



Department for  
Communities and  
Local Government

Our Ref: APP/P1133/A/12/2188938  
Your ref: S4393-00003

Martin Evans  
Nabarro  
Lacon House  
84 Theobalds Road  
LONDON  
WC1X 8RW

10 September 2013

Dear Sir,

**TOWN AND COUNTRY PLANNING ACT 1990 – SECTION 78  
APPEAL BY SHUTTERTON PARK LIMITED  
AT LAND TO THE SOUTH OF SHUTTERTON LANE, DAWLISH, DEVON  
APPLICATION REF: 12/02281/MAJ**

1. I am directed by the Secretary of State to say that consideration has been given to the report of the Inspector, Jessica Graham BA(Hons) PgDipL, who held a public local inquiry on 5 days between 9 April and 3 May 2013 into your clients' appeal against the refusal of Teignbridge District Council (the Council) to grant outline planning permission for housing (up to 350 dwellings); a multi-purpose community building; car parking; hard and soft landscaping and open space; a sustainable urban drainage system; and new vehicular, cycle and pedestrian routes and accesses together with all associated works at land to the south of Shutterton Lane, Dawlish, Devon, in accordance with application reference 12/02281/MAJ, dated 17 July 2012.
2. On 16 January 2013 the 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 because it involves a proposal for residential development of over 150 units, and is on a site of more than 5 hectares, which would have a significant impact on the Government's objective to secure a better balance between housing demand and supply, and create high quality, sustainable, mixed and inclusive communities.

**Inspector's recommendation and summary of the decision**

3. The Inspector recommended that the appeal be allowed and planning permission granted subject to conditions. For the reasons given below, the Secretary of State

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agrees with the Inspector's conclusions and recommendation. A copy of the Inspector's report (IR) is enclosed. All references to paragraph numbers, unless otherwise stated, are to that report.

### **Procedural Matters**

4. The application for costs made by your client at the Inquiry (IR1.9) is the subject of a separate decision letter, also being issued today by the Secretary of State.
5. In reaching his decision the Secretary of State has taken into account the Environmental Statement (ES) which was submitted under the Town and Country Planning (Environmental Impact Assessment) (England and Wales) Regulations 1999 (IR5.1). Like the Inspector, the Secretary of State considers that the ES complies with the above regulations and that sufficient information has been provided for him to assess the environmental impact of the application.
6. The Secretary of State notes that the Council's Planning Committee decided not to defend the fifth of its reasons for refusal (IR1.3-1.4); and he has determined the appeal on that basis. He is satisfied that no interests have thereby been prejudiced.

### **Matters arising after the Inquiry**

7. The Order revoking the Regional Strategy for the South West (RS) came into force on 20 May 2013. However, the Secretary of State notes that the Inspector informed the parties of this fact at the inquiry on 3 May 2013 (IR1.8) and, as no party indicated to the Inspector that they wished to amend or update their cases to reflect that, the Secretary of State is satisfied that the revocation of the RS does not raise 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.
8. The Secretary of State has had regard to the fact that on 28 August 2013 Government opened a new national planning practice guidance web-based resource. However, given that the guidance is currently in test mode and for public comment, he has attributed it limited weight.

### **Policy considerations**

9. In deciding this appeal, 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. In this case, following the revocation of the RS (see paragraph 7 above), the development plan now consists of the saved policies of the Teignbridge District Local Plan 1989-2001 (LP) (IR4.2).
10. Other material considerations which the Secretary of State has taken into account include the National Planning Policy Framework (The Framework); Technical Guidance to the National Planning Policy Framework; The Planning System: General Principles; Circular 11/95: Use of Conditions in Planning Permission; and the Community Infrastructure Levy (CIL) Regulations 2010 as amended.

11. The Secretary of State has also had regard to the emerging Teignbridge Local Plan (eLP) (IR4.3-4.4). This is scheduled to be adopted in March 2014 but, as it is still going through the statutory processes and may be subject to change, it can be afforded only limited weight in this decision. The Secretary of State has also had regard to the 'neighbourhood plan' referred to by the Inspector at IR4.6-4.9. This was not prepared under the terms of the Localism Act, but was intended to provide a community-led input to the eLP. However, although it was not examined under the Localism Act's neighbourhood planning provisions, it was subject to independent scrutiny and the Examiner recommended that it should not proceed to referendum. The Secretary of State therefore gives it no weight in determining this case.

### **Main issues**

12. The Secretary of State agrees with the Inspector that the main considerations regarding this appeal are those identified at IR12.1.

