in Inquiry Doc 53 para 8.

¹²⁹ Inquiry Doc 53 para 9.

... effects on the environment should be taken into account at the earliest possible stage in all the technical planning and decision-making processes¹³⁰.

-The Town and Country Planning (EIA) Regulations 2011

165. The prohibition on granting planning permission without consideration of environmental information under Art. 2(1) of the Directive is at Reg. 3(4) of the EIA Regulations 2011 which provides that:

The relevant planning authority or the Secretary of State or an inspector shall not grant planning permission or subsequent consent pursuant to an application to which this regulation applies unless they have first taken the environmental information into consideration, and they shall state in their decision that they have done so.

166. Regulation 2 of the EIA Regulations 2011 explains that:

environmental information means the environmental statement, including any further information and any other information, any representations made by anybody required by these Regulations to be invited to make representations, and any representations duly made by any other person about the environmental effects of the development;

-The Habitats Regulations 2017

167. It is common ground that the Conservation of Habitats and Species Regulations 2017 (the Habitats Regulations 2017) applies. This transposes Council Directive 92/43/EEC on the conservation of natural habitats and of wild fauna and flora. Relevant regulation 63 is set out at Inquiry Document 53 paragraph 14.

168. For clarity the Secretary of State is the competent authority for the purpose of the appeal.

- Local policies¹³¹

169. For the Rule 6 Party the relevant policies in the Teignbridge Local Plan 2013-2033 include Policies EN6 Air Quality, NA3 Wolborough¹³² and the Teignbridge District Council 2017 Air Quality Annual Status Report (June 2018).

- Air quality¹³³

¹³⁰ This point has been underlined by UK and European Courts. See e.g. the House of Lords in *R (Barker) v LB Bromley* [2007] 1 AC §22 per Lord Hope.

¹³¹ Inquiry Doc 53 para 17.

¹³² CD8a.

¹³³ Inquiry Doc 53 paras 18-37.

170. There are serious concerns that there was a lack of adequate assessment and analysis on air pollution. Further representations in response to the appellants' provision of an ES Addendum in April 2019¹³⁴, noting that the updating information provided 3 short additional paragraphs on dust and air quality, did not provide any further assessment of impacts and effects. The Rule 6 Party's evidence is explained through the proof of Dr Holman¹³⁵, which sets out that the information on air quality in the various documents provided by the appellants as an ES, were incomplete in relation to construction impacts by failing to assess the impact on future receptors, the risk of dis-amenity and that more mitigation may be required. The air pollution dispersion modelling used to predict the impact of the proposed development on air quality was flawed¹³⁶. The ES documents provided no indication that the differences between the model results and the measurements were investigated to minimise the differences and improve model performance¹³⁷. With such a high verification factor the air quality practitioner should have reviewed the model setup and input data in an effort to close the gap with the measurements. There is no evidence that this was undertaken¹³⁸. The statistics referred to by the appellants relate to a later stage in the process, when the model results, which relate solely to the local traffic emissions, have been added to the 'background' air pollution to provide an estimate of the total concentration.

171. The concerns centre on the lack of clarity regarding cumulative assessment, material calculation errors; that the ES was incomplete by not stating that the adverse impacts on air quality should be recorded as significant; that the ES failed to provide information on human health effects; and, that substantial effects would occur at 13 receptors without the Spine Road and 6 receptors with the Spine Road all went unchallenged. In summary, notwithstanding concerns regarding the reliability of the modelling, the various documents of the ES show that the increase in air pollution due to the proposed development would give rise to a significant effect with no evidence that it can be mitigated¹³⁹. The Secretary of State has absolutely no idea whether the vague Low Emission Strategy (LES) will work, there is no information on this whatsoever provided by the appellants¹⁴⁰.

- *Conclusions on air quality*

¹³⁴ Inquiry Doc 23.

¹³⁵ Inquiry Doc 26 Annex C.

¹³⁶ Inquiry Doc 53 para 20.

¹³⁷ Holman proof - Inquiry Doc 26, Annex C paras 9-12.

¹³⁸ The Defra publication: *Local Air Quality Management Technical Guidance (TG16)* (Feb 2018) Inquiry Doc 26 Annex C, how to model air quality for local authority review and assessment when there is non-compliance with an air quality objective such as Newton Abbot and an AQMA order has been made.

¹³⁹ Inquiry Doc 53 paras 18-19 set out concerns in more detail. Supporting judgements to the Rule 6 Party position that instances of development causing adverse air quality effects and a lack of detail on mitigation have been the basis to refuse permission are set out at Inquiry Doc 53 paras 26-28.

¹⁴⁰ The developers in Gladman appealed the High Court decision to the Court of Appeal. This has been heard and judgment is awaited.

172. In conclusion on air quality, §§12.6.6-7 of the ES note that there will be *minor to moderate adverse impact* without the Spine Road within the AQMA and that there would be *moderate adverse effects* outside the AQMA even with the Spine Road i.e. significant adverse effects in ES terms.
173. The ES Addendum, Dec. 2017, §8.1 also concludes that: "*The proposed development would result in a slight to moderate adverse impact within the Newton Abbot AQMA should the development be operational without the Spine Road being available. However, the proposed link road would reduce the impact of the development and would result in a slight beneficial*".
174. In ES terms these are significant adverse effects and a reason to refuse permission. There is reliance by the appellant upon a 'low emission strategy' as an attempt to mitigate the significant effects. However, no attempt has been made by the appellants to provide any detail as to what that strategy may involve. It is nothing more than a wish list of this developer. The appellants simply state at §12.6.9 of the ES that: *... it is not possible to develop a detailed LES at this stage.* This is repeated at §8.1 of the ES Addendum Dec 2017: *As the application is for outline planning permission and proposals are for a large mixed allocation it is not possible to develop a detailed LES at this stage.* This approach provides no meaningful information to the Secretary of State to be able to assess whether a low emission strategy will minimise the substantial adverse effects of the proposed development on the local community.
175. This approach must be seen in the context of worsening air quality in and around Newton Abbot: see eg the relevant entry in the Council's 2017 Air Quality Annual Status Report (June 2018) (extracted in Rule 6 Party opening (Inquiry Document 9) which notes in its executive summary at pages ii-iii that for 39 tube locations:
- 21 locations got worse but still remained below the national objective; and
 - 7 locations exceeded the National Objective.
176. In essence, air pollution in the locality is getting worse. This reflects the national position. Air pollutants, primarily from road vehicles, are NO₂ and particulate matter (PMs). It has been known for some time that these pollutants are responsible for a significant number of premature deaths, increases in the occurrence of respiratory diseases and an increase in the severity of symptoms of those already suffering from these diseases¹⁴¹. Increasing air pollution in an area already experiencing poor air quality is likely to exacerbate health problems at significant social and economic cost to society. It will also increase the financial pressure on the local health care system that is understood to be operating at capacity.

¹⁴¹ see e.g. the Government's COMEAP (1996) and more recently the COMEAP Report: *Associations of long-term average concentrations of nitrogen dioxide with mortality* (22.8.18) which provides a range of estimates of the annual mortality burden of human-made air pollution in the UK is estimated as an effect equivalent to 28,000 to 36,000 deaths (its previous 2010 estimate was 29,000). See also the Royal College of Physicians Report, *Every Breath we Take* (2016), and update report (2018) which states that: "Each year in the UK, around 40,000 deaths are attributable to exposure to outdoor air pollution".

177. The appellants' approach typifies the lack of robust information on air pollution in planning decisions. It is likely to be one reason why the land use planning system has failed to improve air quality despite it being one of the key policy areas with scope to do so. The information provided by the appellants is inaccurate and inadequate to address the significant adverse air pollution effects on the health of the local community. It breaches LP Policy EN6 which requires adequate information to assess the impacts of a proposal on air quality. It is contrary to national policy and efforts to tackle chronic air pollution problems.
178. Finally, the appellants' approach of avoiding discussion of any mitigation measures such as providing information on the low emission strategy is a breach of Article 5(1)(c) of the EIA Directive which requires developers to provide a description of the measures envisaged to *avoid, prevent or reduce, and, if possible, offset likely significant adverse effects on the environment; ...* As such, the appellants' air pollution information fails to meet the obligations under the Directive and fails to provide adequate information to the Secretary of State such that permission for the proposal cannot be lawfully granted.

Adverse impacts on biodiversity

179. The proposal will have an unacceptable impact on biodiversity including a potentially significant adverse impact on the GHB, a European protected species and by extension could result in an adverse impact on the integrity of the South Hams SAC. The appellants have failed to both provide adequate information on likely effects on biodiversity in accordance with Article 2(1) of the EIA Directive and provide adequate information to enable an appropriate assessment to be undertaken on behalf of the Secretary of State under Reg 63 of the Habitats Regulation 2017. If the appropriate assessment were carried out, then it must conclude beyond reasonable scientific doubt that the project will not affect the integrity of the South Hams SAC, a European designated site.
180. It is accepted that the planning application to which this appeal relates, was submitted in respect of part of a Local Plan allocation (the Wolborough NA3 allocation). However, the allocation engages with both a European site of nature conservation importance (the South Hams SAC) and a SSSI of national importance in a UK context (the Wolborough Fen SSSI). It has always been envisaged that both of these sites will be subject to stringent protection through the delivery of the allocation and its associated policies.
181. In order to achieve these legal and policy requirements, there is a need for sensitive master planning and development design that firstly seeks to avoid negative effects on either designation entirely, or if this is unavoidable (and such lack of avoidance can be fully justified having regard to alternative solutions), secures appropriate mitigation and, as a last resort, compensation to ensure no net negative effect, and indeed no net loss of biodiversity more generally.
182. To arrive at a masterplan and development design that achieves these aims, and is therefore legally and policy compliant, requires a thorough understanding of the sensitivities of these sites, including the features and processes essential to supporting their continued interest and condition. In

the case of the South Hams SAC this means an adequately thorough understanding of how GHB use the site (and, in particular, the identified 'strategic flyway' running through the site). In the case of the Wolborough Fen SSSI, this means an adequately thorough understanding of the hydrological regime, both within the SSSI and within its wider catchment, that feeds and supports the habitats of interest. Neither the Council nor the Inspector has been furnished with such information.

183. With regard to the South Hams SAC, the survey information on bats generally, and GHB in particular is out of date, short of industry standards and insufficient to determine with the requisite level of confidence whether the likely significant effects on the South Hams SAC that are accepted by all parties to arise, can be properly addressed in a manner that avoids impacting the integrity of that site.
184. With regard to the Wolborough Fen SSSI, the level of understanding of the hydrological regime critical to the SSSI is far short of the level required in order to be confident that suitable mitigation measures are at all achievable, having regard to the development proposals and their proximity to the SSSI. In such circumstances it is patently not appropriate to defer this critical matter to a planning condition and it is surprising that NE has taken this approach, in the context of its statutory duties and the general requirement to adopt a precautionary approach to a site of such elevated interest.
185. This appeal cannot be granted without offending a broad raft of national and local planning policies that seek to protect internationally and nationally important sites, and indeed the statutory obligations on decision makers that flow from the Wildlife and Countryside Act 1981 (as amended) and the Conservation of Habitats and Species Regulations 2017.
186. The ES Addendum April 2019 failed to address the concerns about the earlier lack of information raised by opposing parties. The Rule 6 Party note of 15.5.19¹⁴² explained that the information at section 5 of the ES Addendum April 2019 was materially incorrect by stating that there was no GHB activity shown in the Langford Bridge ES biodiversity report when that report clearly showed that there was bat activity and further that GHB registrations were also recorded every month that a remote detector survey was in place in relevant locations.
187. The ES Addendum April 2019 compounded the factual errors of the appellants' assessment by stating at paragraph 5.1.5 that there is a *lack of noteworthy biodiversity features of the land relating to the Langford Bridge proposal*. The Rule 6 Party explained that some 75% of the Langford Bridge application site is located within a Strategic Flyway (for GHB) identified by NE as being important to the maintenance of South Hams SAC at a favourable conservation status. Even had there been no empirical survey data proving the use of the site by GHB, I

¹⁴² Inquiry Doc 26 Annex A.

cannot see how this strategic flyway could be dismissed as not a *noteworthy biodiversity feature*¹⁴³.

188. It is clear even without further analysis that the submitted ES (Addendum April 2019) fundamentally misrepresents the information submitted with the Langford Bridge planning application. The assessments it contains are therefore founded on a flawed baseline. They cannot be considered to be the robust assessment of the potential cumulative impacts on GHB needed in the context of the need to fully understand the scope for an adverse impact on the integrity of the South Hams SAC from the Wolborough Barton planning application and appeal acting in-combination with other plans and projects¹⁴⁴.
189. The updated report of Conservation First, Berthinussen, A, Altringham, J of May 2019: *The likely impact of the proposed NA3 Wolborough development and associated mitigation, with particular reference to greater horseshoe bats of the South Hams Special Area of Conservation*¹⁴⁵ prepared to consider the additional development at Langford Bridge included the following:

1.1 An overview of the application - Update 2019: Since our original report in 2017, additional proposals have been brought forward within the NA3 allocation for a development at Langford Bridge to include 450 dwellings, 85 care units and 22,000 m of employment space with associated infrastructure including a partial link road and access roads. The site is immediately to the east of the NA3 Wolborough development described above and overlaps significantly with the greater horseshoe bat strategic flyway restricting it even further (see map in Appendix 3). At least 10 bat species (some identified to genus only, e.g. *Myotis*, *Nyctalus* spp. and long-eared bats) have been recorded across the site, including greater and lesser horseshoe bats and barbastelle (Ecology Solutions Ltd 2019a). The development would result in loss or changes to commuting, foraging and roosting habitat including improved and semi-improved grassland, trees, sections of hedgerow and watercourses, and several farm buildings.

1.2.1 Bat survey - Update 2019: Additional data collected by the Devon Wildlife Trust at six sites immediately adjacent to the proposed NA3 Wolborough site between April and November 2018 showed regular activity of greater horseshoe bats at all locations and across the season (see Berthinussen 2019).

1.2.2 Satellite Roosts – Update 2019: A new document recently published by Natural England providing supplementary advice on conserving and restoring features of the South Hams SAC recognises the importance of transitional roosts and acknowledges that *the use of transitional roosts by the South Hams (greater horseshoe bat) metapopulation is not fully understood* (Natural England 2019).

¹⁴³ Inquiry Doc 26 Annex A.

¹⁴⁴ Inquiry Doc 26 Annex A.

¹⁴⁵ Inquiry Doc 26 Annex B.

Update 2019: Further bat surveys were carried out at Conitor Cave in 2017 and 2018 (Wills 2018). During October 2017, high levels of greater horseshoe bat activity were recorded inside the cave entrance with 943 passes (including numerous social calls) over nine nights. This provides further evidence for a possible mating site at Conitor Cave. High activity was also recorded in July and August 2018 (583 passes over ten nights) indicating significant use of the cave by GHBs during the summer. Lesser horseshoe, Natterers and whiskered bats were also recorded in high numbers, and common pipistrelle, Daubentons and long-eared bats in low numbers.

Additional data collected by the Devon Wildlife Trust between April and November 2018 showed high levels of GHB activity at several other sites in proximity to the NA3 Wolborough development during September and October (see Berthinussen 2019). At one site, 287 GHB passes were recorded during a single night in October, which suggests that there may be other late summer transitional roosts or mating sites in the area.

1.2.3 Other impacts - Update 2019: The recently proposed development at Langford Bridge lies immediately to the east of the NA3 Wolborough development. It is essential that the effects of the two developments are considered in combination. Both result in significant losses or changes to habitat and encroach significantly on a greater horseshoe bat strategic flyway creating a long and narrow 'pinch point' in an area that is already under pressure from urban development.

1.2.5 Additional development at Langford Bridge - We have also reviewed the planning documents for the additional development within the NA3 allocation at Langford Bridge (specifically Chapter 9 of the Environmental Statement and the Habitat Regulations Assessment; Ecology Solutions Ltd 2019a & 2019b). We found issues with the impact assessment and mitigation proposals that largely reflect those discussed above.

The ES describes GHB activity across the application site as being *only very occasional* (Para 9.4.137) and *low* (Para 9.4.171), despite greater horseshoe bats being recorded across the season (April to October) and at 27 of 29 static detector locations. No consideration is given to the survey constraints or the difficulty in detecting greater horseshoe bats. It also appears that more than half of the surveys were carried out in sub-optimal weather conditions, which may have resulted in reduced or atypical bat activity (see Detailed Comments below).

The mitigation plan provided in the HRA is again vague and lacks important detail. 'Dark corridors' are proposed across the site for commuting bats, but these are narrow and close to roads, footpaths and buildings and are likely to be subject to light, noise and recreational disturbance. Effective mitigation for light pollution will be essential, but very little information is provided. The corridors will also be severed in multiple places by access roads, which may act as barriers or create a collision mortality risk for bats attempting to cross them. Most of the

proposed mitigation measures have not been proven to be effective, such as plantings and raised embankments to guide bats over roads, temporary guides such as Heras fencing or 'dead hedging' and new or relocated roosting structures. Where new plantings or habitat are proposed, little consideration is given to the time it will take for them to become established or the need for them to be functional in advance of any impacts (i.e. prior to construction commencing). It is also not clear whether mitigation measures, such as corridors, will be integrated with those in the adjacent NA3 Wolborough development or existing habitats in the wider landscape.

Despite the lack of information and the uncertainties surrounding the effectiveness of the proposed mitigation, it is again assumed that it will be effective. Paragraph 93 of the HRA concludes that, with the proposed mitigation in place, *the function of the part of the Strategic Flyway that lies within the Application Site will be maintained*. It is also concluded that *there will be no in-combination effects in relation to the wider NA3 proposals* (Para 100). This is despite the fact that the Langford Bridge development lies immediately adjacent to the NA3 Wolborough development and will double the length of the strategic flyway that will be restricted to a narrow corridor.

Monitoring is briefly mentioned, but the proposed duration (two years post-construction) is not long enough to assess the impacts of the development on bat populations or the effectiveness of mitigation. A monitoring plan is not provided, nor are there any contingency plans should the proposed mitigation fail.

190. The Rule 6 Party evidence was unchallenged. The appellants did not address the recent findings by Berthinussen, A and Altringham, J.
191. The appellants continued to maintain their position that the survey data from 2013-2014 was adequate and that, contrary to the guidance and some 6 years on, there was no need to provide up to date surveys on GHBs. This view was taken in the knowledge that there had been a material change in local landscape matters including the operation (rather than construction) of the South Devon Link Road. The premise that the surveys would have limited utility in explaining what they already know that there were GHBs using the site continued to be relied upon.
192. The appellants categorised the appeal site as having low value in biodiversity terms although this seemed contrary to their written evidence that the appeal site had moderate to high value: see e.g. 8.4.24, ES. This was inconsistent with the opposing parties' position that the area is of high habitat quality for GHBs.
193. Dr Holloway further asserted that the strategic flyways that could be offered for GHBs could be around 15 metres wide in contrast to the NE guidance that stated these should be in the region of 500 metres¹⁴⁶. He asserted this by misquoting and misunderstanding the text of a judgment in *DWT v Teignbridge DC* [2015] EWHC 2159 (Admin) which provided that:

¹⁴⁶ Holloway proof para 4.36.

59. On 10 October 2014, Natural England required some small changes to the AA, namely:

i) changing the flyway commuting corridor buffers from 10m to 15-20m; and ii) clarifying and correcting the labelling of features on the mitigation map, to make them consistent with the AA.

194. When it was put to Dr Holloway that he had mis-read the judgment and that the judgment referred to 15-20 metre buffers that must apply to the strategic flyway corridors he maintained that corridors themselves were 15m.

195. The extent of the strategic flyway corridors for Chudleigh Caves and Woods SSSI were around 500 metre buffers (and for much of the area in excess of this) as shown by the turquoise area marked area called 'Strategic Flyways 500m buffer zones on the plan [CDR7]. Dr Holloway's view of a 15metre strategic flyway corridor was nonsense.

196. NE maintained an objection to the proposal¹⁴⁷. In evidence Mr Seaton expressed surprise at the approach by NE. He noted that the Local Plan Examining Inspector placed great weight on the position of NE. However, Mr Seaton suggests that for this inquiry the position of NE should not be followed. The position of NE was clear and reasonable; they simply required information:

- Comprehensive, up to date survey data.
- Further analysis of collision and severance impacts.
- A lighting assessment.
- A comprehensive mitigation and avoidance plan

197. The appellants failed to provide such information and therefore NE's objections were maintained.

- *Wolborough Fen SSSI*

198. There are two flaws in the surface water SUDS scheme proposed for that part of the development that is within the catchment of the SSSI. These are that:

- a) based on the appellants own evidence, the attenuation basins could not be relied upon to ensure surface water discharged into the ground based on the failure of the soakaway tests to be able to demonstrate that the ground would infiltrate at all, and
- b) in the absence of successful infiltration, the result was a SUDS system that collected surface water from the SSSI catchment and changed it from being diffuse ground water recharge of the SSSI, to a point source surface water recharge into the SSSI, fundamentally altering the process by which the hydrological regime that underpins the special interest of SSSI operates.