### The Planning Policy context

13. The Secretary of State agrees with the Inspector (IR12.2) that the proposed development would fundamentally conflict with adopted LP policies aimed at restricting residential development on land such as the appeal site, which is outside any defined settlement limit, within a designated Area of Great Landscape Value and contains best and most versatile (BMV) agricultural land. However, like the Inspector, he has gone on to consider whether there are any material considerations to offset this conflict and, for the reasons given at 12.3-12.5, agrees with the Inspector's conclusion at 12.6 that, as indicated in paragraph 11 above, the eLP can be given limited weight.

14. The Secretary of State also agrees with the Inspector's consideration of the weight to be given to the Framework at IR12.7-12.14 and, in particular, her conclusion at IR12.14 that, in order to determine whether the LP policies relevant to the supply of housing should be considered out of date, it is necessary to establish whether the Council is able to demonstrate a five-year supply of deliverable housing sites.

### Housing requirement and supply

15. Having carefully considered the Inspector's discussion on the housing requirement (IR12.15-12.19), the Secretary of State agrees with the uncertainties identified by the Inspector and with her conclusion at IR12.19 that there is likely to be a five year housing requirement for Teignbridge of at least 4,662 dwellings (IR12.17).

16. The Secretary of State has also given careful consideration to the Inspector's discussion on housing supply (IR12.20-12.31) and, taking that into account, agrees with the Inspector's conclusion at IR12.32 that, as the Council has a supply of housing land sufficient to deliver 3,474 dwellings over the next five years, it is currently unable to demonstrate a five-year supply. In arriving at this conclusion, the Secretary of State also agrees with the Inspector's arguments at IR12.33-12.35 that, for the purposes of this appeal, the proposed eLP housing target for Dawlish carries very little weight in the context of the significant shortfall in housing provision across the District as a whole. Overall, therefore, the

Secretary of State agrees with the Inspector (IR12.36) that, in the light of paragraph 49 of the Framework, the relevant policies for the supply of housing in the LP should not be considered up-to-date and permission should be granted unless any adverse impacts would significantly and demonstrably outweigh the benefits. Then, like the Inspector (IR12.37), he has gone on to identify and weigh the benefits and adverse impacts of the appeal proposal.

#### Effect on the character and appearance of the area

17. For the reasons given at IR12.38-12.45, the Secretary of State agrees with the Inspector's conclusion at IR12.46 that, although the appeal site is located outside the settlement limit for Dawlish and the proposed scheme would harmfully alter the character and appearance of the area through the loss of rural landscape to urban development, it would not cause any far-reaching adverse change to the surrounding countryside.

#### Effect on the provision of employment land

18. The Secretary of State notes (IR12.47) that the appeal site is not allocated for employment use in the LP but that the western half of the appeal site is allocated for employment use in the eLP. However, having given careful consideration to the Inspector's discussion and reasoning at IR12.48-12.57, the Secretary of State agrees with her conclusion at IR12.57 that only limited weight should be attached to the possibility that permitting the currently proposed development might undermine the eLP strategy for the sustainable growth of Dawlish.

#### Loss of BMV agricultural land

19. For the reasons given at IR12.58-12.60, the Secretary of State agrees with the Inspector that, although the loss of part of the District's finite resource of BMV agricultural land would be an adverse impact of the appeal proposal, the extent of the harm would be lessened by the fact that the loss would be small in terms of overall proportions and has been countenanced as acceptable by the Council in the process of preparing its eLP.

#### Ecology

20. For the reasons given at IR12.61-12.66, including the fact (IR12.65) that the appellant's ecological adviser and Natural England were in agreement with the findings of the Council's screening assessment that the S106 Agreement and the proposed conditions would operate to ensure delivery of the proposed mitigation measures, the Secretary of State agrees with the Inspector's conclusion at IR12.67 that, while the appeal scheme could not be described as beneficial to the ecology of the area, the adverse impacts would be limited by the proposed mitigation measures.

#### Local involvement in the planning system

21. The Secretary of State agrees with the Inspector's reasoning at IR12.68-12.71, and with her conclusion at IR12.71 that, in the circumstances of this appeal proposal, action to address the housing shortfall should not be delayed to await adoption of the eLP and planning permission should be granted unless any

adverse effects of doing so would significantly and demonstrably outweigh the benefits.

### Conditions

22. The Secretary of State has considered the proposed conditions and the Inspector's comments at IR11.1-11.5. He is satisfied that the conditions proposed by the Inspector and set out at Annex A to this letter are reasonable, necessary and comply with the provisions of Circular 11/95.