¹⁴⁷ Mason proof Appendix 1 – letter of 29 August 2017.

- *The legal basis of the Habitats Assessment required*

199. The approach to habitats assessment taken by the Court of Justice of the European Union (CJEU) in Case C-322/17 *People over Wind v Coilete Teoranta* [2018] PTSR 1668 and as recently clarified in Case C-461/17 *Holohan v An Bord Pleanala* [2018] (7.11.18) is the one to be followed. In *Holohan* the Court held that for an appropriate assessment:

37 all aspects which might affect [the nature conservation objectives of the European site] must be identified and since the assessment carried out must contain complete, precise and definitive findings in that regard, it must be held that all the habitats and species for which the site is protected must be catalogued. A failure, in that assessment, to identify the entirety of the habitats and species for which the site has been listed would be to disregard the abovementioned requirements and, therefore, as observed, in essence, by the Advocate General in point 31 of her Opinion, would not be sufficient to dispel all reasonable scientific doubt as to the absence of adverse effects on the integrity of the protected site (see, to that effect, judgment of 26 April 2017, *Commission v Germany*, C-142/16, EU:C:2017:301, paragraph 33).

40 ... an 'appropriate assessment' must, on the one hand, catalogue the entirety of habitat types and species for which a site is protected, and, on the other, identify and examine both the implications of the proposed project for the species present on that site, and for which that site has not been listed, and the implications for habitat types and species to be found outside the boundaries of that site, provided that those implications are liable to affect the conservation objectives of the site."

200. In light of the reasoning and analysis in *People over Wind* and *Holohan*, APC/WRA submit that the appellants' approach to assessment is incomplete and inadequate. The evidence of the parties in opposition explained why it is impossible to state that 'no likely significant environmental effects will arise on the protected site.

- *The wider concerns for biodiversity*

201. Concerns about the adverse effects on biodiversity must also be seen in the wider context of significant species loss and the deterioration in nature and wildlife in the UK. This was recently emphasised in the UK's 6th National Report to the Convention on Biological Diversity (Jan 2019), which explained that there was insufficient progress in the UK for 14 out of 20 agreed *Aichi* targets set by the International Convention on Biological Diversity.

202. Consistent with the UK's 6th National Report is the recent report on the significant global decline on insect species and the implications of this¹⁴⁸; with the report noting that the most significant reason for species decline appears to be habitat loss and conversion to intensive agriculture and urbanisation. The Government's 25-year plan requires urgent action to improve biodiversity; the proposal will undermine this.

- *Conclusion on biodiversity*

203. In the light of the above submissions, it is impossible for the Secretary of State to conclude that there will be no likely significant adverse environmental effects from the proposal on any European site, or any other relevant site as required by the Habitat Regulations 2017, having regard to the CJEU judgment in *Holohan*. It is also clear from the above that the areas to be covered by the appropriate assessment go beyond the areas suggested by the appellants and that, having carried out an appropriate assessment, it is highly likely that §177 of the NPPF would be engaged and that the presumption of sustainable development would dis-apply for ecological and biodiversity reasons; as well as the proposal being environmentally unacceptable and contrary to the principles of sustainable development.

204. Moreover, as with the concerns over air pollution, the proposal fails to provide any meaningful information on mitigation contrary to Art 5(1) of the EIA Directive.

205. Set in the above context, the appellants' approach to biodiversity and the desire to further urbanise a critical rural site in South Devon is untenable. The perceived need for housing must be seen in the context of biodiversity impacts in and around the site but also against a backdrop of a much greater crisis in biodiversity.

206. Moreover, the appellants' persistent failure to provide up-to-date information on biodiversity means that the Secretary of State cannot grant permission until adequate information is provided. In the light of the above, the Secretary of State will be acting unlawfully by granting permission.

Failure to assess impacts on climate change

207. The appellants' ES failed entirely to consider climate change and the adverse impacts of greenhouse gas emissions. They did this notwithstanding that the Council had made it very clear in its scoping opinion of 27.11.15 that climate change must form part of the ES and that: *greenhouse gas emissions (GHG) need to be assessed following IEMA¹⁴⁹'s Climate Change and EIA Series¹⁵⁰.*

208. The IEMA guidance notes the following:

¹⁴⁸ Sanchez-Bayo, F and Wyckhuys, K: *Worldwide decline of the entomofauna: A review of its drivers in Biological Conservation* 232, pp. 8-27 (April 2019, Elsevier)

¹⁴⁹ Institute of Environmental Management and Assessment.

¹⁵⁰ CD26 Annex D.

Whilst Strategic Environmental Assessment (SEA) and Sustainability Appraisal (SA) can present a broader opportunity to manage GHG emissions this does not absolve EIA from consideration of climate change mitigation. The principles below focus on climate change mitigation, but EIA practitioners must also consider adaptation, ...

209. The IEMA guidance provides over-arching principles including:

- The GHG emissions from all projects will contribute to climate change; the largest inter-related cumulative environmental effect.
- The consequences of a changing climate have the potential to lead to significant environment effects on all topics in the EIA Directive – e.g. Population, Fauna, Soil, etc.
- The UK has legally binding GHG reduction targets – EIA must therefore give due consideration to how a project will contribute to the achievement of these targets.
- GHG emissions have a combined environmental effect that is approaching a scientifically defined environmental limit, as such any GHG emissions or reductions from a project might be considered to be significant.
- The EIA process should, at an early stage, influence the location and design of projects to optimise GHG performance and limit likely contribution to GHG emissions.

210. The IEMA guidance then provides further assessment principles which include:

- During scoping, climate change mitigation and adaptation issues and opportunities should be considered alongside each other to ensure integration in project design.
- The scope of GHG emissions must consider the relevant policy framework (local to global) and should also review the relevant findings in any associated SEA / SA.
- When assessing alternatives, consideration of the relative GHG emissions performance of each option should be considered alongside a range of other environmental criteria.
- Baseline considerations related to GHG emissions should refer to the policy framework and also include the current situation and, where possible, take account of the likely future baseline situation.
- Quantification of GHG emissions (e.g. carbon calculators) will not always be necessary within EIA; however, where qualitative assessment is used (e.g. emissions trends related to construction practices) it must be robust, transparent and justifiable.
- The assessment should aim to consider whole life effects including, but not limited to:

- o Embodied energy in the manufacture of materials used for the development
 - o Emissions related to construction - from materials delivery to on-site machinery
 - o Operational emissions related to the functioning of the development- including appropriate off-site emissions.
 - o Decommissioning, where relevant.
- When evaluating significance, all new GHG emissions contribute to a significant negative environmental effect; however, some projects will replace existing development that have higher GHG profiles. The significance of a project's emissions should therefore be based on its net GHG impact, which may be positive or negative.
 - Where GHG emissions cannot be avoided, the EIA should aim to reduce the residual significance of a project's emissions at all stages - design, construction, operation, etc.
 - Where GHG emissions remain significant but cannot be further reduced - having considered: financial, programme, operational, political and societal constraints - approaches to compensate the project's remaining emissions should be considered. Without any analysis

211. The IEMA guidance is consistent with the approach of the EIA Directive. It is clear, from a number of authoritative sources, that the impacts and effects of GHG emissions both in construction and operations must be provided by developers as part of the EIA process. Moreover, the failure by the appellants and absence of any climate change analysis, despite the Council's request, is brought into focus by the UK Parliament declaring a climate emergency on 1.5.19¹⁵¹.

212. Finally, if there was the need for any further confirmation that climate change and GHG emissions were significant impacts and effects that must be taken into account, the Prime Minister announced on 12.6.19 that the Climate Change Act 2008 would be amended to provide to require net UK carbon emissions to be zero by 2050. The Climate Change (Emissions Targets) Bill is now before Parliament awaiting its second reading¹⁵².

213. This proposal and the appellants' approach are clear examples of why it has been necessary to declare a climate emergency. The proposal ignores the legislative provisions requiring information on climate change and GHG emissions. It ignores a formal notice in the form of a scoping opinion issued by the Council and required under the EIA Regulations that expressly required climate change assessment. It also ignores key guidance on what and how to

¹⁵¹ The Hansard Vol 659, no. 294, page 317 – Inquiry Doc 53 para 68.

¹⁵² See Inquiry Doc 53 para 70.

provide relevant climate change information and the impacts and effects of GHG emissions. Having been given a further opportunity in March 2019 to provide information after the lack of relevant information had been pointed out, the appellants again failed to provide the information.

214. As a consequence of the above, the appellants are acting contrary to Articles 2 and 3 of the EIA Directive 2011/92/EU in failing to provide environmental information on climate change and GHG emissions that should ... *identify, describe and assess in an appropriate manner, the direct and indirect significant effects of a project ...* on, amongst other things, climate.
215. Without this information the Secretary of State is unable to assess or evaluate this particular project in terms of climate change and, as a consequence, will act unlawfully if permission is granted without this information.

Unsustainable development

216. The proposal cannot reasonably be regarded as being consistent or compatible with the concept of sustainable development. As is clear above it is contrary to key principles relating to land use and environmental decision-making and in addition to have substantial adverse effects on air quality, biodiversity and climate change it will have unacceptable adverse effects on socio-environmental matters such as local health services, heritage, visual amenity etc.

- The concept of sustainable development

217. Paragraph 7 of the Framework 2019 sets out that sustainable development at a very high level can be summarised in accordance UN General Assembly Resolution 42/187 which provides that: ...

The General Assembly,

Concerned about the accelerating deterioration of the human environment and natural resources and the consequences of that deterioration for economic and social development,

Believing that sustainable development, which implies meeting the needs of the present without compromising the ability of future generations to meet their own needs, should become a central guiding principle of the United Nations, ...

1. Welcomes the report of the World Commission on Environment and Development entitled "Our Common Future"; ...

4. Agrees further that an equitable sharing of the environmental costs and benefits of economic development between and within countries and between present and future generations is a key to achieving sustainable development; ...

7. Calls upon all Governments to ask their central and sectoral economic agencies to ensure that their policies, programmes and

budgets encourage sustainable development and to strengthen the role of their environmental and natural resource agencies in advising and assisting central and sectoral agencies in that task; ...

218. There are then the interdependent economic, social and environmental objectives in paragraph 8 of the Framework and the paragraph 11 presumption in favour of sustainable development. Any suggested presumption does not engage because:

- a) the project does not accord with an up-to-date development plan; and
- b) policies in the Framework to protect special areas i.e. European Site provide a clear reason to refuse the proposal; and
- c) the adverse impacts would significantly and demonstrably outweigh any benefits (that may be considered to arise) when assessed against the Policies in the Framework taken as a whole.

219. When the concept of sustainable development is properly and meaningfully considered refusing permission and the non-engagement of the presumption is clear. The correct understanding of the notion of sustainable development may be unclear in the Framework; however, that it is a general principle in accordance with the UN provisions is very clear from recent legislation and Government policy¹⁵³. Source: Our Common Future, also known as the Brundtland Report.

- *Irrelevance of the LP Examination*

220. The appellants focussed greatly on the LP Inspector's comment at paragraph 75 of his decision that the NA3 allocation would be a *sustainable urban extension*. This may have some weight if it was correct. However, the evidence presented orally on behalf of the County Council in relation to transport was that very few people would in fact walk to the town centre or, indeed, cycle. Indeed, there was some discussion about how far people would walk to the nearest bus stop. The concern for this site was, in part, due to the topography of the proposal.

221. The reality is that in the light of the evidence and, importantly, the lack of evidence before the Inquiry as to any understanding at all as to mitigation for air pollution, the absence of adverse effects on biodiversity, and no consideration of climate change, the suggestion that the proposal before the Inquiry is sustainable is meaningless. The Local Plan Examining Inspector's comments must be seen in this context. He would have been aware that an allocation in a local plan was just that, an allocation. He would have known that what would be required for any application for planning permission in the NA3 allocation was details relating to the submission in accordance with legislation. This point was underlined by the High Court in *Abbotskerswell v Teignbridge DC* [2014] EWHC 4166 in which Mrs Justice Lang noted that:

In relation to specific sites, the Inspector gave careful consideration to the provision for the protection of GHB and concluded that it was

¹⁵³ Inquiry Doc 53 para 79.

sufficient. He attached considerable weight to the fact that the proposals were not objected to by Natural England. He accepted that the requirement for a bespoke GHB mitigation plan to be approved before planning permission could be granted for a specific project was an appropriate safeguard.

And at paragraph 72:

Additionally, the Local Plan provided for mandatory site-specific bespoke mitigation plans, as recommended in the Habitats Regulations Assessment. These would necessarily require an impact assessment. In my view, the Council was entitled to conclude that bespoke GHB mitigation plans in relation to specific development sites would be both more appropriate and effective if undertaken at planning permission stage, when the scope and details of the project would be known to the Council and the developer. The Local Plan was a high-level strategic document, setting out broad allocation policies, but without project detail. (CD14a)

222. In the Court of Appeal in the same case (*Abbotskerswell PC v TDC* [2015] EWCA (C1/2015/0076)), Lord Justice Underhill reiterated the point:

So far as the settlement level plans are concerned, the absence of a specific requirement in the Plan that these should be completed before any planning application is determined does not compromise the protection of the site. It remains a requirement of the grant of planning permission that the developer can demonstrate that there will be no adverse effect on the site either as a result of his own development or (importantly) in combination with other plans or projects: see the quote from the policy at para. 6 above. If he is unable to do so because that is impossible without a settlement-level plan of the type recommended in the supplementary report, then permission must be refused. (CD14b)

223. The appellants suggested during the Inquiry that the Strategic Environmental Assessment/Sustainability Appraisal (SEA/SA) covered matters such as air quality impacts but failed to produce this or provide any relevant extracts. Rule 6 party asked for the definitive SEA/SA to be provided explaining that they could not locate the relevant parts of the SEA/SA for the LP let alone understand how it related to the proposed development. The appellants explained to the Inquiry that the SEA/SA was not straightforward and that it ran to 1,000 pages with various amendments etc. Neither relevant extracts or a definitive perhaps consolidated SEA/SA was produced by the appellants.

224. What is clear is that without any meaningful understanding of the SEA/SA or clear reference to it the Secretary of State has absolutely no idea what it said. APC/WRA have been unable to make head or tail of the SEA/SA and submit that the likelihood is that, in common with most SEA/SAs, it is simply a tick box style exercise that generally suggests that addressing environmental concerns will be a good thing but that otherwise has no real application to specific projects or

development. The appellants are unable to rely upon an assertion that there has been any meaningful assessment for the proposal as part of an SEA/SA. In contrast, the EIA Directive requires the detail and clarity of environmental concerns to be expressed clearly and simply in non-technical language, recognising the limited value of a strategic assessment to a particular project or development.

225. Rule 6 party submit that SEA deals with matters on a strategic, general level but properly recognises that environmental concerns will need to be considered at the project level. Importantly, unless the appellants can point to specific aspects of the SEA/SA that address the environmental concerns arising from this proposal then it is not relevant. Given that the technical appendices of the ES fail even to quantify mitigation measures (see e.g. the discussion above on air pollution LES), the lack of biodiversity detail, the lack of a detailed Masterplan etc. the Secretary of State should place no reliance upon the SEA/SA having addressed critical environmental and sustainability issues.

- *Inadequate assessment of socio-environmental factors*

226. Chapter 6 of the appellants' ES of June 2017 was called: socio-economic impacts. The chapter is superficial in nature noting that there is no cumulative effect. On the critical area of healthcare provision, concerns were raised by Torbay and South Devon NHS Foundation Trust and local GPs that the proposal will have a detrimental impact on the healthcare provider's ability to deliver services. The evidence of Dr Paul Melling said small amounts of (existing) capacity will soon be overrun. Primary carers were not involved in the development of the Local Plan¹⁵⁴.

227. The consequences of the funding gap for the NHS will be significant and there will be an increase pressure on local services.

228. The appellants view on the adverse impacts was not that the significant effects would not arise but that they are not be responsible for e.g. GPs not engaging in the planning process earlier. Rule 6 Party say that such a view may or may not be correct, but the Secretary of State needs to be aware that those significant adverse effects will arise, and the local community should not pay the price and suffer the consequences of an unprepared under-resources proposal. The consequence is that the proposal will place increased pressure on health services and will have significant adverse socio, environmental and economic effects: as such it is unsustainable, the appellants' denial of responsibility of this does not change this.

- *Landscape and visual impacts*

229. Chapter 7 on landscape and visual effects notes that the application has a moderate adverse effect. In fact, it will be a significant adverse effect and that this much was clear from the site visit.

¹⁵⁴ Inquiry Doc 11.

230. In terms of landscape Dr Page noted the material gaps in the ES documents. He noted in particular that:

Remarkably despite their presence in the area surrounding the application site, the EIA fails to consider any national and regional designations of sites of Geological Heritage Importance, including the fossil-rich sites of Devonian limestones at Wolborough Quarry and the Field near Court Grange County Geological Sites and Ransleigh Quarry, East Ogwell Quarry and Lemon Valley Woods SSSIs, as well as the geological importance of the Conitor Cave sites and any interconnected karstic systems. In addition, historical excavations in the Wolborough Facies of the Upper Greensand, as described by Sellwood et al. 1984 (Geology of the Country around Newton Abbot, Mem. Geol. Surv.), revealed a regionally unique development of fossiliferous limestone in the Upper Greensand 400 m south of Wolborough Church (p.122). Aller Sand Pit SSSI, also nearby, exposed Upper Greensand, but with less scientifically important features. The EIA fails to assess the potential national and regional value of outcrops of these rocks within the proposed development area and provide any necessary mitigation against loss or damage.

231. Dr Page also outlined what he understood would be the key geological features of the proposed development site, which did not appear to have been considered by the Appellants; Appendix 9.3 called Geo-physical Survey, was an archaeological survey. Dr Page's evidence on geology and landscape was generally unchallenged, although there was some discussion on hydrogeology (discussed below).

- *Heritage*

232. Historic England made detailed submissions objecting to the proposal. Rule 6 Party agree with the conclusions of Historic England and consider that for heritage reasons the application should be refused. Moreover, the lack of information provided on heritage is a breach of Article 5(1) of the EIA Directive, due to the failure of the appellants in providing adequate environmental information.

- *Water resources, flood risk and drainage*

233. As noted in Section B above, the information on water resources, flood risk and drainage failed to consider the adverse effects of water discharges on the Wolborough Fen SSSI. The cumulation of impacts and effects of water resources and flooding is also a concern, something that has to have regard to the complexity of the landscape.

234. Dr Page also raised concerns about hydrogeology and that there was inadequate information provided by the appellants. In the Appendix to Dr Page's proof he notes:

- *Perhaps one of the most revealing comments in the EIA concern the potential hydrological effects on Wolborough Fen SSSI of the development, e.g. "any change of land use would affect the processes*

of groundwater recharge and surface runoff and contamination risks” (section 8.5.75); which would affect “wetland communities considered rare in south-west England” (8.4.3, p.96); and that the “The fen habitat is considered to be under threat...from runoff” (8.4.3, p.97); including “With an increase of impermeable surfaces, there is less time and area for water to infiltrate into the ground and recharge groundwater. For the catchment of the Fen, this will be a negative impact as “the most important source of water to the site is groundwater from the Aller Gravels and possibly the underlying Upper Greensand”” (11.5.9). Section 11.5.4 and elsewhere also refer to risks of groundwater contamination both during construction and after construction (i.e. when housing is occupied).

- Remarkably, however, despite these statements the EIA apparently ignores such issues in sections 14.4.11-13.4.13 etc where working these formations (Aller Gravels, Upper Greensand) as a mineral resource is proposed, which would of course greatly exacerbate the problem by removing the crucial aquifer system.*
- In addition, the potential stability of slopes developed on unconsolidated sediments such as the Aller Gravels and Upper Greensand is not considered. The ‘Upper Greensand’, in particular, is notorious in East Devon for its ability to liquefy and develop landslip systems when over saturated – hence its presence in the slope here should be regarded as a potential stability risk*
- It is essential therefore that before any outline or detailed planning consent is given by TDC that a detailed independent hydrological impact assessment as well as a full geotechnical survey is carried out, including to the satisfaction of the Environment Agency and Natural England, who remain responsible for safeguarding the national nature conservation importance of Wolborough Fen SSSI, as well and the community amenity value of Decoy Country Park and more general hydrological and water supply issues.*
- Without adequate modification and mitigation, it is likely that the proposed development would lead to the serious damage and even possible loss of the nationally important nature conservation interests of Wolborough Fen SSSI, as well as other key habitats and species across the area.*

235. It was put to Dr Page in XX that consideration of the hydrological impacts of the proposal *could* be required by conditions and he noted that, in principle, it could. However, the difficulty for the Secretary of State is that in slicing off the consideration of likely significant environmental impacts and effects of the proposal on hydrogeology to a post-decision determination would mean that the Secretary of State has no way of being able to assess the adverse environmental effects prior to granting permission. As such, the Secretary of State would be acting unlawfully by granting consent without considering the likely significant adverse environmental effects on the locality including a SSSI. Such an approach would be contrary to Article 2(1) of the EIA Directive and Reg 3(4) of

the EIA Regulations 2011. The environmental information, or lack of it, has been raised as a concern at the Inquiry and the appellants have made no attempt to provide this information.

- *No real housing need*

236. Peter Finch, the Chair of CPRE Devon presented evidence orally and in written submissions¹⁵⁵. In particular he noted that the recent housing figures show that the targets set in the current Teignbridge Local Plan applying the Government`s standard methodology:

... greatly exceed the real housing needs of Teignbridge and Devon residents. Also, housing delivery in Teignbridge is exceeding the Council`s target. For instance, in 2017-2018, 726 new dwellings were added to the housing stock (MHCLG statistics). Therefore, there is no pressing need to approve development on this site. Our local circumstances should be taken into account, as ORS have, in assessing our future housing need in Teignbridge.

237. The Council explained to the Inquiry that the NA3 Allocation is currently under review by the Council and the question of need for housing in this locality is likely to form part of that review. It is not known when the NA3 allocation review will conclude.

- *Conclusion on unsustainable development*

238. There is nothing in the proposal to suggest that the proposal can reasonably be regarded as aligning to the correct concept of sustainable development. That the land is allocated for development in the LP does not assist. The NA3 allocation itself was contentious and Rule 6 party`s position is that, while it may have been lawful, it was wholly inappropriate for the locality. Some six years on from the allocation it is now clear that it is unwanted by the community and should certainly not be approved without the range of significant adverse impacts of the proposal being taken into account. The appellants appear to rely upon the allocation as in some way seeking to rubber-stamp through the proposal; whatever the cost to the community. This approach would be unlawful.

239. In relation to socio-economic factors (Section 6 of the ES) the appellants failed to consider significant adverse effects such as healthcare provision. On landscape and visual matters, the appellants simply repeated their inadequate analysis relying upon the need to deliver housing. The need is disputed, but, in any event, it still requires meaningful assessment so that the Secretary of State can balance the adverse effects on landscape with purported benefits.

240. The reference in ES Addendum April 2019 to water simply repeated the incorrect approach of the earlier information relying upon unknown mitigation measures and failing to explain or describe the cumulation of effects from this proposal along with the other proposals.

¹⁵⁵ Inquiry Doc 12.

241. In conclusion, because the proposal does not fit the definition or concept of sustainable development as relied upon in the Framework and legislation, the proposal should be refused.

- *Inadequate environmental information*

242. There is concern that until up to date detailed environmental, archaeological and landscape assessments have been completed; the extent of the information provided in the environmental statement (ES) is wholly inadequate with no meaningful evaluation of cumulative effects. It fails to consider the operational phases of impacts along with most, if not all, of the indirect, secondary and cumulative impacts. The text above is evidence that the appellants have failed to provide adequate environmental information they are required to provide under the Directive¹⁵⁶.

243. The Secretary of State has no way of understanding how the environmental impacts of the proposal, in cumulation with other projects, will affect the local community. Yet these cumulative effects are required to be provided under Art 5 and Annex IV of the EIA Directive. As a consequence, the appellants have failed to comply with their obligations under the EIA Directive to provide the information.

244. Not only has there been a comprehensive failure to consider the cumulative effects of the operational aspects of the proposal and so not comply with the Directive, there has also been an express approach to slice off a number of environmental effects for assessment at a later stage: either at the reserved matters stage or in conditions, or both. While slicing off certain matters for later environmental assessment or confining consideration to a red-line boundary may be acceptable in domestic planning policy (by consideration at reserved matters), it offends the requirements of the EIA Directive, that the environmental effects of the project must be considered at the earliest possible stage.

245. Further, the appellants' approach to EIA can reasonably be described as a paper chase with significant gaps and material errors and so fails to meet the obligations of the Directive.

246. The EIA Directive is clear that all relevant environmental information must be provided at the earliest possible stage. It is then essential that critical environmental aspects and effects are understood at this stage. Attempting to evaluate and assess any number of reserved matters applications over a period of anything between 10-12 years would be virtually impossible and would amount to project splitting in terms of EIA.

247. It is impossible to understand the environmental impacts and effects of this project in the locality when the information supposed to provide that information is wholly inadequate. This is not a technical concern arguing about how certain data may apply, it is that there are fundamental gaps in assessment and analysis. It is for this reason that the Council was entirely right to conclude that it could not determine the project.

¹⁵⁶ Inquiry Doc 53 at paras 93-105 sets out in more detail the extent of the information gaps identified and the assessment of the evidence provided including cumulative effects.

248. In the light of the above, the Secretary of State does not have adequate environmental information, including any understanding of the cumulative effects that this proposal may have in the locality in combination with other projects.

- *The absence of an adequate masterplan*

249. The Illustrative Masterplan provided by the appellants is inadequate and fails to provide sufficient information for the proposal to be understood. Paragraph: 032 Reference ID: 26-032-20140306 of the National Planning Policy Guidance provides that:

Masterplans can set out the strategy for a new development including its general layout and scale and other aspects that may need consideration. The process of developing masterplans will include testing out options and considering the most important parameters for an area such as the mix of uses, requirement for open space or transport infrastructure, the amount and scale of buildings, and the quality of buildings.

250. The appellants' Illustrative Masterplan fails to achieve this. It provides no strategy for the proposal nor does it provide key aspects of the proposal that need determination¹⁵⁷.

251. The appellants' approach that any concerns can be dealt with by condition prior to determination of reserved matters is inadequate. It fails to provide for a sufficient level of scrutiny and, as with many other aspects of the proposal, it breaches Article 2(1) of the EIA Directive that all environmental effects should be assessed before development consent is granted.

252. In summary, the concern focused on the Masterplan failing to meet the standards required by the Council's Technical Note on master planning, that the 'masterplan' provided only covered $\frac{3}{4}$ of the NA3 allocation¹⁵⁸.

Conclusion

253. In summary the appeal should be dismissed, and planning permission refused for the following reasons:

- i. will cause an unacceptable impact on air pollution in the locality and will result in a deterioration in air quality in the locality in the short, medium and long term without sufficient mitigation measures in place;
- ii. is likely to cause an unacceptable impact on biodiversity, including on the GHB, a protected species; in circumstances where there is insufficient information available for the Secretary of State to undertake a habitats risk assessment that will conclude there is No Likely Significant Effect on a protected habitat;

¹⁵⁷ Watts proof Para 3 and page 52 Appendix CW1.

¹⁵⁸ Inquiry Doc 53 paras 116-119 give more detail.

- iii. fails to consider whether the impacts on climate change contrary to law and policy;
- iv. is contrary to key principles relating to land use and environmental decision-making and in particular the concept of sustainable development because it is likely to have unacceptable adverse effects on the locality including e.g. on local health services, heritage etc;
- v. cannot be determined until up-to-date detailed environmental, archaeological and landscape assessments have been completed, the information provided in the ES continues to be wholly inadequate; and
- vi. fails to be supported by an adequate Masterplan contrary to provisions in the LP.

254. The Rule 6 Party also offered further comments on the up-dated Bat Survey submitted by the Council following the close of the Inquiry¹⁵⁹. The promoted position of the Rule 6 Party expressed above does not alter, that being that even with the up-dated survey results the evidence still affords insufficient confidence as to the ability of the scheme to avoid adverse impacts on the SAC. They do not accept it can be dealt with by condition.

255. In respect of the Housing Delivery Test Results 2019 they maintained their position of there being no pressing need for new housing in the district and particularly on the appeal site and that the contention that the proposal is sustainable development is wrong¹⁶⁰.

256. Inquiry Doc 64 also sets out the Rule 6 Party position on the resolution of the Council to grant planning permission for the Langford Bridge scheme. They claim material errors in law in the Council's consideration of the scheme.

Pertinent Statutory Undertakers comments

*Historic England (HE)*¹⁶¹

257. HE's interest lies in the Grade I listed Church St Mary the Virgin and the significance it derives from its setting. HE acknowledge that the site is allocated in the LP but have been consistent in its approach at both the LP examination stage and the extant development management process, that due to the sensitivities of the site there is a need for a robust understanding of the significance of the heritage asset contribution made by its setting.

258. Insufficient information has been provided in respect of assessing the significance of this highly designated heritage asset and the contribution made by its setting to that significance, and an adequate options appraisal to establish the road access point. The concern is that due to the close proximity of the allocated site to the Church inevitable harm caused by the proposed development could equate to substantial harm if an ill-conceived scheme is brought forward that does not take into consideration design and the contribution made by the setting of the Church to its significance.

¹⁵⁹ Inquiry Doc 58 (Bat survey 2019) & Rule 6 party response Inquiry Doc 60.

¹⁶⁰ Inquiry Doc 66.

¹⁶¹ Inquiry Doc 19.

259. The decision-maker does not have sufficient information to make the required assessment on impact in accordance with the statutory duty¹⁶² and the Framework.
260. The proposed access point (for consideration at this stage) would create a significant urban intrusion into a sensitive part of the Church's setting and results in the imposition of a major development constraint on the site. There is no indication of how the historic environment has been taken into account in respect of the location of the access.
261. The potential substantial harm to the listed Church can only be accepted if the decision maker is satisfied that there is clear and convincing justification and that any public benefits derived from the development decisively outweighs that harm. The appellants have failed to demonstrate that any inevitable harm has been justified and this issue can not be resolved through reserved matters.

*Natural England (NE)*¹⁶³

262. LP policies advise that Wolborough Fen SSSI should be maintained and enhanced. There is an outstanding objection to the proposal relating to potential impacts upon the SSSI. Development within the SSSI hydrological catchment poses a risk although the hydrological catchment is small and coincides with only part of the NA3 allocation. It is groundwater rather than surface water which is the most important source to maintain the ecohydrological features of the SSSI.
263. NE advised that to prevent and avoid damage to the SSSI resulting from the development within the hydrological catchment of the SSSI a reliable evidence base should be developed in advance of development proposals within the catchment area. NE has accepted that a planning condition could be attached to any outline planning permission requiring that development within the SSSI hydrological catchment does not come forward until appropriate surveys have been completed, and appropriate construction, and operational drainage solutions identified.
264. In respect of the impact on the integrity of the SAC, in the absence of any up to date survey of GHBs there would be insufficient information on which to complete an appropriate assessment that could conclude to the required degree of certainty that there would be no adverse effect on the integrity of the site. This statement was made prior to the submission of the GHB Survey 2019.

Third parties who addressed the Inquiry

*Dr Paul Melling*¹⁶⁴

265. Dr Melling spoke on behalf of the Newton Abbot Federation of GP Practices. It is central to providing improved healthcare to the community population in the community setting to understand population growth, potential demographic change and health challenges. There are significant challenges facing the local health care infrastructure through an ageing population living longer, population

¹⁶² Section 66 (1) of the Planning (Listed Building and Conservation Area) Act 1990.

¹⁶³ Letter from Natural England dated 8 February 2019.

¹⁶⁴ Inquiry Doc 11.

growth, the shift of many aspects of healthcare from a hospital to a community setting and the increase in available interventions.

266. The risk of practice failure is real and local. If primary care fails, the stresses in the rest of the health and social care systems are immense. The Federation would like to work with Planners and developers in a pro-active way, rather than facing these challenges in an unprepared way.
267. The proposed development would have a significant impact on the provision of health care locally. Albeit that practices have not closed their patient lists this does not imply that all is well. The Federation has not been invited for their input into any assessment in respect of this proposal in terms of health care infrastructure.

*Peter Finch CPRE Devon*¹⁶⁵

268. Historic environment - CPRE agree with the evidence of HE in respect of the impact of the proposal at this scale on the significance of the Grade I listed Church causing substantial harm to its setting, eroding its rural isolation including the loss of trees. Along with All Saints Highweek, St Mary Wolborough flank the head of the Teign estuary. The conversion of the adjacent barns and the allocation of a play area are the only mitigating measures which are proposed and will not mitigate the substantial harm identified. The assessment of HE should be given great weight.
269. Natural environment – there is no up to date survey of bat movements. Proposal will add to the cumulative impact on the GHBs from other major developments on the strategic flyways in the SAC.
270. Dark corridors and bat flyways are vital and must only be decided upon based on evidence beyond all reasonable scientific doubt. Further the SSSI would be affected by pollutants likely to run off or leach from the development.
271. Housing needs – the Governments standard methodology is not based on the latest 2016 household projections from the ONS but uses the 2014 figures which are out of date. The formula is flawed and takes no account of local circumstances. The actual local need (ORS report) is considerably less than that of the LP target or the MHCLG standard methodology target. Local delivery also exceeds the LP target therefore there is no pressing need to allow this appeal.
272. The proposal will not deliver a sustainable urban extension to Newton Abbot and risks significant harm to nationally and internationally protected biodiversity and cause significant harm to the historic landscape.

*Mr Sampson*¹⁶⁶

273. There is no fit for purpose Masterplan in place. The DPD will be the Masterplan which is the first requirement of LP Policy NA3. So, until proper consultation has been carried out on DPD this proposal should be dismissed.
274. The environmental concerns around LP Policy NA3 were tested through judicial review and it is clear that until bat mitigation surveys and other environmental

¹⁶⁵ Inquiry Doc 12.

¹⁶⁶ Inquiry Doc 13.

assessments have been carried out permission should not be granted. There should be a high level of certainty that there will be no adverse effect on the integrity of the SAC.

275. A relief road for Newton Abbot is desperately required and is a key part of LP Policy NA3. Yet the proposal only proposed to provide a small spine road terminating in a single lane traffic light. The inadequacies of the scheme can not be left to the reserved matters stage.
276. There is already a plentiful supply of housing and future sites and the LP is being reviewed. We should wait for the DPD to be produced before proceeding.

*Mr Shantry*¹⁶⁷

277. This submission centres on a fierce opposition to the LP Policy NA3 allocation itself. There are valid objections on ecological grounds, negative effects on hydrology of the SSSI, destroying the setting of the listed Church, protection of the GHBs and the effect on local congestion due to the access road not being agreed.
278. No more homes should be agreed until a full review of the LP is undertaken in April 2021. The top down pressure to approve higher housing numbers on greenfield sites is totally in opposition to the localism agenda and the wishes of the local population.

*Mr Daws*¹⁶⁸

279. It has not been demonstrated that the proposed plans are in the best interests of the Town, the residents or the wildlife and environment in and around LP Policy NA3 area. A range of environmental concerns have to be satisfied with a high level of certainty before permission is granted. This is a flawed proposal which for the sake of future generations should be dismissed.

Mr John – representing Mr Glynn (Langford Bridge Scheme)¹⁶⁹

280. There is no objection to the wider principle of development and ambitions for the area. The policy and objectives for growth within the LP are recognised including seeking to facilitate improvements to congestion and air quality.
281. The proposal does represent a large development with another large scheme also being progressed in parallel. LP policy and the draft Masterplan make it clear that the delivery of a comprehensive highways solution is critical as part of wider objectives to reduce congestion and air quality. It is unclear that the submitted evidence demonstrates that there will be no harm with adequacy of works and delivery of promised benefits.
282. There is concern that the appeal scheme underestimates traffic impacts, there are no details on bridge improvements or their delivery and that the proposed Spine Road alignment deviates from the original rationale of providing a link to reduce congestion.

¹⁶⁷ Inquiry Doc 14.

¹⁶⁸ Inquiry Doc 15.

¹⁶⁹ Inquiry Doc 17.

283. In the circumstances of the early stage of the Langford Bridge scheme and the evolution of the Masterplan it is premature to allow the appeal in the context of highway impacts not having been thoroughly considered to be confident in no resultant harm.

*Mr Martyn Planning Officer Newton Abbot and District Civic Society*¹⁷⁰

284. The concerns of the Civic Society centre on matters of heritage and landscape character. These matters are dealt with by others and rather than repeat evidence the Society relies on that evidence in opposition. They do summarise the history of Wolborough Barton in their Inquiry Statement¹⁷¹ to give a better awareness of what is sought to be replaced by the proposed housing and other works. The following paragraph is the conclusion of that evidence which should be read in full at Inquiry Doc 18.

285. For some 1500 years the site of the appeal site has served the purpose of food production cared for by generations of farmers many of whom lie buried in the nearby churchyard of St Mary the Virgin. The land has been improved over the years with better buildings and methods of husbandry and agriculture. What is now proposed is more a destruction than development and should be strongly resisted.

*Mr Collman*¹⁷²

286. LP Policy NA3 sets out that the development would not proceed until there is an assurance that GHBs will be protected. No assurance that encircling a habitat with houses will not affect the Bats can be given. Also, it cannot be ascertained that the proposal will not adversely affect the integrity of the European site. The Bats frequent the appeal area and fly regularly between it and the SAC. Varying weather conditions can influence which particular parts of Devon are chosen by GHBs flying and foraging beyond their SAC. The normal foraging range is a human construct that ignores records of GHBs miles from the SAC roosts. The importance of satellite roosts such as that at Conitor Copse close to the appeal site is still not known. The flight paths, strategic or otherwise of the GHBs are likely to be significantly modified or curtailed by a housing development with all the residential and traffic-light pollution it would bring.

287. The Wolborough Fen SSSI includes wetland communities rare in the south-west of England. The proposal represents habitat degradation and the increased footfall from recreational use would be hugely increased. Increased dog and cat population from the development would impact upon local fauna.

288. Even taking into account any SUDS storm rainfall would not be coped with. The effectiveness of the SUDS would be difficult to predict due to the geology of the area, one of sand and gravel interspersed with clay. The concern is that an inadequate system would ruin the SSSI.

289. Only the removal of LP Policy NA3 can give Wolborough Fen SSSI a reasonable chance of survival.

¹⁷⁰ Inquiry Doc 18.

¹⁷¹ Inquiry Doc 18.

¹⁷² Inquiry Doc 22.

Conditions

290. In the case that the SofS is minded to allow the appeal a schedule of conditions was submitted by the parties at the Inquiry¹⁷³. Following discussion at the Inquiry some conditions have been amended and amalgamated for clarity, precision, elimination of duplication, and taking into account guidance in this regard. The conditions are set out at Annex A in respect of both the full and outline proposals.
291. Only conditions which are formally required to be discharged prior to works commencing on site have been promoted as pre-commencement conditions, the terms of which the appellants are in agreement with. These are imposed as they involve details to be approved for the arrangements of the work on site or matters that affect the layout and position of development. These details are required to be submitted and approved by the local planning authority prior to commencement of development.
- Full planning permission*
292. In summary, a standard condition is required on the timing of commencement of development. Confirmation of the approved plans is needed to define the site and is reasonable and necessary for the avoidance of doubt and in the interests of proper planning.
293. Conditions relating to the provision of sustainable surface and ground water drainage as well as foul water disposal are deemed necessary to ensure adequate arrangements are in place, particularly in relation to flooding and in the interests of environmental impact.
294. In the interests of securing a satisfactory external appearance and in the interests of the character and appearance of the traditional farm buildings details of the following are necessary to be submitted and approved – details of windows and doors, roofing materials, stone works, external finish of the damp proof course, hard-surfacing materials, hard and soft landscaping works, internal highway details, finished floor levels, finish of external timbers, external materials, external pipe work, aerials etc, sectional drawings of fenestration etc, refuse bins both residential and commercial.
295. Limitations on external lighting are necessary to minimise visual impacts on the environment.
296. The Construction Environmental Management Plan is necessary to ensure that the amenity of occupiers of surrounding premises is not adversely affected by dust, noise and to most efficiently route construction traffic to minimise impacts on highway safety and the free flow of traffic as well as taking into account the locations of the AQMAs.
297. Due to the importance of existing hedgerows in ecological terms a condition to protect them during construction is required.

¹⁷³ Most of which had been agreed between the parties – Inquiry Doc 41.

298. The locality has been identified as having some possible archaeological interest. Therefore, a condition requiring a programme of investigation is justified.
299. The sites current use for agricultural purposes warrant some investigation into any possible contamination.
300. In the interests of the special ecological character of the environs of the site an ecological Mitigation Strategy is justified to safeguard the ecological well-being of the locality.