### Obligation

23. The Secretary of State has considered the Section 106 Agreement submitted by the parties at the inquiry (IR1.7) and the Inspector's comments at IR10.1-10.15, IR12.64-12.65 and IR12.72-12.73. He agrees with the Inspector that, with the exception of the Employment Land Contribution (IR10.14-10.15), the contributions and obligations secured are 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; and can therefore be considered to be compliant with CIL Regulation 122. He also agrees with the Inspector that, as the other highway works at Starcross, Kenton and Exminster (referred to at IR12.73) were not considered necessary by the Highway Authority, the failure to provide a contribution towards them is not a factor which counts against the appeal scheme. However, he agrees with the Inspector that the employment contribution fails the requirements of CIL Regulation 122, and he therefore gives that no weight.

### The planning balance

24. For the reasons given at IR12.74-12.77, the Secretary of State agrees with the Inspector that the "presumption in favour of sustainable development" set out in the Framework applies and permitting the proposed development would take a positive step forward towards addressing the District's current shortfall in housing provision which would outweigh the harm caused in other respects.

### **Overall Conclusions**

25. Although the appeal proposal would be contrary to the out of date LP, the Council do not have a five year housing land supply so that, in accordance with the provisions of the Framework, full weight can no longer be given to the policies of that plan. Furthermore, although the appeal scheme would also conflict with policies in the eLP, that has not been subjected to independent examination and so is likely to be subject to change. The appeal scheme represents sustainable development which would make a significant contribution towards addressing the undersupply of housing, including affordable housing, in the District. Therefore, although it would cause some limited and localised harm to the character and appearance of the countryside, the Secretary of State is satisfied that this would not significantly and demonstrably outweigh the benefits of the appeal scheme when assessed against the policies of the Framework taken as a whole.

## **Formal Decision**

26. 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 for: housing (up to 350 dwellings); a multi-purpose community building; car parking; hard and soft landscaping and open space; a sustainable urban drainage system; and new vehicular, cycle and pedestrian routes and accesses together with all associated works at land to the south of Shutterton Lane, Dawlish, Devon, in accordance with application reference 12/02281/MAJ, dated 17 July 2012, subject to the conditions listed in Annex A to this letter.
27. 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.
28. 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**

29. A separate note is attached setting out the circumstances in which the validity of the Secretary of State's decision may be challenged by making an application to the High Court within six weeks from the date of this letter.
30. A copy of this letter has been sent to Teignbridge District Council. A notification letter has been sent to all other parties who asked to be informed of the decision.
31. This letter serves as the Secretary of State's statement under regulation 21(2) of the Town and Country (Environmental Impact Assessment) (England and Wales) Regulations 1999.

Yours faithfully

**Jean Nowak**

Authorised by Secretary of State to sign in that behalf

**Conditions**

- 1) The development hereby permitted shall be carried out in accordance with the following approved plans, in so far as those plans relate to matters not reserved for future determination: 3270-201 Rev C, 3270-202 Rev F, 3270-203 Rev C, 3270-204 Rev F, 3270-205 Rev C, 3270-206 Rev C, 3270-106 Rev A and 03764 TPP 07.06.12.
- 2) Prior to the submission of any applications for approval of details of the access, appearance, landscaping, layout, and scale, (hereinafter called "the reserved matters"), a Phasing Plan shall be submitted to and approved in writing by the local planning authority. Reserved matters applications for each of the phases identified in the approved Phasing Plan shall be submitted to and approved in writing by the local authority before any development in that particular phase begins, and the development shall be carried out as approved.
- 3) Application for approval of the reserved matters for the first phase of the development (as identified in the Phasing Plan approved under condition no. 2 above) shall be made to the local planning authority not later than two years from the date of this permission. Application for approval of the reserved matters for all other phases shall be made not later than five years from the date of this permission. The development hereby permitted shall begin either before the expiration of two years from the date of approval of the last of the reserved matters for the first phase, or before the expiration of five years from the date of this permission, whichever is the later.
- 4) No development shall take place until details of a site-wide drainage strategy, incorporating the principles of sustainable urban drainage systems, has been submitted to and approved in writing by the local planning authority. Thereafter, development shall only be carried out in accordance with the approved details.
- 5) No development shall take place until a Construction Method Statement has been submitted to, and approved in writing by, the local planning authority. The approved Statement shall be adhered to throughout each phase of the construction period. The Statement shall provide for:
  - i) the parking of vehicles of site operatives and visitors
  - ii) loading and unloading of plant and materials
  - iii) storage of plant and materials used in constructing the development
  - iv) the erection and maintenance of security hoarding including decorative displays and facilities for public viewing, where appropriate
  - v) wheel washing facilities
  - vi) measures to control the emission of dust and dirt during construction, including details of an air-quality monitoring scheme
  - vii) a scheme for recycling/disposing of waste resulting from demolition and construction works
  - viii) highway management procedures.

- 6) Before any phase of the development hereby permitted is commenced, details of the method, timing and duration of any piling shall be submitted to and approved in writing by the local planning authority. The development shall be carried out in accordance with the approved details.
- 7) The details to be submitted as part of the reserved matters applications for each of the phases identified in the Phasing Plan approved under condition no. 2 above shall include
  - details of estate roads, cycle ways, footways, footpaths, verges, junctions, street lighting, retaining walls, service routes, surface water outfall, road maintenance / vehicle overhang margins, embankments, visibility splays, accesses, car parking and street furniture;
  - details of foul and surface water drainage for that phase, in accordance with the site-wide drainage strategy approved under condition no. 4 above. Details shall include design calculations and percolation tests for surface water management proposals, copies of any necessary discharge consents and construction consents, arrangements for ongoing maintenance and management, and details of surface water drainage adoption agreements;
  - an updated Travel Plan, relevant to that particular phase;
  - full details of existing ground levels, proposed ground levels and all slab and finished floor levels in that phase; and
  - a detailed management plan for landscape and ecology, open space, landscaping and habitat creation, identifying full details of features for breeding birds; together with a maintenance plan, and a timetable for its delivery and ongoing management.
- 8) There shall be no burning of waste on site during the construction period.
- 9) No part of the development hereby permitted shall be occupied until foul sewer improvement works have been completed such that the local planning authority has confirmed in writing, on the advice of the relevant statutory undertaker, that there is adequate public foul sewer capacity for the development.





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# Report to the Secretary of State for Communities and Local Government

by Jessica Graham BA(Hons) PgDipL

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

Date: 24 June 2013

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TOWN AND COUNTRY PLANNING ACT 1990

**TEIGNBRIDGE DISTRICT COUNCIL**

APPEAL MADE BY

**SHUTTERTON PARK LIMITED**

Inquiry opened on 9 April 2013

Land to the south of Shutterton Lane, Dawlish, Devon

File Ref: APP/P1133/A/12/2188938

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**File Ref: APP/P1133/A/122188938**

**Land to the south of Shutterton Lane, Dawlish, Devon**

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant outline planning permission.
- The appeal is made by Shutterton Park Limited against the decision of Teignbridge District Council.
- The application Ref 12/02281/MAJ, dated 17 July 2012, was refused by notice dated 30 November 2012.
- The development proposed is housing (up to 350 dwellings); a multi-purpose community building; car parking; hard and soft landscaping and open space; a sustainable urban drainage system; and new vehicular, cycle and pedestrian routes and accesses together with all associated works.

**Summary of Recommendation: That the appeal be allowed, subject to conditions set out in Appendix C**

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## 1. Procedural matters

*References in round brackets are to documents (listed in Appendix B), while references in square brackets are to paragraphs within this report.*

- 1.1 The inquiry sat on 9, 10 and 11 April 2013. It resumed briefly on 16 April, but due to the illness of a witness, adjourned until 3 May 2013, when it sat for a final day. I made an unaccompanied pre-inquiry visit to the area on 8 April, an accompanied site visit on 12 April, and further unaccompanied visits to the area and its surrounding highway network on 17 April and 2 May.
- 1.2 The application was submitted in outline, with details of scale, layout, appearance, access and landscaping reserved for future consideration.
- 1.3 The Council's notice dated 30 November 2012 (APP 15) set out 6 reasons for its refusal to grant planning permission, which referred to (1) the site not being allocated for residential development; (2) the location of the site outside the Dawlish settlement boundary and within countryside designated an Area of Great Landscape Value (AGLV); (3) the unacceptable loss of land allocated for employment use; (4) the ability of the Council to demonstrate a five year supply of housing land plus a 20% buffer, such that no overriding need for the residential development of this site arose; (5) the loss of the natural break between the town of Dawlish and Dawlish Warren and (6) the loss of Best and Most Versatile (BMV) agricultural land.
- 1.4 The Council's Planning Committee decided, at its meeting on 14 January 2013, not to defend the fifth of these reasons (INQ 15, 1.1.5).
- 1.5 By letter dated 16 January 2013, the SoS directed that he would determine this appeal himself. The reason given for that direction was that "the appeal involves a proposal for residential development of over 150 units or a site of over 5 hectares, 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 communities".
- 1.6 At the inquiry, the Council clarified its position that the landscape harm caused by the proposed development would be limited to the appeal site itself, would not extend to the wider area, and would not warrant a refusal to grant planning permission. The appellant clarified its position that it did not seek to argue the proposal would have any positive benefit in landscape terms. On that basis, both parties agreed not to call their respective landscape witnesses.
- 1.7 An executed S.106 Agreement (INQ 29) was submitted at the inquiry. I discuss the content and implications of that Agreement at section 12 below.
- 1.8 On 24 April 2013 an Order was laid in Parliament, to come into force on 20 May 2013, revoking the Regional Strategy for the South West (RSSW) and the saved policies of the Devon Structure Plan (DSP). When the inquiry resumed on 3 May 2013 I advised the parties that this meant by the time the SoS came to determine this appeal, the RSSW and DSP would no longer form part of the Development Plan for the area.
- 1.9 Before the inquiry closed, the appellant applied for an award of costs against the Council. That application is the subject of a separate report.