Outline planning permission

301. There may be some repetition in respect of the justification for the conditions in the outline proposal from that of the full one, but for clarity the justification has been repeated. In addition, some justification has been set out in the Inspector's reasons which follows.
302. Standard conditions are required on the approval of the reserved matters and on the commencement of development. Further conditions are required to ensure that the submission of reserved matters and later details comply with the considerations/parameters taken into account in the approval of the outline permission.
303. In the interest of clarity, the precise matters permitted by the planning permission is set out. Confirmation of the approved plans is needed to define the site and is reasonable and necessary for the avoidance of doubt and in the interests of proper planning.
304. Due to the size and extent of the development site the submission of a phasing plan is required to ensure the manageability of both the agreement of the reserved matters proposals and their implementation.
305. To secure a consistency in the high quality of the design of development across the various phases which may involve a number of developers, the submission of a Design Code, including one for custom-built housing is justified.
306. Due to the relationship of the development site with the South Hams SAC and more specifically the local Greater Horseshoe Bats population, care is required to secure the necessary mitigation for the long-term well-being of the Bats. This shall include agreed landscape and ecological works and lighting strategy.
307. The proximity of the Newton Abbot and Kingskerswell AQMA and the extent of the development justifies the agreement of a low emissions strategy for mitigating air quality impacts.
308. Conditions relating to the provision of sustainable surface and ground water drainage (SUDS) as well as foul water disposal are deemed necessary to ensure adequate arrangements are in place, particularly in relation to flooding and in the interests of environmental impact. This is particularly important due to the proximity of Wolborough Fen SSSI.
309. For the avoidance of doubt and in the interest of air quality management and to secure improved strategic transport linkages in the Town a condition on the delivery of the Spine Road is justified.

310. The Construction Environmental Management Plan is necessary to ensure that the amenity of occupiers of surrounding premises is not adversely affected by dust, noise and to most efficiently route construction traffic to minimise impacts on highway safety and the free flow of traffic as well as taking into account the locations of the AQMAs and air quality. The Ecological Construction Method Statement would deal with how the construction phase would be reconciled with the ecological sensitives of the development site.
311. Full details of highway layout and associated design details are required to be submitted as part of reserved matters. This should take into account the terms of the agreed Design Code.
312. Due to the importance of existing hedgerows in ecological terms a condition to protect them during construction is required. Similarly, a condition identifying the trees to be retained and their means of protection during construction is also necessary.
313. The locality has been identified as having some possible archaeological interest. Therefore, a condition requiring a programme of investigation is justified.
314. The sites current use for agricultural purposes warrant some investigation into any possible contamination.
315. To ensure the well-being of the Wolborough Fen SSSI a condition requiring that details of any development within the hydrological catchment area of the Fen be submitted to ensure the integrity of the Fen is maintained.
316. To ensure commercial units have adequate loading and unloading facilities available to them details shall need to be submitted for agreement. This is in the interest of highway safety and to secure convenient and appropriate facilities for business users.
317. Conditions relating to ensuring the improvements to the Ogwell Roundabout are undertaken and completed at appropriate stages in the development are imposed in the interests of highway safety and traffic management.
318. For the avoidance of doubt and to secure the various non-residential uses to those which have been considered, a condition clarifying those uses and the various associated floor space is justified.
319. The delivery of the Community Building, the retail offer and the school site are important parts of the social benefits of the proposal and so conditions securing that timely delivery is justified.
320. The development site presents a number of design challenges in design terms due to its topography. A condition requiring details of finished floor levels and ridge heights is necessary to ensure a properly conceived design strategy in this regard is settled upon and it is clear at what levels buildings are to be constructed and the resultant visual impact.

Obligations

321. An obligation was sought by Torbay and South Devon NHS Foundation Trust and what follows are the cases for each party in this regard, and then Inspector reasons solely on this topic. The Council did not support the case of the NHSFT.

The Rule 6 Party, whilst offering some endorsement of the NHSFT position, did not offer any substantive evidence in this regard.

Torbay and South Devon NHS Foundation Trust (NHSFT) – case for S106 obligation¹⁷⁴

322. The NHSFT are seeking £1,070,416 as a S106 contribution to adequately mitigate the impact of the development on the health of the local population. LP Policy S1 sets out that impacts from existing or committed developments on health of occupants or users of the proposed development is a material policy consideration. In addition, LP Policy S14, which identifies Newton Abbot as being at the centre for South Devon as part of the Heart of Teignbridge, identifies the support of existing health services and future expansion of facilities or creation of new facilities to meet the needs of the population as being sought by the LP.

323. In simple terms, there are four stages to the NHSFT's argument:

- I. The development brings new people into the area;
- II. New people present at NHS hospitals seeking treatment, which cannot be denied;
- III. Providing that treatment costs the Trust money;
- IV. The Trust is not funded for that care until at least 18 months after the population has increased and therefore it should be funded by the developer in order that the general standard of the health service does not suffer as a result of the population increase. Without mitigation, the impact that this development creates has a long-term knock-on effect.

324. There can be no doubt that new people will use NHS services from the moment they occupy the development. The Trust is the principal provider of NHS services and has an obligation to provide the vast majority of the increased services that will be used by the residents of this development. It is a condition of the Trust's licence as a Foundation Trust to provide a list of mandatory services to all-comers and without restriction. The costs of more staffing, drugs and other consumables (i.e. revenue support, not capital) begin as soon as people take up residence.

325. In the longer term, funding to the local health systems will increase as a result of the increasing population. However, in the short term, there is no additional funding to accommodate additional cost. Without such funding, it will provide a lesser or substandard service. The Trust's hospitals are already at full capacity. With unfunded demand for services, waiting times will increase and this will affect the overall health of the population of the development and the existing community which in turn will have a knock-on effect on social, health and wellbeing of the population.

326. The NHSFT is in an invidious position in that the Trust has waiting time targets (eg a four hour waiting time target for a person to be seen at A&E). If the Trust fails to meet its targets, it is penalised by withdrawal of its Sustainability and

¹⁷⁴ Inquiry Doc 54 – includes rebuttal evidence of Paul Cooper and the response to the advice note of David Lock QC and the statement of the Council

Transformation Fund (now called PSF Provider Sustainability Fund) and it may not receive additional income through the Commissioning for Quality and Innovation payment framework. Such penalties would further affect the standard of care that can be provided. It is noted that the Council¹⁷⁵ has argued that the funding is not necessary because the services would be provided in any event. However, a lesser or substandard service still means that the development will have an unacceptable impact on the health of the population, which would be contrary to the focus on healthy communities in the Framework and in LP policy.

327. At a national level, funding is allocated to the Department of Health through a process of negotiation with Her Majesty's Treasury. There is no direct reflection of population movement – funding is more related to affordability, delivery of national standards, and politically determined cost drivers such as pay awards.

328. The allocation for any given financial year (1st April to 31st March) is calculated as follows:

- Baseline from the previous year; plus □
- Growth – incremental allocation reflecting the overall increase in funding agreed with HMT; plus, or minus. 'Growth' does not mean population growth. 'Growth' is essentially politically driven e.g. an announcement that the NHS will be given £x more in the Budget,
- Adjustment to growth depending on whether the resultant allocation is above or below a target allocation.

329. In 2019/20 the allocation to South Devon Trust Clinical Commissioning Group (CCG) was uplifted on the previous year by 5.48% being 'average growth'. That growth allocation is broadly intended to uplift funding to accommodate the increasing costs of delivering healthcare, including inflation, growth in demand for certain medical technologies etc. The target allocation is calculated with reference to population, age and the needs of a local area informed by indicators such as deprivation indices. As above, at present, the target and actual allocations for Devon are within normal tolerance, so average levels of growth are received.

330. Where population changes outside of 'normal demographics', such as a development of this nature, additional funds flow to a CCG as follows:

- Registered GP population increases as people take up residence;
- That increase in population drives a higher target allocation;
- With target allocation then becoming higher than the actual (previous year plus standard uplift) an additional allocation may be made.

331. This process typically takes up to 3 years to affect a change in allocation:

- Year 1 – Housing development leads to population growth
- Year 2 – Census count at GP practice level, feeds into target allocation model
- Year 3 – Funding flow as additional growth allocation

¹⁷⁵ The Council do not support the NHSFT in their pursuit of this S106 contribution.

332. However, cost-flows to NHS organisations begin from Year 1, as people with needs access services from their uptake of residency. There is therefore up to a 2 year 'mismatch' between local NHS organisations incurring cost and the allocation of additional funding that might be expected to accommodate a growing population. This is the basis for the shortfall of (conservatively) 12 months identified by the Trust.
333. The NHSFT has a five-year funding settlement with the CCG overlaid with the NHS National Contract each year. No additional funding is allocated in any given year as a direct result of additional activities being undertaken. The Trust receives no additional income to cover changes in population from a significant development such as this until the CCG funding catches up, significant changes in population not being reflected for up to three years. Nor are the Trust able to bill for additional services. The Trust is left bearing the cost of actions to mitigate increased demand until such times as the CCG funding allocation catches up and feeds through into contract values¹⁷⁶.
334. The question to justify a S106 contribution must be does the impact of the proposed development result in a funding deficit to the NHS Trust leading to adverse impacts on health in the area? The answer to that question must be yes as set out above.
335. The contribution is necessary to make the development acceptable in planning terms because, without it, the population increase will be accessing NHS Trust services without any corresponding funding for (at least) one year which will adversely affect the standard of service that can be provided leading to an adverse impact on the health and wellbeing of the population of the Trust's area at large. The S106 contribution would be used to fund running costs which is established in law¹⁷⁷ and previous appeal decisions¹⁷⁸.
336. Without the requested contribution, the access to adequate health services is rendered more vulnerable thereby undermining the sustainability credentials of the proposed development due to conflict with the Framework and Local Development Plan policies.

Response of the appellants to the request for S106 funding from the NHSFT¹⁷⁹

337. The appellants have included an obligation within the submitted Unilateral Undertaking dated 27 June 2019 to cover the requirements of the NHSFT¹⁸⁰. However, the obligation is subject to clause 4.2 which introduces conditionality. The obligation will only be enforceable in the event that the Secretary of State considers that the obligation meets the tests of Regulation 122 of the Community Infrastructure Levy Regulations 2010 (as amended).
338. However, the appellants position is that the contribution towards the running costs of the Trust fails each test of Regulation 22 those being;

¹⁷⁶ Inquiry Doc 54 paras 12-28 sets out a fully explanation.

¹⁷⁷ Tesco Stores Ltd v Secretary of State for the Environment [1995] 1 WLR 756 at 770 and 776 - As is set out in the Opinion of Jeremy Cahill QC and Kevin Leigh.

¹⁷⁸ Example - APP/T3725/A/14/2221858 at para 36.

¹⁷⁹ Inquiry Doc 55 Appendix 1.

¹⁸⁰ Inquiry Doc 42.

- necessary to make the development acceptable in planning terms;
 - directly related to the development; and
 - fairly and reasonably related in scale and kind to the development.
339. There is a distinct difference between the roles played by NHS commissioners (which have public law duties to deliver NHS services in the same way that local authorities have public law duties to deliver education services) and providers of NHS services which purely have private law duties under NHS commissioning contracts.
340. The Trust's case is based on the Secretary of State being prepared to treat the Trust as if it were a centrally funded NHS body with statutory duties to deliver services to patients. Its case is that the gradual roll-out of the development over the coming years will impose costs on the delivery of statutory functions before the funding arrangements have caught up with the new demands. The request for a planning obligation is put on the basis that the requested funding would fill the "gap" until NHS funding catches up with population numbers.
341. The Trust is the wrong public body to make that case. It is solely a provider of contracted services operating in the NHS market. It has *vires* to provide NHS services but no statutory duties to do so. Its duties are purely contractual, not statutory.
342. In legal terms, the Trust is simply a contracted provider of services within the NHS market created by the National Health Service Act 2006 and the Health and Social Care Act 2012. It both competes and co-operates with other public body and private sector providers of NHS services, but is not a body with statutory provision duties.
343. The Trust enters into contracts with the relevant NHS statutory commissioning bodies, namely CCGs, to deliver the NHS services to patients specified in its contracts. The Trust gets paid by CCGs in accordance with the contract, not as a result of any financial allocation made by Government.
344. The Trust has entered into legal obligations (in its contract with the CCG) to provide a defined level of NHS services to local people for a defined annual sum. A CCG is entitled to enforce compliance by the Trust with the terms of the NHS Standard contract. The contract defines the type and range of services to be provided and the standards that the Trust has to meet. The Inspector is entitled to assume that a public body which enters into a contract will deliver on the contractual promises it has made. Planning obligations cannot be imposed to provide subsidy to a contracted public service provider to assist it in performing the terms of a commercially negotiated contract.
345. The local authority plans to meet its housing supply targets and thus increase its population were publicly available for a considerable period of time prior to the date when the Trust and the CCGs entered into their contracting arrangements. This type of development ought to have been foreseen by both NHS commissioners and providers of NHS services.
346. The Trust has chosen to enter into a contract which imposes absolute legal obligations on it to provide a defined range of services to NHS patients living in

- Newton Abbott at a defined standard. There can be no proper basis for the appellants to be required to provide money to a Trust to assist that Trust in meeting its existing contractual obligations. This is not necessary to make this development acceptable in planning terms.
347. The Trust's case is that the CCG has a time-lag in funding. However, housing allocations are agreed at a local level to meet the needs of the population which is projected to be resident in a local authority area.
348. This is a planning application which seeks to develop houses to accommodate persons who are already anticipated to be in a local authority area as a result of the local housing supply targets which must be planned for by local authorities when preparing their local plans. The appeal site is an allocated site within the Council's LP. The persons who will move to live in any houses in this development (if permission is granted) are thus within the already identified local housing supply target. They are not extra people but people who are already expected to be living in the Newton Abbot area and who are thus expected to use public services in that area. Indeed, this proposal is significantly behind schedule and so, for the purposes of the projected population, these are people who are already assumed to be living in the Newton Abbot area¹⁸¹.
349. Hence the simple answer to the Trust's case is that, on the material published by NHS England, the CCG appears to be already funded to provide acute NHS services to the new residents of this development. CCG funding also appears to partly depend on the numbers of persons who register with local GP practices (which may increase with the new development). However, CCGs fund local GP practices by a separate route since, for these purposes, the CCG acts as the delegate of NHS England¹⁸². This is an entirely separate funding stream since, for these purposes, CCGs are acting on behalf of NHS England and not in their own right.
350. There is a lack of clarity in the evidence of the Trust about their true financial position. All of the publicly available documents appear to show the Trust, is in financial deficit and is propped up by negotiated sums of money provided by NHS Improvement. This is indicative of the wider problem of NHS underfunding, but that is no reason why a developer should be asked to contribute to make up NHS deficits. Any contribution that the appellants make to the Trust will simply reduce the deficit (and thus reduce the need for deficit funding from NHS Improvement) as opposed to being used to fund additional services.
351. The NHSFT strongly denies they are in a financial position of a deficit, but this has not been evidenced.
352. The Trust has entered into binding legal obligations to provide a defined level of services to local NHS patients at defined quality standards. It is not suggested by the NHSFT that a developer contribution will be used to provide additional services or increase capacity by, for example, increasing the number of bed

¹⁸¹ See Inquiry Doc 55 Appendix 1 paras 24-31 for more detail.

¹⁸² Contracts for GP practices are concluded between NHS England and the private sector bodies which run GP practices. However, NHS England has delegated responsibility for managing those contracts to CCGs, despite the fact that the members of CCGs comprise local GP practices.

spaces or is required to fund any capital improvements. On the contrary, it is suggested that the developer contribution will be used, in part, to fund the performance of the Trust's existing contractual obligations and provide funding for additional staff. However, no targeted plans of how any monies would be used have been submitted.

353. The answer is thus that the Trust is already under binding legal duties to provide these services. The Trust is legally required to provide all of the contracted services to defined quality standards, regardless as to whether the contribution sought by the Trust is imposed or not. As a result, there is no link between the request for the contribution and the development. The contribution is not related to planning and is not necessary to make the development acceptable in planning terms.

Inspector's conclusion solely on the NHSFT request for funding via the S106 agreement.

354. In considering this aspect of the case and reaching a view I have taken into account the totality of the evidence submitted and delivered orally by both parties and summarised within their respective submissions to the Inquiry¹⁸³.

355. NHSFT submitted an objection to the appeal proposal in February 2019 which seems to be the first time their concerns were raised. In essence their case centres on a short-fall in funding for the care of new residents which amounts to at least an 18 months lag after the population increase¹⁸⁴. In the context of the current NHS funding arrangements an increase in population would be responded to in the longer term, but NHSFT argue that revenue support such as staffing costs¹⁸⁵ would begin as soon as population increases.

356. No case was advanced by the NHSFT that the contribution they have requested relates in anyway to the provision of physical premises or facilities. It seems to me that the short-fall in funding which the appellants are being asked to 'plug the gap' would be as a direct result of the workings of the mechanisms by which the NHSFT receives its reimbursement in meeting the costs associated with the delivery of services to patients.

357. This is a difficult situation of short-term financial strain which the NHSFT currently has to bear. The provision or not of health services to those presenting for care is not a commercial decision. The NHSFT is responsible as a public service provider. I do appreciate that this places pressure on services and particularly on existing staff and it is noted that the extra money would go some way to meet increased staffing requirements providing a contribution to pay staff. The further impact of that stress would be that crucial targets on performance could be missed as the increase in demand would be struggled to be accommodated. This could also result in additional budget boosting payments as reward for performance not coming forward, which would place further strain on an already pressurised system. The argument of the NHSFT in this regard was clear and the impacts of non-payment were appreciated as unfortunate and troubling. The NHS is the backbone of our Society offering health and high-

¹⁸³ Inquiry Doc 54 & Inquiry Doc 55 Appendix 1.

¹⁸⁴ ie Occupation of the new homes.

¹⁸⁵ Not capital costs.

quality care for all, now and for future generations. We should do all we can to support our NHS.

358. However, this proposal is not a windfall development¹⁸⁶. As previously highlighted the appeal site is the larger part of a development site which was allocated in the LP adopted in 2014 having gone through a whole process of Plan formulation, including consultation¹⁸⁷ and public examination leading up to the formal adoption of the LP by the Council. The LP has identified that the expansion of Newton Abbott to provide new homes is one of the central stays of the LP strategy. LP Policy NA3 deals specifically with the development of the appeal site to deliver at least 1500 homes and is the second largest development proposal in the Heart of Teignbridge. This is not a development which should have come as a surprise to the NHSFT and yet it seems to have. It struck me that this was partly due to a confusion in responsibilities of which arm of the NHS should be involved in the plan-making process. It is essential that there is engagement in the plan-making process to ensure that service providers, such as the NHS at all levels, are onboard with any proposed expansion and that there is joined up thinking in respect of the provision of service infrastructure and ultimately funding. The Council explained that NHS England had been a party to the LP in its development stages. In those circumstances it is reasonable to suppose that NHS England would have taken away the implications in respect of providing and funding those projected services based on the resultant population expansion through the LP, to amalgamate those into their own strategic planning for the immediate locality.
359. Whilst I have not had evidence from NHS England submitted, including any outcomes of resultant strategic planning, nonetheless, I heard that funding for increasing population numbers is responded to via the current funding mechanism. As already indicated, it is the workings of this mechanism for funding which operates in a period of lag¹⁸⁸, which places the NHSFT at an undeniable disadvantage.
360. However, whilst I have understanding for and, to an extent, sympathise with the position in which the NHSFT finds itself, it is as a result of the workings of the funding relationship between Government¹⁸⁹, the CCG and the actual 'at the coal face' service provider, the NHSFT, which places the NHSFT at disadvantage.
361. I consider that in the circumstances of a 'known' development¹⁹⁰ within an adopted Development Plan document which had been the subject of consultation with relevant health providers at the time of production, it can not be justified to require a developer to plug a gap in funding essentially to pay staff wages, which is brought to the appeal at the eleventh hour, even though that may, in part, be due to some element of new population which may move into the Newton Abbot area as a result of the building of the new homes¹⁹¹.

¹⁸⁶ A site, now promoted for housing development, which has been previously unknown in this regard.

¹⁸⁷ Public and statutory consultees and interested parties.

¹⁸⁸ The funding follows the population with a lag of some 18 months.

¹⁸⁹ Her Majesty's Treasury and the Department of Health.

¹⁹⁰ Specifically allocated in the LP – LP Policy NA3.

¹⁹¹ Similarly, an already known factor within the NHS hierarchy.

362. Development Plan Policies S1 and S14 do highlight the need to consider the impact from committed developments on the health of occupants of proposed housing schemes and that the LP should seek to support existing health services and future expansion of facilities or creation of new facilities to meet the needs of the population. By the NHSFT's own case those future demands would be met, but with the time lag already identified.
363. I am aware of the cases which the NHSFT brought to my attention in respect of similar funding being allowed at appeal. However, it is the inclusion of the appeal site as a LP allocation and consequently a site which has been the subject of consideration by associated service providers in respect of future demands on their services, which I consider distinguishes this case. I understand that without the developer contribution services may be put under pressure and this is unfortunate in the current climate of pressure on NHS services but, as I heard from Dr Melling, a General Practitioner Kingskerswell & Ipplepen Health Centres, this could equally apply to pressurised local primary health care such GP surgeries¹⁹².
364. The Council confirmed in Closing¹⁹³ that they were unpersuaded that the contribution requested by the NHSFT met the requirements of the CIL regulations¹⁹⁴.
365. Were the Secretary of State not to agree with my reasoning on this topic the appellants' have made provision within the Unilateral Undertaking¹⁹⁵ for a planning obligation in the order of the sum requested by the NHSFT.

*Further obligations*¹⁹⁶

366. A signed Unilateral Undertaking under section 106 of the Town and Country Planning Act 1990¹⁹⁷ has been submitted covering the following matters:
- Affordable housing – LP Policy NA3 c) requires 20% affordable housing. The UU meets this requirement and the obligation is justified in respect of Development Plan policy¹⁹⁸.
 - Public Open Space – provision of open space, including allotments, green space, natural area, children and young people's space and a multi-use games area and its transfer to a management company for future management and maintenance + off-site playing pitch contribution - justified by amongst others LP Policy NA3 f), l) & m).
 - Employment land provision – Marketing details, construction of associated services – justified by LP Policy NA3 b).

¹⁹² Dr Melling did confirm he was not requesting any financial obligations from the developer as he appreciated that he had missed the boat in this regard in terms of time scale for seeking obligations.

¹⁹³ Inquiry Doc 52 para 57.

¹⁹⁴ Inquiry Doc 27.

¹⁹⁵ Inquiry Doc 42 Schedule 7.

¹⁹⁶ Wolborough Barton Section 106 Compliance Statement – attached to Inquiry Doc 42.

¹⁹⁷ Inquiry Doc 42.

¹⁹⁸ LP Policy WE2 also mirrors the requirement for 20% affordable housing within the settlement of Newton Abbot. This would also deliver the requirements of LP Policy NA3 c).

- Neighbourhood hub and community building – justified to meet the day to day shopping needs of the future residents of the development and in the interests of reducing car usage and improving air quality – justified by LP Policy NA3 d).
- Community building – serviced land and finished building shell to be provided to meet the needs for a community space – justified LP Policy NA3 d).

367. A signed Unilateral Undertaking under section 106 of the Town and Country Planning Act 1990¹⁹⁹ making promises to Devon County Council has been submitted covering the following matters:

- Land for a primary school - to be transferred to Devon County Council – justified by the requirement of LP Policy NA3 d).
- Travel Plan contributions including off-site pedestrian and Cycle Improvements Contribution – to fund the requirements of a detailed Travel Plan and off-site works - justified to assist in a modal shift away from the private car to alternative modes of travel (Framework Section 9 – promoting sustainable transport and LP Policy S9).
- Bus contribution – provide financial support for up to 3 years to fund a new bus service running through the site - justified to assist in a modal shift away from the private car to alternative modes of travel (Framework Section 9 – promoting sustainable transport and LP Policy S9). Option 2 of the agreement should be adopted allowing for the first instalment to be paid before no more than 300 dwellings are occupied to secure the early establishment of the new half hourly circular bus running in both directions between Newton Abbot town centre, the railway station, the Penn Inn roundabout, Wolborough, Ogwell Cross and back to Newton Abbot town centre. For the benefits of the Travel Plan to bite and establish behaviours in the future residents of using the bus service, it should be provided as soon as possible. This is necessary to secure its long-term commercial viability without subsidy²⁰⁰.

All of the above provisions in both agreements are considered to be necessary, in order to make the development acceptable taking into account the terms of the CIL Compliance Statement.

Inspector's reasons²⁰¹

368. At the outset it is clear that the proposal for full planning permission for the conversion of existing agricultural buildings to hotel, restaurant and bar/drinking

¹⁹⁹ Inquiry Doc 43.

²⁰⁰ It is noted once the bus service proves viable any additional payments from the developer would not be required. Therefore, it is in the interests of the developer to get the bus service established at an early stage to move towards a position of viability.

²⁰¹The following conclusions are based on the submitted evidence, that given at the Inquiry, the written representations made and my inspection of the site and its surroundings. The numbers in square brackets [] denote earlier paragraphs in this report from which these conclusions are drawn. This is not an exhaustive list but highlights particular paragraphs.

establishment does not attract the opposition of the parties in policy terms nor are any other matters raised in the evidence which would lead to a conclusion that permission specific to this part of the appeal proposal should be withheld. The only reason I have to question the position of the parties on this matter is that the decision-maker²⁰² has a statutory duty to have special regard to the desirability of preserving listed buildings or their settings or any features of special architectural or historic interest which they possess. The farmyard to be converted lies immediately adjacent to a Grade I listed church and it is undeniable that it is within the setting of the Church. This matter will need to be considered and I will return to it later in the report.

369. The principle of the larger mixed-use development is not a matter of dispute between the Council and the appellants [81]. The Council is keen to see the benefits that would be delivered by that development both for new homes and for new employment floor space, as well as related physical, social and community infrastructure, realised in line with the LP's strategy for sustainable development. The Council accept the scope for disagreements is relatively narrow²⁰³, but nonetheless critical.
370. With the Rule 6 Party in-principle objection in mind, I clarify my position.
371. Section 38(6) of the Planning and Compulsory Purchase Act 2004 requires that applications for planning permission must be determined in accordance with the Development Plan unless material considerations indicate otherwise.
372. As already highlighted the Development Plan for the District includes the Teignbridge Local Plan²⁰⁴. LP Policy NA3-Wolborough identifies the allocation of which the appeal site forms a large part²⁰⁵. It is identified as an opportunity to create a sustainable neighbourhood for Newton Abbot. The allocation was shaped by green infrastructure corridors, topography and a design led master planning workshop. As part of LP Policy NA3 an indicative masterplan was settled upon within the LP itself²⁰⁶, although I recognise this is a conceptual plan to inform the interpretation of the Policy and the need for a comprehensive landscape and design led masterplan for the strategic site allocation, produced with meaningful and continued input and engagement from stakeholders was also a policy requirement²⁰⁷.
373. I have no doubt that the appeal proposal seeks to comply with the terms of LP Policy NA3. The delivery of the specified outcomes of this Development Plan policy lies at the heart of this case and the degree to which it does comply with policy is a matter for consideration but the principle of a mixed-use development in this

²⁰² In this case the Secretary of State.

²⁰³ Inquiry Doc 8 paras 1-3.

²⁰⁴ Adopted 2014.

²⁰⁵ I am aware there are some comparatively small sections of the site outside of the allocation area, but this is inconsequential and should not colour the consideration of this proposal particularly as it partly assists in the accommodation of a realignment of the Spine Road and access to the development and the following of an existing field boundary which seems logical in terms of the physical features of the site – See SofCG (CD15a) para 4.10 and plan following.

²⁰⁶ CD8a page 88.

²⁰⁷ LP Policy NA3 a).

location is not in question²⁰⁸. To question this principle would fundamentally undermine the strategies and objectives of the Development Plan which has already been open to public scrutiny through consultation and examination and final adoption by the Council. The delivery of the required outcomes of the LP would also be placed in jeopardy particularly in respect of the provision of housing.

374. Therefore, taking into account the primacy of the Development Plan I do not intend to question the principle of the development of the site further, it being clear it has been long established through appropriate and thorough planning processes.

375. What does need to be considered is whether, in the circumstances of this proposal being in outline only, the requirement of LP Policy NA3 a), that being the inclusion of a comprehensive landscape and design led masterplan for the strategic site allocation, produced with meaningful and continued input and engagement from stakeholders forms part of this proposal and can be meaningfully assessed at this stage in the design process. To conclude on this matter, it is necessary to consider the impacts of the proposal. So, I will go on to consider main matters raised by the opposing parties in respect of impacts before coming to a view on this specific matter. These are all matters which were considered by the LP Examining Inspector and I draw attention to his conclusions where appropriate.

Heritage – Outline and full proposals [27-28, 66-74, 151, 232, 257-261]

376. Section 16(2), 66(1) and 72(1) of the Planning (Listed Buildings and Conservation Areas) Act 1990, which require that special regard shall be had to the desirability of preserving listed buildings or their settings or any features of special architectural or historic interest which they possess, and special attention shall be paid to the desirability of preserving or enhancing the character or appearance of conservation areas are the statutory duties placed upon the decision-maker in this appeal. I do appreciate that heritage issues have been considered by the Examining Inspector at the LP stage. However, whilst his conclusions are a material consideration, in this instance, they do not excuse the decision-maker from undertaking his statutory duty as set out above.

377. Part of Wolborough Hill, to the east of the appeal site, is a Conservation Area, sitting on the steep south sloping valley side characterised by tiered development of substantial homes set in mature gardens of varying ages and designs which contribute to the sylvan quality of this designated heritage asset. From Coach Road and more particularly from Stonemans Hill and local footpaths in this area the visual dominance and suburban character and appearance of the homes within the Conservation Area are of particular prominence and do dilute the immediate rural character of the appeal site as the residential development of the Town spills down towards the pastoral fields to the south.

378. Immediately to the north of the agricultural buildings intended for change of use to a hotel and restaurant, on the other side of Coach Road is the parish church of St Mary the Virgin, a Grade I listed building and its lynch gate. It is prominently located on rising ground and is an important landmark in the wider landscape. Its prominence is accentuated by the nature of the immediately adjoining land to the north, south and west which lies at a lower level, sloping away. Whilst it sits close

²⁰⁸ As I go through my conclusions, I will make reference to the criteria within LP Policy NA3 as appropriate.

to the suburban development on Wolborough Hill it is set apart by means of the intervening associated graveyard which benefits from a strong sense of separation and definition by means of stone boundary walls, dotting of mature trees between the graves and a sloping down from the residential streets, but a setting up from the sunken level of Coach Road and the appeal site beyond.

379. Apart from the quality and state of preservation of the Church²⁰⁹, which is clearly a much loved heritage asset in the locality, the Church and its immediate setting within its graveyard, which is equally elevated on ground above its surroundings²¹⁰, forms part of its significance in that the close association of the two elements of this spiritual medieval heart to the rural hinterland expresses a linkage with a bygone age of likely agricultural settlement. The appellants in the Heritage Appraisal²¹¹ accept that based on archaeological outcomes in the vicinity, it is likely that the appeal site would include evidence of early settlement. The location and magnificence of St Mary the Virgin would bear that out. Even the encroachment of the Town from the east into the setting of the Church has not diminished its prominence in the landscape as a landmark²¹² and a once important religious beacon.
380. I have noted that there would be some sense of intended separation between new built development and Coach Road and the Church with landscaped belts along the peripheral edge. In addition, the site for the school would also be close to Coach Road and it may be possible to design the layout with playing fields close to the road which would certainly increase some sense of separation. However, this would just be tinkering at the edges to my mind. The appeal proposal would change the setting of the Church to the south to one of suburban development, albeit interspersed with landscaping both peripherally and within the areas of volume house building.
381. The location of the proposed Spine Road and its access point onto Old Totness Road as indicated on the illustrative masterplan, is not dissimilar to that associated with LP Policy NA3 and considered by the LP Examining Inspector. As an indication of the Spine Road location and access point it would not create any greater urban influence on the significance or setting of the Church than the proposed development in general, so I do not consider it increases any level of harm yet to be identified.
382. The proposed change of use of agricultural buildings²¹³, which does include some new build, whilst changing the character of the use of this farmyard, a lone expression of the wider agricultural use of the appeal site and setting of the Church, would not greatly change its appearance. If anything it would improve the setting of the Church by the removal of some unsympathetic more modern buildings and the preservation and enhancement of those more traditional farm buildings, albeit to move into a new period of use and character of this farmyard as a centre for leisure where some appreciation of the buildings and its agricultural past can be

²⁰⁹ I was lucky enough to visit the interior of the Church.

²¹⁰ Other than to the east.

²¹¹ Binder 4 of 7 Environmental Statement Volume 3A.

²¹² This is particularly so when approaching from the west, in more distant views from Stonemans Hill, from views from approaching footpaths in several directions and more distant views to the north.

²¹³ Full planning proposal.

experienced by guests. The relationship with the Church in respect of significance and setting would be preserved and enhanced and would not add to any identified harm in heritage terms²¹⁴.

383. In respect of the impact on the character or appearance of the Conservation Area, in the context of the existing development having a strong urbanising influence on the fields within the valley, the introduction of further residential development of a similar character, that being sylvan in nature, accentuating the topography of the site would have only a neutral impact on the character and appearance of this particular designated heritage asset.
384. In addition, off to the south of the appeal site, beyond Stonemans Hill is St Augustine's Priory a Grade II listed building, of mid-19th century origins. It was returned to its original residential use in recent times when the intervening monastic use was changed to a retirement village. In essence the Priory lies behind high stonewalls which are listed by association. Its significance lies within the enclosed nature of the Priory hidden behind its high walls. The rural setting is an expression of the Priory's relationship with the surrounding lands which, in all likelihood, historically served to support the Priory. However, the proposed development would sit down slope from the Priory, minimising the inter-visibility of the two elements and the rural context of the Priory would still persist with the retention of green space adjacent to Priory Road to the north and the wide expanse of countryside to the south and beyond. In this way the significance and setting of the Priory would be preserved²¹⁵.
385. That all said, without doubt for the reasons set out above, the appeal proposal would erode the setting of the Church and to a lesser degree its significance by reason of diminishing the association of the pastoral land upon which the appeal development would be built.
386. So, the identified impact on heritage would be centred on the harm to the setting and significance of the Grade I Church. I am satisfied that the submitted evidence within the Heritage Appraisal, along with the evidence to the Inquiry, as well as professional judgement, are sufficient information for the decision-maker to make the required assessment on impact of this outline proposal in accordance with the statutory duty²¹⁶ and the Framework.
387. Taking all the identified evidence into account there would not be a total loss of significance and so the appeal proposal, as a totality, would lead to less than substantial harm to the significance of a designated heritage asset²¹⁷. That said the degree of less than substantial harm would be at the mid to upper level of a sliding scale of less than substantial harm²¹⁸.

²¹⁴ Heritage impacts specific to the full planning proposal would not then be a barrier to the grant of planning permission.

²¹⁵ This reflects the conclusion of the LP Examining Inspector at para 71 of his Report.

²¹⁶ Section 66 (1) of the Planning (Listed Building and Conservation Area) Act 1990.

²¹⁷ The enhancement in respect of the conversion of the farmyard buildings although not particularly weighty has been used to off-set some of the harm identified but makes only a negligible difference.

²¹⁸ Framework paragraph 196.

388. Having reached this view, the less than substantial harm to the significance of the designated heritage asset should be weighed against the public benefits of the proposal²¹⁹. This balance will be returned to later in this decision.

Highway matters [29-31, 75-79, 154]

389. LP Policy NA3 sets out the broad requirements of the approximately 120 hectares site allocated at Wolborough of which the appeal site forms a large part. Criteria e) requires the provision of a vehicular route connecting the A380 South Devon Link Road with the A381. This road linkage is identified as being key infrastructure which requires safeguarding²²⁰ as well as being critical to the creation of a sustainable transport network through the overall site and to improve the overall movement corridors across the Town²²¹. It is also recognised that development would be brought forward in smaller parcels but that edge of site locations that have existing access to the road network may be able to come forward earlier subject to acceptable solutions being found for the impact on the road network²²².

390. The Council's concern initially centred on the early delivery of the Spine Road. The road would be funded through the proposed development providing 82% of the Spine Road through the appeal site. The road would end to the east at the boundary of land owned by the Council and the final section of the Spine Road would be delivered through the remaining parcels of the NA3 allocation.

391. As already indicated the Council has resolved to grant planning permission for a smaller parcel of development of the NA3 allocation at Langford Bridge²²³ which would link through from the Kingskerswell Road to the proposed Spine Road, and with Kingskerswell Road then linking into the A380, the policy requirement e) of LP Policy NA3 would be achieved.

392. The Examining Inspector in his Report²²⁴ confirmed that the Spine Road was not intended as a major distributor road and that a 6 metres width would suffice. This was with the agreement of the HA. Both the proposed Spine Road and the Link Road through the Langford Bridge site are being promoted on this basis. The proposed access points onto Old Totnes Road and that onto Kingskerswell Road are in broad alignment with that indicated on the conceptual plan associated with Policy NA3²²⁵. There was concern from third parties that traffic generated by future residents of the development as well as those travelling between the A381 and the A380 would cause congestion at the pinch point of the Kingskerswell Road at Langford Bridge. However, there are traffic controls at the Bridge which could control the flow of traffic at any given time. This undoubtedly has been taken into consideration in the decision to allocate the NA3 site and I don't see any need to consider it further.

²¹⁹ Paragraph 196 of the Framework requires that the identified harm in the less than substantial category should be weighed against the public benefits of the proposal.

²²⁰ LP para 7.26.

²²¹ LP para 7.34.

²²² LP paras 7.26 & 7.36

²²³ Inquiry Doc 63.

²²⁴ CD1d Appendix 2 -para 74

²²⁵ The line of the road within the LP is indicative not definitive.

393. The Council is committed to the delivery of the Spine Road/Link Road and albeit that land does lie within differing ownerships, including the Council, the Allocation as a whole relies on the co-operation of landowners to deliver this key piece of infrastructure.
394. The provision of the Spine Road to the eastern boundary ready to link in with the Link Road would be secured by reason of a condition requiring its provision to enable its continuation through to Kingskerswell Road and the A380 prior to the occupation of the 500th dwelling²²⁶. This has proved an acceptable means of securing the Spine Road to both the Council²²⁷ and to the HA. I see no reason to disagree²²⁸. Obviously, the detailed design of the road would form part of the reserved matters application. Its implication in respect of the drainage of the site will be considered elsewhere in this report.
395. Third parties were concerned that there would be significant congestion prior to the Spine Road being constructed (ie before the 500th house was built). However, the Transport Assessment sets out that all of the traffic movements associated with the development could be accommodated through the Ogwell roundabout. The 500th house would be less than 50% of the development. Further there is no evidenced suggestion that the proposal would result in residual cumulative impacts on the road network which could be considered severe²²⁹.
396. Further the LP Examining Inspector in his report described the overall LP NA3 allocation, including the appeal site, as being a sustainable urban extension to Newton Abbot in a highly sustainable location²³⁰. This gives some confirmation that resultant traffic generated by the new development would be tempered by the number of residents using the new bus service as well as walking/cycling into Town. The Allocation also includes employment opportunities which may allow those working there to live nearby in one of the new homes and walk to work.

Ecological impacts [26, 43-74]

397. Given the size of the appeal site, the nature and scale of the proposed development and the potential impact on environmental resources, an Environmental Statement (ES)²³¹ was produced for the proposed development. It sprang from previous work included in the environmental assessment relevant to the LP²³², although was more detailed in respect of being site specific. Various

²²⁶ Condition 11.

²²⁷ Inquiry Doc 52 para 58.

²²⁸ In this way the requirement of LP Policy NA3 e) would be achieved in so far as this part of Allocation can contribute towards that end.

²²⁹ Framework para 109.

²³⁰ CD1d Appendix 2 para 75.

²³¹ Folders 3, 4, 5, 6 & 7.

²³² Following the adoption of the LP by the Council Abbotskerswell Parish Council (part of the Rule 6 Party) challenged that adoption on the primary ground that the LP had been adopted in breach of the Habitats Directive as it failed to ensure strategic level protection for a protected site which hosts GHBs, and alleged the Claimants and others were particularly affected by the proposed housing development (NA3) and wished it to be located elsewhere. The Claim was dismissed (Mason Appendix 13 – Approved Judgement).

inadequacies have been alleged in respect of the content and coverage of the ES. It has been supplemented through this appeal with additional clarification and evidence. A further Addendum²³³ was submitted partly dealing with Air Quality and this too has been taken into account in the consideration of this appeal. I am also conscious that this is a site which has already been through a LP Examination and subjected to a raft of environmental testing, at that stage, for the Allocation to be adopted. The ES should not be used as a means of delaying already tested development by tying it up in legal knots. The ES should be a proportionate response to the scale and nature of development, its location, as well as considering what has gone before in respect of environmental assessment and decisions taken. The Council did not allege any deficiency in the generality of the environmental assessments submitted and subsequently supplemented. They were able to come to reasoned conclusions on the environmental effects of the appeal proposal save for the impact upon the GHBs which this Report will come to. I too consider the submitted environmental assessments to be sufficient to appropriately inform this decision.

- *Impact on Wolborough Fen SSSI [82, 198, 233-235, 262-263]*

398. Wolborough Fen SSSI lies within Decoy Country Park²³⁴. The Illustrative Masterplan shows the proposed development adjoining the Country Park but with considerable existing green space and woodland between the proposed development areas and the Fen itself. The over-riding concern is for the well-being of the Fen, particularly for its delicate hydrological balance which could impact on water quality or quantity discharging from the development site, which could adversely affect discharge into the Fen and ultimately could put flora and fauna at risk. This is not a new concern by any means. At present, in the context of the existing pastoral fields which are grazed by over-wintering cattle²³⁵ and the arable fields, actively cultivated, current Fen management is affected by nutrient enrichment linked to fertiliser application. This can lead to enhancement of the nutrient status of the Fen leading to an increased succession to scrub and woodland communities which could impact and egress on the balance of the constituent parts of the Fen itself. The run-off from fields and woodland tracks also can lead to sources of surface water run-off and sediment deposition which can negatively impact on the Fen²³⁶.
399. The Flood Risk Assessment (FRA) indicates that some 46.5 hectares of the surroundings make up the catchment area of the Fen²³⁷. Only 8% of that catchment area would change from permeable to impermeable area²³⁸. The magnitude of change in this regard would be limited were development to proceed.

²³³ CD16 d.

²³⁴ It does not form part of the South Hams SAC.

²³⁵ They also graze within the woodland adjoining the Fen.

²³⁶ The appellants have indicated that it is the intention to change farming practices to move away from using inappropriate fertiliser which might damage the Fen and in any event were the appeal site to be developed this would move agricultural land further away from the Fen itself.

²³⁷ This reflects the varying topography of the appeal site.

²³⁸ Binder 7 of 7 Rev B, Para 5.20 page 26.

400. The FRA does acknowledge that the most important source of water is groundwater from Aller Gravels²³⁹ and possibly the underlying Upper Greensand. Direct surface water runoff and rainfall are less important sources both in quantitative and ecohydrological terms.
401. The appeal proposal does not include mineral extraction or significant cut and fill, so the impact on underlying geology would be indiscernible.
402. In adopting a precautionary approach, a condition would be imposed that requires detailed hydrological and hydrogeological investigations covering seasonal fluctuations to be undertaken, the findings of which would inform and guide the design of the SUDS.
403. The LP Examining Inspector acknowledges that there is concern about the impact of new hard surfaces within the area on the level of run-off feeding into the Fen. He goes on that it is standard practice for a SUDS to be designed in order to regulate all surface water within development sites²⁴⁰. In this case the investigations into the hydrology and hydrogeology of the relevant part of the catchment area would appropriately inform the SUDS design such that the Fen SSSI would be protected. It would be enhanced by reason of the current position of unchecked pollutant run-off being stemmed with the development of the surrounding fields as the source²⁴¹. A properly managed drainage system would have a beneficial impact. The imposition of a condition in relation to the design and securing of the SUDS would be sufficient at this stage of the evolution of the strategic, policy committed development to safeguard the well-being of the Fen²⁴². This was also the conclusion of the Council²⁴³ and Natural England in this regard.

- Air Quality [92-94, 170-178]

404. The Rule 6 Party raised concern that the appeal proposal represents a significant risk to the Air Quality Management Area (AQMA) within Newton Abbot²⁴⁴, including the Kingskerswell AQMA.
405. An initial air quality assessment was undertaken and formed part of the Environmental Statement²⁴⁵(ES) including a further assessment within the Addendum ES December 2017²⁴⁶. Both DEFRA and IAQM guidance were used in the undertaking of the additional assessment work using worst-case assumptions to predict future concentrations and this work was all agreed with the Air Quality Officer of the Council.
406. The appeal site is not within an AQMA. The AQMAS lie in the centre of Newton Abbot and Kingskerswell and have been designated due to exceedances of the annual mean nitrogen dioxide objective at locations of relevant exposure.

²³⁹ The main conduit for groundwater entering the Fen.

²⁴⁰ LP Examining Inspector's Report para 73.

²⁴¹ LP Policy NA3 i) in so far as it relates to the well-being of the Fen would remain uncompromised.

²⁴² Condition 10.

²⁴³ Inquiry Doc 52 para 54.

²⁴⁴ The Council did not pursue this matter.

²⁴⁵ CD16a -Section 12.

²⁴⁶ CD16b.

407. There is potential for traffic generated by the construction phase of the development to impact air quality within the AQMA. The majority of construction traffic would access the appeal site through the Town. It is likely this added traffic movement within the Town would result in a major adverse impact adding to nitrogen dioxide levels. However, through the Construction Environmental Management Plan (CEMP) it is proposed, with the agreement of the Council, to include mitigating measures which would serve to reduce the anticipated impact down to minor adverse. These would include imposition of agreed haulage routes, use of low emission construction vehicles, and timetabling of the movements of construction vehicles to ensure they do not travel through the AQMA during peak traffic periods. In addition, appropriate dust and pollution control measures such as damping down, identification of all dust generating activities and their timetabling and details of the emission methods to be used shall be agreed with the Council. These matters would all be secured by condition²⁴⁷ and this is not an uncommon means of mitigating such impacts particularly taking into account the construction phase is not forever.
408. The overall development of the appeal site and the wider NA3 allocation is dependent on the delivery of the Spine Road. It has been agreed that this key piece of infrastructure linking the A380 and the A381 would come forward before the 500th house was built²⁴⁸. The Spine Road would take traffic out of the centre of Town, providing the opportunity for alternative routes between important distributor roads. This would in the long-term likely improve air quality within the AQMA by facilitating a reduction in traffic passing through the town centre, both that generated by the operation of the development (ie vehicular movements of future residents) and those travellers moving between the A381 and A380 as an alternative route to the current town centre one.
409. Prior to the completion of the Spine Road there would be some increase in town centre traffic generated by the new development which would impact on air quality within the AQMA²⁴⁹. However, the required Travel Plan and relevant promises within the S106 agreement, would present the opportunity to encourage the use of non-car modes of transport such as the extended bus services, use of cycle ways and, being in a highly sustainable location²⁵⁰, future residents are more likely to walk to the facilities and services of the Town. Further as this proposal is for mixed use development, including employment opportunities, it would offer the possibility that future residents could walk to work, as well as to school, local shops and community facilities, including a local hostelry, it all being included within the parameters of the new development. This would serve to reduced traffic movements generated by the operation of the development in the long term across the Newton Abbot network of roads, improve travel management and green infrastructure provision and enhancement²⁵¹.
410. In the assessment of operational emissions, the likely traffic generated by other committed development in the area was factored in. However, taking into account the importance of the Spine Road as a key piece of strategic infrastructure

²⁴⁷ Condition 14.

²⁴⁸ Condition 11.

²⁴⁹ Moderate adverse impact.

²⁵⁰ Examining Inspector's Report on the LP para 75.

²⁵¹ Framework para 181.

required to deliver growth within the Town and District, serving not just the proposed development but also the rest of the NA3 allocation, and as a relief road to ease traffic congestion within the Town, the long-term effect on the AQMA would be a positive one. It would reduce through movements of traffic on the southern side of Newton Abbot thereby diminishing nitrogen oxide levels within the AQMA and minimising pollution²⁵². In accordance with Framework paragraph 170(e) the proposed development would help to improve local environmental conditions in respect of air quality, neither new nor existing homes being put at unacceptable risk from unacceptable levels of air pollution, thereby contributing to and enhancing the natural local environment.

411. Air quality within the SSSI was the subject of consideration within the ES Addendum. Natural England was nervous that some significant impacts may not have been identified. The roads immediately adjacent to the SSSI, as shown on the Illustrative Masterplan and the Parameters Plan would all be likely to be small residential streets of a minor nature which would be unlikely to generate annual average daily trips (AADT) of more than 1000 per day. Even the Spine Road would be located more than 200 metres from the SSSI²⁵³ and so in either case these elements were screened out of the relevant air quality assessment. I am conscious that this proposal is in outline form which reflects the extent of development committed to in the LP and to which Natural England did not raise a concern at the Examination stage of the LP in respect of air quality. In these circumstances I am satisfied that the in-combination impact of the proposal on the air quality on the SSSI would not reach unacceptable levels.
412. LP Policy EN6²⁵⁴ sets out that the Council should act to improve the air quality of the District. Sufficient information to assess the impact of the proposal on the AQMA has been submitted through the Sustainability Appraisal/Strategic Environmental Assessment for the LP²⁵⁵, ES²⁵⁶, the ES Addendum- Air Quality Reassessment²⁵⁷ and the Air Quality Position Statement of Ms Kirk²⁵⁸. This presents a robust prediction of potential impact sufficient for a decision-maker to come to a view in this matter. None of this evidence has been challenged by the Council nor any other matters are left outstanding for statutory consultees in respect of air quality. From the submitted evidence it is plain that the proposal would overall serve to minimise harm to public health and improve the air of the District. In this way the terms of LP Policies EN6 and S11 would not be offended.
- *Greater Horseshoe Bats and impact on the South Hams Special Area of Conservation [43-65, 179-197, 264]*
413. The European site which requires consideration is the South Hams Special Area of Conservation (SAC). Its designation is in part due to the accommodation/hosting of GHBs, which are qualifying Annex II species, at the SAC although other bat

²⁵² Framework 8 (c).

²⁵³ These parameters are set out within the screening criteria of the Highways Agency's Design Manual for Roads and Bridges.

²⁵⁴ CD8 a.

²⁵⁵ CD16 c.

²⁵⁶ CD16 a.

²⁵⁷ CD16 b.

²⁵⁸ Seaton Proof Appendix 3.

species are present²⁵⁹. The NA3 allocation area has relevance to the SAC due to the regular use of the site by individual GHBs that are likely to comprise part of the wider SAC GHB population.

414. GHBs are among the rarest and most threatened bats in Europe. South Devon represents an international stronghold for the species in the context of decline elsewhere.
415. The SAC comprises five sites dispersed across South Devon (the distances in brackets are the sites distance to the appeal site as the crow flies. GHBs tend to follow linear features such as wood edges and hedgerows so actual flight distance could be significantly greater)²⁶⁰:
- Berry Head to Sharkham Point SSSI (14 km)
 - Buckfastleigh Caves SSSI (11 km)
 - Bulkamore Iron Mine SSSI (12km)
 - Chudleigh Caves and Woods (7.2 km)
 - Haytor and Smallacombe Iron Mines SSSI (10 km)
416. These component parts include the significant roosts for summer maternity colonies and winter hibernation. The GHBs of the fragmented SAC form part of a larger meta-population which combines a number of main colonies and outlying roosts. GHBs are known to be roost faithful but their long-term conservation status relies on genetic flow between colonies and the availability of suitable transitional roosts as the species increases its range.
417. GHBs feed in different habitats during the year as availability of their prey changes. Foraging habitats can include grazed pastures, edge of woodland, stream corridors, tree lines, tall thick hedges and wetlands. Adult GHBs using maternity roosts largely forage within 4 km of the roost while juveniles hunt mainly within 1 km of the roost and are highly dependent on grazed pasture²⁶¹. That said GHBs have been recorded at distances between 14-20 km from their known roost. They fly between feeding sites and their roosts via a network of commuting routes.
418. The appeal site is located outside of and some distance from the SSSI component parts of the SAC sites (between 7 km and 20 km)²⁶².
419. A feature of interest is the known presence of an adjacent GHB roost at Conitor Copse cave²⁶³ which provides year-round day and night roosts for a small number of individual bats, although the movement of bats between this cave roost and the component locations of the SAC is unknown.

²⁵⁹ CD1B Appendix 1 - Citation

²⁶⁰ Mason Proof para 3.7.

²⁶¹ Mason proof para 3.15 + CD17 d.

²⁶² The appeal site does not include any of the qualifying habitats listed in the citation of the South Hams SAC - CD1 b Appendix 1. It is not protected by the Habitats Directive for its own sake.

²⁶³ Lies to the west of the appeal site beyond the A381.

420. The appellants' bat surveys²⁶⁴ indicate that the areas of wooded edge and hedgerow habitats together with areas of grazed pasture are likely to be used on occasion by individual GHBs. However, based on the normal foraging range of some 4 km, the distance between the component SAC parts and the appeal site, and the nature of the GHB actual flight distances, it places any claimed importance of the site as a likely foraging area in doubt²⁶⁵. Therefore, it is reasonable to conclude that the appeal site does not lie within any defined sustenance zone in relation to any European designated site.
421. The concept of Strategic Flyways (SF)²⁶⁶ was considered by the parties and one was identified running westwards along the southern boundary of the appeal site. However, the identification of this SF was not based on site-specific radio-tracking data, but on assumed occurrences. This reduces the reliance which can be placed on any value which could be ascribed to the SF for the GHB population specific to the SAC²⁶⁷. More recent guidance identifies that outside of sustenance zones GHBs are dispersed widely and in low numbers using a complex network of commuting routes, rather than just a few key SFs²⁶⁸. New draft guidance²⁶⁹ will replace SF with Landscape Connectivity Zones which coalesces the entire network of flyways in recognition of the need to maintain permeability across the SAC landscape and is based on a better understanding that GHBs are widely dispersed. The appeal site would be outside of the 4 km Sustenance Zone but within the Landscape Connectivity Zone so would still trigger a detailed assessment. This emerging guidance would further reduce any reliance on SF as a restrictive feature in development terms.
422. It seems to me that currently the value of the appeal site for GHBs is as part of a more extensive network of 'pathways' which allows the bats to travel between roost sites across the South Devon countryside which could include journeys to and from the five component parts of the SAC from more distant roosts such as Conitor Copse.
423. One of the main issues for the Council and Natural England in respect of the body of evidence already submitted by the appellants to comply with the Habitats Directive and requirements of the Habitat Regulations²⁷⁰, was that the bat survey

²⁶⁴ Environmental Statement Appendix 8.1.

²⁶⁵ Natural England guidance introduces the concept of sustenance zones, of importance in terms of foraging and strategic flyways – CD11 b.

²⁶⁶ Strategic Flyways were developed using radio tracking data and collective local knowledge on bat activity and records. The South Hams SAC Strategic Flyways were made 500 metres wide (an arbitrary figure) to offer several pathways and provide alternative routes. The Natural England Consultation Zone Planning Guidance for the South Hams SAC (CD11b) identifies the SFs, including that which includes part of the appeal site.

²⁶⁷ Both the Council and Natural England placed little or no emphasis on the concept of SF.

²⁶⁸ CD11 e page 24, para 1 (a).

²⁶⁹ The South Hams SAC Planning Guidance SPD – Mason Appendix 12.

²⁷⁰ The GHB/SAC issue was informed at the plan-making stage through the Habitats Regulations Assessment and supplementary report (CD9f & CD9 g respectively). The various documents submitted identify, describe and assess the significant effects of the proposed development at this outline stage in its design progression - Appropriate Assessment Considerations CD1b set out the relevant informative material which includes the ES along with 2019 Bat Survey Inquiry Doc 58. A large body of ecological information informed by scoping requests, followed by habitat surveys, an Ecological

work dated back to 2013-2014 and was considered insufficient to inform a Habitat Regulation Assessment. However, the Council had commissioned in 2019 their own Bat Survey dated November 2019, which was submitted in evidence²⁷¹ and can be considered a reliable and up to date GHB survey based upon best practice. Natural England was consulted on survey scope and methodology.

424. The most recent Bat Survey dated November 2019 concludes that bats were observed to favour substantial hedgerows and tree lines (especially adjacent to pasture), woodland edge and dark lane habitats. Key areas included Stonemans Hill to the west of the appeal site, Priory Road to the south and hedgerow networks linking these with Wolborough Barton and Decoy Brake woodland. The fields and hedgerows between the woodland and the industrial estate off Kingskerswell Road is a current key area and beyond the boundaries of the appeal site. These areas mainly bound the appeal site but are established routes upon which the proposed development would not impact. No GHB roosts were identified on the appeal site in this recent survey and this confirms the outcome in this regard of the 2013-2014 survey²⁷². The Illustrative Masterplan has incorporated a route along the southern boundary which would allow for a number of pathways along hedgerows and lanes along which the GHBs can fly and forage²⁷³. The ability of bats to fly along the identified main route within the Bat Survey 2019 would be retained. Green corridors could also be incorporated to enable GHBs and other bats to access transient foraging areas within Wolborough Fen and the woodland of Decoy Country Park. This would allow bats to continue to move through the landscape unimpeded and with access to impromptu feeding areas.
425. At the time the LP Examining Inspector was considering LP Policy NA3 the concept of the SF was unchallenged. The Examining Inspector reported that whilst a bat flyway ran along the southern boundary of the site the Council's expert witness indicated that a buffer of green space did not necessarily have to be 500m wide to be effective and that there would be adequate space for the flyway to be properly protected. Natural England at the LP Examination stage stated that the Plan proposals would provide for satisfactory protection of the bats and raised no objection to the allocation.
426. The Examining Inspector's conclusions set out that the network of commuting routes/pathways should be wide enough to allow for sufficient habitat along its path which GHBs can traverse²⁷⁴. The 250 metres wide main pathway achievable within the development parameters would serve as an effective bat highway.
427. On the basis of the outcomes of the most recent bat survey the Council is content that in so far as assessing if the competent authority now has sufficient information to be satisfied that no development likely to adversely affect the integrity of the South Hams SAC can be carried out under the outline permission consistent with the provisions of the Habitats Regulations. Natural England's position has been that in the absence of an up to date bat survey there would be

Impact Assessment, an Illustrative Masterplan and a GHB mitigation plan need also to be considered.

²⁷¹ Inquiry Doc 58.

²⁷² Since the 2013/2014 surveys were undertaken the South Devon Link Road has opened.

²⁷³ The main pathway would have a width of some 250 metres.

²⁷⁴ The GHB/SAC issue was informed at the plan-making stage through the Habitats Regulations Assessment and supplementary report – CD9f & CD9g.

insufficient information on which to complete an assessment to conclude that there would be no adverse effect on the integrity of the site²⁷⁵. Having evaluated the Bat Survey 2019 Natural England considered some comparison work necessary between the surveys from 2013-2014 and that of 2019 to ascertain whether the mitigation measures proffered in the GHB Mitigation Plan would still stand as being relevant. However, as the Council highlight²⁷⁶ there are some variations in the survey protocol/analysis between the surveys which make such a comparison of limited value. The overall results of the 2019 survey, in the context of the results from the 2013-2014 survey would be sufficiently robust to inform an AA and mitigation at outline stage.

428. The approach of the GHB Mitigation Plan²⁷⁷ is to establish networks of connected and continuous habitat corridors extending across the appeal site and to the wider landscape. The retention and enhancement of green space is also key to the strategy. The Plan includes the retention of a green corridor of some 250 metres in width which would preserve the permeability across the landscape for the GHBs allowing commuting between the parts of the SAC and outlying roosts. The corridors within the scheme include reinforced hedgerows which are valuable commuting features for GHBs as well as providing habitats for foraging. The wetland SUDS habitat, including a marshy/meadow grassland and orchard areas, would also provide valuable foraging habitat. The detailed lighting strategy to be included at reserved matters stage would ensure minimal disturbance to GHB foraging and commuting habitat as a result of light spill.
429. The up to date Bat Survey has allowed the Council to move their position to one of agreeing that matters in respect of the following can be agreed at reserved matters stage with the imposition of conditions on any grant of outline permission to secure those details which would in essence only come about through the detailed design of the scheme: route of the new Spine Road, lighting assessment, identification and retention of GHB corridors and other GHB habitats²⁷⁸ to be overlaid with the finalised Masterplan²⁷⁹. The Council are now content that the competent authority has sufficient information to be satisfied that no development likely to adversely affect the integrity of the South Hams SAC could be carried out at this outline stage consistent with the provisions of the Habitats Regulations.
430. I have noted that the Langford Bridge development, recently resolved to be granted by the Council, included outline permission for residential led mixed-use development for up to 450 dwellings²⁸⁰. The Council identified that the Langford Bridge scheme would represent a permanent and irreversible change to the functioning of the Landscape Connectivity Zone with the potential to further fragment commuting habitats used by GHBs moving between the South Hams SAC designated roosts, and other supporting roosts. The relevant Bat Survey work for Langford Bridge found that whilst the site was used by commuting GHBs, it is not a key foraging area for this species. This is not a dissimilar conclusion to that reached in this Report in respect of the appeal proposal. The Council has then

²⁷⁵ Natural England Letter dated 15 March 2019

²⁷⁶ Inquiry Doc 61 – Table 1.

²⁷⁷ CD1b) Appendix 3.

²⁷⁸ In the context of Figure 4.2 of the 2019 Bat Survey.

²⁷⁹ Inquiry Doc 61 – requirements incorporated into the relevant planning conditions.

²⁸⁰ Inquiry Doc 63.

concluded that subject to mitigation measures which mirror those proposed in this appeal²⁸¹, there would be no adverse effect on the integrity of the SAC.

431. The Langford Bridge scheme in addition to the appeal proposal represents the larger part of the NA3 allocation. Survey evidence along with complementing mitigation measures present a clear picture of the 'in combination' impacts of development in the immediate locality as representing change for the GHBs, but which would be mitigated across both parts of the NA3 allocation.

432. That all said and notwithstanding my favourable conclusions in respect of the way that the GHBs could be accommodated within the landscape, alongside the new development, there is no doubt nor argument between the parties that the appeal proposal represents a permanent and irreversible change to the functioning of this part of the landscape for the GHBs who commute through it. Those GHBs may well be just passing through but are likely to have come from the various main roosts within the SAC. So, taking a precautionary approach it is an agreed point between the parties that an Appropriate Assessment would be required.

- *Overall conclusion on ecology [203]*

433. Under the precautionary terms of the Habitats Directive, as implemented by the Conservation of Habitats and Species Regulations 2017, where a plan or project is likely to result in a significant effect as absent mitigation, a competent authority is required to make an Appropriate Assessment (AA) of the implications of that plan or project on the integrity of the European site in view of the site's conservation objectives. In particular, an assessment is required as to whether a development proposed is likely to have a significant effect upon a European site, either individually or in combination with other plans and projects.

434. Following the Court of Justice of the European Court (CJEU) ruling in *People over Wind v Coillte Toranta* it is not appropriate, at the screening stage, to take account of measures intended to avoid or reduce the harmful effects of a project on a European Site. Such measures should only be considered as part of an AA. The AA is required to consider whether the proposals, including any mitigation measures, alone or in combination with other proposals, would adversely affect the integrity of the SAC. There is agreement that an AA is required in this instance. It is also clear that the competent authority for conducting the AA here is the Secretary of State.

435. The matters I have set out under the heading *Ecological impacts* serve to assist the competent authority in making his assessment but do not in themselves equate to an AA in their own right as part of this Report²⁸². However, in reaching my recommendation I have taken account of this evidence.

436. For the above reasons I consider in so far as my conclusions are relevant to the recommendation within this Report, that the above measures of mitigation would be sufficient to ensure that the proposed development would not, beyond scientific doubt, have an adverse effect on the integrity of the South Hams SAC, nor would it result in a diminishing of the quality and importance of the SSSI as an

²⁸¹ Inquiry Doc 63.

²⁸² The following documents should also assist the competent authority in making an AA – the Appendices of Ms Mason, CD1b) AA considerations, LP Examining Inspector's Report, LP Policy NA3 and Inquiry Doc 58.

ecological habitat²⁸³[158]. I consider it reasonable to deal with these matters at an outline stage in the knowledge of the various survey work outcomes, the conclusions of the LP Examining Inspector, the terms of the proffered mitigation and securing conditions and obligations, and the opportunity to re-visit the assessment at the reserved matters stage. These measures, to be delivered through conditions and the S106 obligations, would comply with LP Policy NA3 i) and n) which seek to protect the relevant ecologically important habitats, along with Policies EN8, EN9 and EN10, the objective of which is the maintenance and enhancement of biodiversity as a key element of sustainable development.

*Public benefits*²⁸⁴

437. Delivery of market housing – As already highlighted the NA3 allocation is a key part of proposals to meet the adopted strategy of the Council for the distribution and level of development and supporting infrastructure, to achieve economic prosperity, quality environment and the wellbeing of the community²⁸⁵ up until 2033. This must carry significant weight in any balancing exercise particularly as the delivery of the housing has been factored into the Council's response to its housing need through the LP.
438. In addition, it is also a response to Government's objective of significantly boosting the supply of homes with a sufficient amount and variety of land coming forward where it is needed, and that land with permission is developed without unnecessary delay²⁸⁶. Whilst the appeal site has yet to be granted planning permission, it is within an allocated site which has been deemed suitable for mixed-use including housing through the LP process of allocation. This plays heavily in favour of the proposal.
439. Delivery of affordable housing (AH) – The proposal would include 20% AH which would be policy compliant, and the Council through the LP identify meeting the needs for housing, including a significant proportion of the AH requirements as a key issue to ensure that communities are better as a result of implementing the LP²⁸⁷. The NA3 allocation being integral to the LP would make a significant contribution to the Council achieving that objective and so adds considerably to the positive side of the balance.
440. Provision of two care homes would respond to the needs of people as they reach different stages of their lives providing appropriate accommodation options.
441. The provision of a youth centre, local shops, community facilities and primary school could be seen to just mitigate for the needs of future residents of the development. However, such facilities would have a benefit to existing local residents offering facilities to a wider catchment.
442. Future residents would support the services and shops in the centre of Newton Abbot. Construction jobs would form part of the short-term benefits as well as

²⁸³ I am aware that there are other bats, and flora and fauna of interest within the SSSI. The impact on these elements has been considered in the overall response.

²⁸⁴ This is not an exhaustive list – the evidence of Mr Seaton set them out in more detail in his proof Section 7.

²⁸⁵ LP paras 1.2 & 1.6.

²⁸⁶ Framework para 59.

²⁸⁷ LP para 1.7.

increased economic input into the local economy. In addition, the employment land, local shops, the school and care homes would offer employment opportunities in the Town. The employment land and care homes would present possibilities for new businesses to become established or existing businesses to relocate with the possibility of growth, supporting the economic prosperity objective of the LP²⁸⁸. Cumulatively this presents a weighty benefit to add to the balance.

443. It has been concluded that the appeal site is in a location accessible to services and facilities described as highly sustainable. The encouragement of cycling, walking, implementation of the Travel Plan, along with the provision of the new circular bus route would provide options for other modes of transport other than the car. The proposed highway improvements, whilst being mitigating measures for the impact of the proposed development, would benefit the wider population in respect of improving highway safety.
444. All of these benefits weigh positively in favour of the proposal in the balance of this decision. That planning balance will be applied shortly.

Heritage balance

445. Having assessed the impact of the proposal in heritage terms it is necessary to undertake a separate heritage balance in accordance with the Framework paragraph 196. In doing so I am conscious that great weight and considerable importance should be given to the conservation of assets²⁸⁹. With this already in the balance having found that there would be less than substantial harm at the mid to upper end of the sliding scale to the Grade I listed Church as a designated heritage asset, this too needs to be weighed in. However, the identified public benefits of the appeal proposal do present cumulatively significant weight in the heritage balance.
446. I am satisfied that the public benefits set out above are cumulatively of such considerable weight, particularly taking into account the importance of the NA3 allocation to the Council's strategy for future growth and economic prosperity, that the heritage balance tips in favour of the proposal, the public benefits outweighing the identified heritage harm.

Planning balance [98-101, 253]

447. *Proposal for full planning permission* – As already indicated there are no identified harms in respect of the impact of this aspect of the appeal proposal. Therefore, there are no barriers either in respect of conflict with the Development Plan policy or Government guidance which should stand in the way of planning permission being granted subject to the identified conditions.
448. *Proposal for outline planning permission* - LP Policy NA3 a) seeks the submission of a comprehensive landscape and design led masterplan for the strategic site allocation, produced with meaningful and continued input and engagement from stakeholders. The submitted Illustrative Masterplan²⁹⁰, in the context of an outline planning proposal which, essentially seeks to confirm the LP allocation for mixed use development covering the appeal site, as the largest section of that strategic commitment to growth, enshrined in the Development Plan,

²⁸⁸ LP para 1.6.

²⁸⁹ Framework para 193.

²⁹⁰ Dwg no 141204| 02 02 K.

has come forward as a result of some pre-application consultation with the Council as well as the community. This appeal, and the consideration of the planning application before that, also gave an opportunity for parties to consider the conceptual development criteria and impacts. By the very evidence to the Inquiry stakeholders have engaged on the basis of the Illustrative Masterplan as an informing resource. The Design and Access Statement²⁹¹ presents a direction of travel for the more detailed design of the scheme which, through a process of design evolution in which stakeholders should continue to be involved, would become apparent at the reserved matters stage. I consider that the spirit of LP Policy NA3 a) has been responded to and for this development to be delivered in a timely fashion to make the contribution that the Council anticipates from it in respect of the economic and social well-being of the District, progress forward must be made.

449. The duty in section 38(6) of The Planning and Compulsory Purchase Act 2004 enshrines in statute the primacy of the Development Plan. As an essential component of the 'plan-led' system, it is also reiterated in the Framework which is of course a material consideration to which substantial weight should be attached. [220-225]
450. Framework paragraph 11 c) sets out that a presumption in favour of sustainable development should apply when approving development proposals that accord with an up-to-date development plan without delay.
451. Having established that the appeal site lies almost wholly within the LP NA3 allocation, part of the urban extension to Newton Abbot promoted through the adopted LP, and having considered how the appeal proposal measures up to the policy requirements of LP Policy NA3 as well as of the Development Plan as a whole, the only offense I have found is in heritage terms in respect of the impact on the significance and setting of the Grade I listed Church. Harm has been identified. That harm could be considered to be an offence to LP Policy NA3 g). However, when considered in a flat planning balance the specific heritage harm in the negative side of the balance does not outweigh the already identified benefits of the development which will contribute to the achievement of sustainable development and Government's objective of significantly boosting the supply of both market and affordable homes.

Recommendations

452. Consequently, it is recommended that planning permission be granted for both the full and outline proposals.

Frances Mahoney

Inspector

²⁹¹ CD1c.

Annex A – Schedule of recommended conditions

Full Permission

Full proposal for a change of use of existing agricultural buildings to hotel (C1), restaurant (A3) and bar/drinking establishment (A4) uses, involving erection of new build structures, construction of an access road and parking, plus other associated conversion and minor works.

- 1) The development hereby permitted must be begun not later than the expiration of three years from the date on which this permission is granted.
- 2) The development hereby permitted shall be carried out in accordance with the following approved plans:
 - Site Location Plan (160107 L 01 01)
 - Proposed General Arrangement Plan (160107 L 02 01 A + Rev C)
 - Proposed floor plans – Buildings 2 and 4 (160107 L 04 01 A)
 - Proposed floor plans – Buildings 3, 5 and 6 (160107 L 04 02 A)
 - Proposed elevations – Buildings 2 and 4 (160107 E 05 01 A)
 - Proposed elevations – Building 5 (160107 E 05 02)
 - Proposed elevations – Buildings 3 and 6 (160107 E 05 03)
 - Proposed sections (160107 Se 02 01)
 - Building retention and demolition plan (160107 L 06 01)
 - External works (160107 L 07 01 B)
 - Timber pergola detail (160107 DE 05 01)
 - Farm buildings parking layout (4035-021 Rev B)
- 3) No development shall take place until details of sustainable surface and ground water drainage have been submitted to and approved in writing by the local planning authority (such details to be in general conformity with the submitted Flood Risk Assessment). Development shall be carried out in accordance with the approved details and the surface water drainage infrastructure shall be retained and maintained in functioning order as such thereafter.
- 4) No windows, doors and other glazed or timber panels shall be installed until details of joinery have been submitted to and approved in writing by the Local Planning Authority. Such details shall include cross sections, profiles, reveal, surrounds, materials, finish and colour in respect of new windows and doors. The work shall thereafter be carried out and retained in accordance with the approved details.

- 5) Notwithstanding the details of the materials shown on the submitted drawings, the roofing materials to be used in the development shall be submitted to and approved in writing by the local planning authority prior to their installation. The work shall then be carried out and retained in accordance with the agreed details.
- 6) Any areas identified as stonework on the approved plans shall be constructed of a natural stone, a sample of which including construction details and mortar specification shall be submitted to and agreed in writing by the local planning authority, prior to works to any areas of stonework commencing. The stonework shall thereafter be carried out as approved.
- 7) No building shall be constructed above damp proof course until details of the proposed render type and colours have been submitted to and approved in writing by the local planning authority. The work shall then be carried out in accordance with the agreed details.
- 8) Prior to the laying of setts/paviours and other surface materials to be used as part of the hard-surfacing scheme, precise details of the form and colour shall be submitted to and approved in writing by the local planning authority and shall thereafter be laid out on site in accordance with the agreed details.
- 9) No building shall be constructed above damp proof course until details of the external colour and finish of the timber to be used have been submitted to and agreed in writing with the local planning authority. The work shall then be carried out in accordance with the agreed details.
- 10) No building shall be constructed above damp proof course until details of both hard and soft landscape works have been submitted to and approved in writing by the local planning authority and these works shall be carried out as approved.

These details shall include proposed finished levels or contours; means of enclosure; car parking layouts; other vehicle and pedestrian access and circulation areas; hard surfacing materials; minor artefacts and structures (e.g. furniture, refuse or other storage units, signs, lighting etc.); proposed and existing functional services above and below ground (e.g. drainage power, communications cables, pipelines etc. indicating lines, manholes, supports etc.); retained historic landscape features and proposals for restoration, where relevant.

Soft landscape works shall include planting plans; written specifications (including cultivation and other operations associated with plant and grass establishment); schedules of plants (noting species, plant sizes and proposed numbers/densities); implementation and management programme.

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

- 11) No development shall take place until highway details have been submitted to and approved in writing by the local planning authority. These shall include details of the proposed road(s), cycleways, footways, 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. Development shall be carried out in accordance with the approved details.

- 12) Prior to the installation of any external lighting a lighting strategy, including details of all external lighting, shall have been submitted to and approved in writing by the local planning authority. Development shall be carried out in accordance with the approved details. No external light sources shall be installed other than those external light sources permitted by the local planning authority.
- 13) No development shall take place until a Construction Environmental Management Plan (CEMP) has been submitted to and approved in writing by the local planning authority. The CEMP shall include a summary of the work to be carried out; a description of the site layout and access including proposed haul routes and parking facilities and the location of site equipment including the supply of water for damping down; an inventory and timetable of all dust generating activities; a list of dust and emission control methods to be used; the identification of an authorised responsible person on site for air quality; a summary of monitoring protocols and an agreed procedure for notification to the local authority Environment & Safety Services Department; a site log book to record details and action taken in response to incidences of the air quality objectives being exceeded and any exceptional incidents; proposed hours of work (including construction, piling, deliveries and other movements to and from the site). All vehicles leaving the site must be wheel-washed if there is any risk of affecting nearby properties. There should be a paved area between the wheel-wash and the main road. The development shall be carried out in accordance with the approved CEMP.
- 14) No building shall be occupied until works for the disposal of foul sewage have been provided in accordance with details submitted to and approved in writing by the local planning authority for the relevant building.
- 15) No development shall take place, or any equipment, machinery or materials be brought onto the site for the purpose of development until fencing to delineate a Protection Zone to protect retained hedges has been constructed in accordance with location and construction details shown on plans and particulars including in relation to retention and removal timetables that have been submitted to and approved in writing by the local planning authority. Within the Protection Zone nothing shall be stored or placed, nor any works take place, nor shall any changes in ground levels or excavations take place unless a method statement for such works has also been submitted to and approved in writing by the local planning authority.
- 16) No development shall take place until the applicant has secured the implementation of an agreed programme of archaeological work in accordance with a written scheme of investigation which has been submitted and approved in writing by the local planning authority. The development shall be carried out at all times in strict accordance with the approved scheme.

- 17) No development other than that required to be carried out as part of an approved scheme of remediation shall take place until sections 1 to 3 of this condition 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 section 4 of this condition has been complied with in relation to that contamination.

Section 1. Site Characterisation

An investigation and risk assessment, in addition to any assessment provided with the planning application, shall 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 competent persons 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:
 - o human health
 - o property (existing or proposed) including buildings, crops, livestock, pets, woodland and service lines and pipes
 - o adjoining land
 - o groundwaters and surface waters
 - o ecological systems
 - o 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'.

Section 2. 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 shall 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.

Section 3. Implementation of Approved Remediation Scheme

The approved remediation scheme shall be carried out in accordance with its terms prior to the commencement of the development other than that

required to carry out remediation, unless otherwise agreed in writing by the local planning authority. 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 the replaced 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.

Section 4. 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 shall be reported in writing immediately to the local planning authority. An investigation and risk assessment must be undertaken in accordance with the requirements of section 1 of this condition, and where remediation is necessary a remediation scheme must be prepared in accordance with the requirements of section 2, 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 section 3.

- 18) No building comprised shall be built above damp-proof course unless and until details of the proposed finished floor levels of each building have been submitted to and approved in writing by the local planning authority. The development shall be carried out in accordance with the approved details.
- 19) No development shall take place until an ecological mitigation strategy, in so far as it relates to this proposal, has been submitted to, and approved in writing by, the local planning authority. The strategy shall be based on the proposed mitigation in the Chapter 8 of Volume 2 of the Environmental Statement submitted as part of the planning application and the submitted GHB mitigation plan (and addendum dated 8 March 2019). The Development shall be carried out and maintained in accordance with the approved strategy.

Outline Permission

Outline proposal for mixed use development comprising circa 1210 dwellings (C3), a primary school (D1), up to 12650 sq m of employment floorspace (B1), two care homes (C2) providing up to 5,500 sq m of floorspace, up to 1250 sq m of community facilities (D1), a local centre (A1/A3/A4/A5) providing up to 1250 sq m of floorspace, open space (including play areas, allotments, MUGA) and associated infrastructure (Means of Access to be determined only)

- 1) Details of the appearance, layout, scale and landscaping (hereinafter called "the reserved matters") for each phase shall be submitted to and approved in writing by the local planning authority before any development takes place on the relevant phase and the development shall be carried out as approved.

- 2) Application for approval of the reserved matters for the first phase approved pursuant to condition 5 shall be made to the local planning authority not later than three years from the date of this permission. Application for approval of all of the reserved matters shall be made to the local planning authority not later than 12 years from the date of this permission.
- 3) The development of each phase hereby permitted shall take place not later than two years from the date of approval of the last of the reserved matters to be approved for the relevant phase.
- 4) Outline planning permission is hereby granted for no more than:
 - a. 1,210 dwellings (including custom build), house and flats and other uses within Class C3
 - b. A Primary School
 - c. 12,650 sq m gross of Employment floorspace within Use Class B1
 - d. 5,500 sq m gross of Care Home floorspace within Use Class C2 in no more than two individual facilities
 - e. 1,250 sq m gross of community facilities floorspace within Use Class D1
 - f. 1,250 sq m gross of Retail / Local Centre floorspace within Use Classes A1/A3/A4 and/or A5 (cumulative)
 - g. Car parking and other miscellaneous uses including public bicycle interchange / storage facilities, substations, waste storage and recycling facilities

The development hereby permitted shall be carried out in accordance with the following approved plans:

- Site Location Plan (Reference:141204 L01 01 G)
 - Proposed access drawings (References: 4035-010 D; 4035-011 E – 4035-018 Rev B; 4035-012 C - 4035-017 Rev B)
- 5) As part of the first application for the approval of reserved matters, a detailed phasing plan shall be submitted to and approved in writing by the local planning authority. The phasing plan shall specify the proposed timing for the delivery of the areas of public open space/green infrastructure on each phase as well as the construction programme for the housing (including self or custom build housing) and other built elements of the development. The development hereby approved shall be carried out in accordance with the approved phasing plan.
 - 6) Prior to the submission of any reserved matters application in relation to any phase, a Masterplan and Design Code shall be submitted to and approved in writing by the Local Planning Authority. The Masterplan and Design Code shall be formulated broadly in accordance with the submitted Design and Access Statement and Illustrative Masterplan (141204 L02 02 k) and Parameter Plan (14 204 P01 rev B) and shall include the following details:
 - (a) The proposed movement network delineating the primary, secondary and tertiary streets and pedestrian and cycleway connections, setting out the approach to estate design, treatment of non-vehicular routes

and car and cycle parking including connection into the existing pedestrian and cycleway routes shown on drawing no 4035 020 Rev A. These details shall include and take account of design principles to be agreed with the local planning authority in respect of crossing points of bat commuting routes in relation to the road network.

- (b) The proposed layout use and function of all open space within the development.
- (c) The approach to and design principles applied to car parking (on street and off-street).
- (d) Phased layout principles to include urban structure, form and layout of the built environment, building heights, densities, legibility, means of enclosure, key gateways, landmark buildings, key frontages and key groups.
- (e) The design approach for areas within the public realm including landscaping and hard surface treatments, lighting, street trees, boundary treatments, street furniture and play equipment including an explanation of how the design approach and layout will achieve the proposed mitigation as set out in the Chapter 8 of Volume 2 of the Environmental Statement submitted as part of the planning application and the submitted Greater Horseshoe Bat (GHB) Mitigation Plan (and addendum dated 8 March 2019)
- (f) Servicing, including utilities, design for the storage and collection of waste and recyclable materials.
- (g) External materials, to include a palette of wall and roof finishes, windows, doors, porches, heads, cills, chimneys, eaves and verges and rainwater goods.
- (h) The design principles that will be applied to the development to encourage security and community safety.
- (i) The specific design principles that will be applied to the Local Centre.
- (j) The design principles for the incorporation of a Sustainable Urban Drainage System (SUDS) throughout the development. This should include the defining of the Wolborough Fen catchment area and the results of a detailed hydrological and hydrogeological investigation (covering seasonal fluctuations) which should inform the design of the SUDS.
- (k) The location and accommodation of existing GHB corridors which cross the site along with the creation of additional GHB habitat with linkages to existing GHB routes shall form part of the general design code.

Thereafter any application for the approval of reserved matters shall comply with the approved Design Code.

- 7) No development shall take place within an approved phase of the development hereby permitted until an ecological mitigation strategy for that phase has been submitted to, and approved in writing by, the local planning authority. The strategy shall be based on the proposed mitigation in the Chapter 8 of

Volume 2 of the Environmental Statement submitted as part of the planning application and the submitted GHB mitigation plan (and addendum dated 8 March 2019). The Development shall be carried out and maintained in accordance with the approved strategy.

- 8) No development shall take place on any phase of the development until a Landscape and Ecology Implementation and Management Plan (LEMP) for that phase has been submitted to and approved in writing by the local planning authority. The LEMP shall include a timetable for implementation of the landscaping and ecology work and details of the management regime. The LEMP shall be implemented in accordance with the approved details.
- 9) No development shall commence on any phase until a low emissions strategy for mitigating the air quality impacts of the relevant phase (including the construction of the relevant phase) has been submitted to and approved in writing by the local planning authority. The approved strategy shall be implemented in accordance with the timescales set out therein. Any measures which are required to be retained shall be maintained throughout the life of the development.
- 10) No development shall take place until details of a strategy for sustainable surface water and ground water drainage (SUDS) (including temporary drainage provision during construction) including mechanisms for ongoing management has been submitted to and approved in writing by the local planning authority. No development on any individual phase shall take place until details of sustainable surface water and ground water drainage (including temporary drainage provision during construction) for that phase to accord with the submitted Flood Risk Assessment have been submitted to and approved in writing by the local planning authority. Development shall be carried out in accordance with the approved details and the surface water drainage infrastructure shall be retained and maintained in operational order thereafter.
- 11) The delivery of the spine road through the site shall be provided to the eastern boundary of the site at a location to be agreed with the local planning authority (to enable its continuation through to Kingskerswell Road and the A380) prior to the occupation of the 500th dwelling.
- 12) Prior to the installation of any external lighting on the site, within any phase of development, a lighting strategy for that particular phase, including full details of all external lighting (heights, mounting, cowling, and lamp bulb details should be included), including that serving individual plots (non-domestic), must be submitted to and approved in writing by the local planning authority. A dark areas/corridor map where lighting levels of less than 0.5 lux would persist shall be included within the details to be agreed by the local planning authority (GHB commuting routes). The impact of house height, orientation and screening of roads and turning heads to retain darkness in corridors shall be considered and incorporated in the lighting strategy. The detailed assessment shall include contour lux modelling. No external light sources shall be permitted on those areas shown coloured green on Drawing 141204 P 01 Rev D. No external light sources shall be installed at the site other than those external light sources permitted by the local planning authority.

- 13) No building in any phase shall be occupied until works for the disposal of foul sewage from that phase have been provided, in accordance with details first submitted to and approved in writing by the local planning authority.
- 14) No development shall take place on any phase of the development until a Construction Environment Management Plan (CEMP) has been submitted to and approved in writing by the local planning authority for that phase. The CEMP shall include a summary of the work to be carried out; a description of the site layout and access including proposed haul routes and parking facilities and the location of site equipment including the supply of water for damping down; an inventory and timetable of all dust generating activities; a list of dust and emission control methods to be used; details of timetabling for movements of construction vehicles to avoid the AQMA during peak traffic periods; details of timetabling or means for construction vehicles to visit the construction site to avoid queuing traffic; the identification of an authorised responsible person on site for air quality; a summary of monitoring protocols and an agreed procedure for notification to the local authority Environment & Safety Services Department; a site log book to record details and action taken in response to incidences of the air quality objectives being exceeded and any exceptional incidents; proposed hours of work (including construction, piling, deliveries and other movements to and from the site); and an Ecological Construction Method Statement including how GHB identified corridors will be protected during the construction phase as well minimising light spill (no more than 0.5 lux in corridors). Construction vehicles must be low emission which comply with current Euro emission standards. All vehicles leaving the site must be wheel-washed if there is any risk of affecting nearby properties. There should be a paved area between the wheel-wash and the main road. The development shall be carried out in accordance with the approved CEMP.
- 15) No development shall take place on a phase of the development until full highway details for that phase have been submitted to and approved in writing by the local planning authority. These shall include details of the proposed estate road(s), cycleways, footways, 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. Development shall be carried out in accordance with the approved details.
- 16) No development shall take place on any phase, or any equipment, machinery or materials be brought onto any part of the relevant phase for the purpose of development until fencing to delineate a Protection Zone to protect retained hedges has been constructed in accordance with location and construction details shown on plans and particulars including in relation to retention and removal timetables that have been submitted to and approved in writing by the local planning authority. Within the Protection Zone nothing shall be stored or placed, nor any works take place, nor shall any changes in ground levels or excavations take place unless a method statement for such works has also been submitted to and approved in writing by the local planning authority.
- 17) Notwithstanding the Arboricultural Impact Assessment (ES Technical Appendix 8.6) no development shall take place on any phase of the development until a detailed tree survey has been carried out on that phase and a plan submitted

and approved by the local planning authority that clearly identified those trees to be retained and those removed. In relation to those trees identified to be retained no development shall take place within an approved phase of the development hereby permitted until details of tree and hedgerow protection measures for that phase during construction have been submitted to, and approved in writing by, the local planning authority. The measures shall accord with BS 5837:2012 Trees in relation to design, demolition and construction – Recommendations and shall indicate exactly how and when the trees will be protected throughout the construction period. The measures shall include provision for the supervision of tree protection works by a suitably qualified arboricultural consultant. The development shall be carried out in accordance with the approved details and protection measures.

- 18) No development shall take place on a phase of the development until the applicant has secured the implementation of a programme of archaeological work in accordance with a written scheme of investigation for that phase, which has been submitted by the applicant and approved in writing by the local planning authority. The development shall be carried out at all times in strict accordance with the approved scheme.
- 19) Unless otherwise agreed by the local planning authority, development on any phase of the development other than that required to be carried out as part of an approved scheme of remediation shall not take place until sections 1 to 3 of this condition have been complied with in respect of that phase of the development. 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 section 4 of this condition has been complied with in relation to that contamination.

Section 1. Site Characterisation

An investigation and risk assessment, in addition to any assessment provided with the planning application, shall 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 competent persons 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:
 - o human health
 - o property (existing or proposed) including buildings, crops, livestock, pets, woodland and service lines and pipes
 - o adjoining land
 - o groundwaters and surface waters
 - o ecological systems

o 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'.

Section 2. 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 shall 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.

Section 3. Implementation of Approved Remediation Scheme

The approved remediation scheme shall be carried out in accordance with its terms prior to the commencement of any phase of the development other than that required to carry out remediation, unless otherwise agreed in writing by the local planning authority. 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 the replaced 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.

Section 4. 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 shall be reported in writing immediately to the local planning authority. An investigation and risk assessment must be undertaken in accordance with the requirements of section 1 of this condition, and where remediation is necessary a remediation scheme must be prepared in accordance with the requirements of section 2, 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 section 3.

- 20) No development shall take place within the Wolborough Fen SSSI hydrological catchment unless and until a Scheme (based upon an evidence base agreed with the local planning authority in consultation with Natural England) has been submitted to and approved by the local planning authority in consultation with Natural England which sets out detailed measures to ensure that the development does not have an adverse impact on the integrity of the Wolborough Fen SSSI during the construction or operation of the development. The development shall thereafter proceed in accordance with the approved details.

- 21) No commercial buildings shall be occupied or otherwise brought into use until provision for the loading and unloading of goods vehicles for that building has been made in accordance with details which shall have been submitted to and approved in writing by the Local Planning Authority.
- 22) The total use class A (A1/A3/A4/A5) (as defined in the Town and Country Planning (Use Classes) Order 1987 (as amended) or any other instrument that replaces it words) floorspace hereby approved shall not exceed 1,250 sq.m gross external area. No more than 100 sq.m gross external area of the total floorspace approved shall be used for hot food takeaway purposes (use class A5) and no single unit of A1 use shall exceed 500 sq.m (gross external area) floor area.
- 23) No more than 300 of the dwellings permitted hereby shall be occupied unless and until the works to the Ogwell Cross Roundabout (shown on drawing nos 4035-012 E, 4035-017 B) and Firestone Lane (shown on drawing no 4035-011 E) have been completed.
- 24) No more than 600 dwellings to be occupied until the further works to the improvement of the Ogwell Roundabout (shown on drawing number drawing 4035 003 Rev B) have been fully implemented.
- 25) A design code for the custom build dwellings within each relevant phase shall be submitted to and approved by the local planning authority prior to the submission of the first reserved matters application for any phase including a custom build dwelling. The reserved matters applications for the custom-build dwellings shall accord with the requirements of the approved design code.
- 26) The Community Building shall be completed prior to the occupation of more than 50% of the Dwellings comprised in Area 2 in accordance with a specification which shall include details of the size (which shall be no less than 500m² Gross External Area), location and proposed range of uses of a Community Building which has first been submitted to and approved by the local planning authority. The Community Building shall be considered to have been completed when it meets the following criteria:
 - a. The building is wind and water tight which may include temporary provision/arrangement pending finally agreed fit out works
 - b. All services have been provided to the boundary and/or the external envelope of the building and there is proper and safe access to the building
 - c. In respect of those parts of the building which are to be fitted by a tenant the relevant parts of the building are ready for the tenant to fit out
 - d. In respect of those parts of the building which are not to be fitted out by a tenant the relevant parts of the building are ready for beneficial use and occupation
 - e. The building has been constructed and substantially completed in all respects to shell standard
- 27) A building located in Neighbourhood Area 2 to provide floorspace of not less than 500sqm (Gross Internal Floor Area) for Use Class A retail purposes shall

be constructed to shell and core specification prior to the occupation of 50% of the dwellings in Neighbourhood Area 2. The building shall be marketed for such purposes in accordance with a strategy to be submitted to and approved in writing by the local planning authority prior to any such marketing commencing. For the avoidance of doubt, this may comprise multiple lettable units.

- 28) 1.8 hectares of land to be used for the provision of education shall be serviced, accessible and made available prior to the occupation of no more than 400 dwellings. The land shall be provided in the location shown on the submitted illustrative framework plan (141204 L02 02 J) or other such location as may be first submitted to and approved in writing by the local planning authority. The serviced land shall be kept available solely for education purposes for 10 years from the date of planning approval or the Occupation of the 600th Dwelling, whichever is the later.
- 29) No building comprised in any phase shall be built above damp-proof course unless and until details of the proposed finished floor levels of each building comprised in that phase have been submitted to and approved by the local planning authority. The development shall be carried out in accordance with the approved details.

APPEARANCES

FOR THE LOCAL PLANNING AUTHORITY:

Michael Bedford QC	Instructed by Karen Trickey Head of Legal Services
He called	
Christine Mason	Senior Ecologist
Samantha Taylor	Senior Transport Planner Devon County Council
Ian Perry	Principal Planning Officer
Fergus Pate	Principal Delivery Officer – Conditions and S106 session only

FOR ABBOTSKERSWELL PARISH COUNCIL & WOLBOROUGH RESIDENTS' ASSOCIATION – RULE 6 PARTY:

Dr Stookes Solicitor Advocate	Instructed by Chris Watts
He called	
Chris Watts	Secretary of the Wolborough Residents Association
Samuel Watson	Principal Ecologist Bioscan (UK)
Dr Kevin Page	Geo-diversity
Dr Claire Holman	Air Quality

FOR THE APPELLANT:

Charles Banner QC	Instructed by David Seaton PCL Planning Ltd
He called	
Dr Stephen Holloway	Director of South West Ecology Ltd
David Seaton	Managing Director PCL Planning Ltd
David Lock QC	Landmark Chambers – NHS law

THE TORBAY AND SOUTH DEVON NHS TRUST

Annabel Graham Paul of Counsel Instructed by Malcolm Dicken Head of
Commercial Development

She called

George Grute	Commercial Development Manager of the Trust
Paul Cooper	Finance Director of the Trust
Malcolm Dicken	Head of Commercial Development

INTERESTED PERSONS:

Rhiannon Rhys	Historic England Inspector of Historic Buildings and Area Planning SW
Dr Paul Melling	General Practitioner Kingskerswell & Ipplepen Health Centres
Peter Finch	Chairman of the CPRE Teignbridge, Devon Branch
Mr Sampson	Newton Says No campaign member
Michael Martyn	North Devon Civic Trust
Kelvin Shantry	Local resident
Richard Daws	Local resident
Jeffery Collman	Local resident
Iestyn John	Partner Bell Cornwell – representing Mr Glynn adjacent land owner
Jonathan Lloyd	Representing Mr Glynn adjacent land owner

Inquiry Documents

- 1) Supplementary Proof of Mrs Chrissy Mason
- 2) Holohan Judgment
- 3) Rebuttal Evidence of Mr Watson (March 2019)
- 4) Rebuttal Evidence of Mr Lacey (March 2019)
- 5) Further Rebuttal Evidence of Mr Seaton (March 2019)
- 6) Stagecoach Bus Services New Residential Developments (2017)
- 7) Guidelines for Providing for Journeys on Foot (IHT)
- 8) Opening – Mr Bedford (Council)
- 9) Opening – Mr Stookes (Rule 6 Party)
- 10) Opening – Mr Banner (Appellant)
- 11) Notes of Dr Paul Melling
- 12) Notes of Mr Peter Finch, CPRE Devon
- 13) Notes of Mr Sampson
- 14) Notes of Mr Shantry
- 15) Statement of Mr Daws
- 16) Bundle including correspondence with Historic England (PCL letters 18/07/18, 22/03/19 and Options Appraisal, HE letter dated 14/03/19)
- 17) Notes of Mr John
- 18) Notes of Mr Martyn
- 19) Historic England’s Summary of Written Statement
- 20) Local Development Scheme (February 2019)
- 21) Wolborough DPD Milestones
- 22) Statement of Mr Collman
- 23) 24/04/19 PCL Planning ES Addendum & ES Non-Technical Summary
- 24) 02/05/19 Email from Leanne Palmer enclosing Agreement between CCG and the Torbay and South Devon NHS Foundation Trust, and Financial Statement
- 25) 23/05/19 Email from Jessica Duck enclosing Financial Funding Statement, Risk-Share Agreement, Letter to Clarke Willmott, CGC allocations and NHS standard contract
- 26) 16/05/19, Letters from Richard Buxton Solicitors in response to ES Addendum and letter dated 29/05/19 from Richard Buxton Solicitors
- 27) 31/05/19 Email from Caroline Waller enclosing TDC’s S106 Reg 123 Compliance Statement and accompanying spreadsheet in addition to the Council’s note on the NHS requests
- 28) 04/06/19 PCL Planning Ltd letter to Leanne Palmer, NHS response and copy of Counsel Advice
- 29) 04/06/19 PCL Planning Ltd letter to Leanne Palmer, additional matters enclosing additional SoCG and Letter from SLR Consulting.
- 30) 10/06/19 – Email to Leanne Palmer enclosing S106 Commentary
- 31) Christine Mason – Notes on Habitat Regulations Assessment References
- 32) 10/06/19 - NHS documents
- 33) Langford Bridge Farm plan
- 34) Habitats Directive extract
- 35) Extract from Environmental Statement re. ecology

- 36) 22/05/19 Email from C. Brookes, Historic England
- 37) 30/05/19 Letter from Clarke Willmott to Leanne Palmer
- 38) 04/06/19 PCL letter to Shakespeare Martineau
- 39) 22/03/19 letter from Ian Perry to Caroline Waller
- 40) Securing Section 106 and Community Infrastructure Levy Funds – A Guide (September 2018)
- 41) Agreed schedule of conditions
- 42) Certified copy of the completed Unilateral Undertaking given to Teignbridge District Council – attached is the Council’s S106 compliance statement.
- 43) Certified copy of completed Unilateral Undertaking given to Devon County Council – attached to it the Council’s comments on the Unilateral Undertaking and the position statement of Devon County Council.
- 44) Appellants’ costs application against the Council
- 45) Council’s response to appellants’ cost application
- 46) Rule 6 Party costs application against the appellants
- 47) Appellants’ response to Rule 6 Party cost application
- 48) Appellants’ cost application against the Torbay and South Devon NHS Trust
- 49) The Torbay and South Devon NHS Trust response to appellants’ cost application
- 50) The Torbay and South Devon NHS Trust cost application against the appellants
- 51) Appellants response to the Torbay and South Devon NHS Trust cost application
- 52) Closing submissions of the Council
- 53) Closing submissions of the Rule 6 Party
- 54) Note of the Torbay and South Devon NHS Trust case
- 55) Closing submissions of the Appellants’ including Appendix 1 - Submissions by the appellants in response to the Torbay and South Devon NHS Trust application for NHS funding
- 56) Extract from Local Air Quality Management Technical Guidance (TG16)
- 57) Note of David Lock QC’s qualifications and experience
- 58) NA3 Wolborough 2019 Bat Activity Survey dated 22 November 2019 (Geckoelle Report)
- 59) Response to Geckoella Report by appellants.
- 60) Comments of Rule 6 Party on the Geckoella Report
- 61) Comments of the Council (Christine Mason) on Geckoelle Report.
- 62) Email final response from appellants to Geckoella Report
- 63) Agenda, Report to Planning Committee and the Minutes of the meeting of the 21 January 2020 in respect of resolution to grant planning permission for Langford Bridge Farm development.
- 64) Response by the Rule 6 Party to resolution of the Council to grant permission for the Langford Bridge Farm development
- 65) Response of appellants to Housing Delivery Test Results 2019
- 66) Response of Rule 6 party to Housing Delivery Test Results 2019



Ministry of Housing, Communities & Local Government

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RIGHT TO CHALLENGE THE DECISION IN THE HIGH COURT

These notes are provided for guidance only and apply only to challenges under the legislation specified. If you require further advice on making any High Court challenge, or making an application for Judicial Review, you should consult a solicitor or other advisor or contact the Crown Office at the Royal Courts of Justice, Queens Bench Division, Strand, London, WC2 2LL (0207 947 6000).

The attached decision is final unless it is successfully challenged in the Courts. The Secretary of State cannot amend or interpret the decision. It may be redetermined by the Secretary of State only if the decision is quashed by the Courts. However, if it is redetermined, it does not necessarily follow that the original decision will be reversed.

SECTION 1: PLANNING APPEALS AND CALLED-IN PLANNING APPLICATIONS

The decision may be challenged by making an application for permission to the High Court under section 288 of the Town and Country Planning Act 1990 (the TCP Act).

Challenges under Section 288 of the TCP Act

With the permission of the High Court under section 288 of the TCP Act, decisions on called-in applications under section 77 of the TCP Act (planning), appeals under section 78 (planning) may be challenged. Any person aggrieved by the decision may question the validity of the decision on the grounds that it is not within the powers of the Act or that any of the relevant requirements have not been complied with in relation to the decision. An application for leave under this section must be made within six weeks from the day after the date of the decision.

SECTION 2: ENFORCEMENT APPEALS

Challenges under Section 289 of the TCP Act

Decisions on recovered enforcement appeals under all grounds can be challenged under section 289 of the TCP Act. To challenge the enforcement decision, permission must first be obtained from the Court. If the Court does not consider that there is an arguable case, it may refuse permission. Application for leave to make a challenge must be received by the Administrative Court within 28 days of the decision, unless the Court extends this period.

SECTION 3: AWARDS OF COSTS

A challenge to the decision on an application for an award of costs which is connected with a decision under section 77 or 78 of the TCP Act can be made under section 288 of the TCP Act if permission of the High Court is granted.

SECTION 4: INSPECTION OF DOCUMENTS

Where an inquiry or hearing has been held any person who is entitled to be notified of the decision has a statutory right to view the documents, photographs and plans listed in the appendix to the Inspector's report of the inquiry or hearing within 6 weeks of the day after the date of the decision. If you are such a person and you wish to view the documents you should get in touch with the office at the address from which the decision was issued, as shown on the letterhead on the decision letter, quoting the reference number and stating the day and time you wish to visit. At least 3 days notice should be given, if possible.