## **2. The site and surroundings**

- 2.1 Dawlish is the third largest town in the district of Teignbridge, with a population of approximately 13,800. The appeal site is some 13.46 hectares of land to the south of Shutterton Lane, located approximately 1.5 miles (by road) from the edge of the primary shopping area of Dawlish town centre. According to the adopted Local Plan (LP), the site lies outside the settlement boundary of Dawlish and within an AGLV.
- 2.2 The appeal site is predominantly pasture land and divides roughly into a western parcel and an eastern parcel, separated by a belt of woodland running north-south through the centre of the site. Some 7.1 ha of the appeal site is classified as Grade 1 agricultural land, and 3.7 ha as Grade 2.
- 2.3 To the east of the appeal site lies existing residential development, while beyond Shutterton Lane to the north is agricultural land, farmed largely for arable crops. To the south of the eastern parcel lie a number of holiday parks, and to the south of the western parcel is a Sainsbury's supermarket, with associated parking and a petrol station. To the rear of the supermarket is an area of land with planning permission for employment uses, and beyond Sainsbury's to the south is the existing Shutterton Industrial Estate.
- 2.4 Alongside the western boundary of the appeal site runs the Exeter Road (A379), from which an access road serves the supermarket, and then continues to the southern boundary of the appeal site. Bus stops on this road provide services to Exeter, Newton Abbot, Starcross and Dawlish.

## **3. The proposal**

- 3.1 The proposal seeks outline planning permission for up to 350 dwellings. Details of scale, layout, appearance, access and landscaping are reserved for future determination, and so the details shown in the submitted masterplan are for illustrative purposes only. However, the parameter plans submitted with the application indicate that the dwellings would be distributed between the eastern and western parcels of land, with the central wooded belt retained as open space.
- 3.2 The existing supermarket access road would provide the only vehicular access to the development, but there would be pedestrian-only access points from Shutterton Lane. 30% of the dwellings would be delivered as affordable housing, and a site for the construction of a multi-purpose community building would be provided. The development would incorporate some 4.9ha of open space, including woodland and scrub.
- 3.3 A full description of the scheme is given in the Design and Access Statement submitted with the application (APP 16).

## **4. Planning policy and guidance**

### *The Development Plan*

- 4.1 As of 20 May 2013 [1.8], the statutory Development Plan for the area consists solely of the 'saved' policies of the Teignbridge District Local Plan 1989-2001 ("the TLP").

- 4.2 The TLP was adopted in October 1996. In 2007 the SoS issued a saving direction which prevented most of the policies within this Local Plan from expiring in accordance with the Planning and Compulsory Purchase Act (PCPA) 2004. Thus, while the period that the saved policies were originally intended to cover has now expired, they will remain an extant component of the Development Plan until they are replaced by the adoption of a new Local Plan.

#### *The emerging Local Plan*

- 4.3 The Council is in the process of producing a new Local Plan to cover the period 2013 to 2033. This started life as a 'Core Strategy', in line with then extant national planning policy guidance which has subsequently been superseded. A *Core Strategy: Preferred Options* document was published for consultation in January 2012. After considering the consultation responses, the Council published a *Draft Submission Teignbridge Local Plan* ("the Draft eLP") in September 2012.
- 4.4 The Draft eLP was reviewed by the Council's Overview and Scrutiny Committee on 4 September 2012, which recommended a number of changes. These changes were reviewed and approved by the Full Council on 21 September 2012, and a *Submission Version Teignbridge Local Plan* "the eLP" was then published in November 2012, to allow formal representations to be made in advance of its submission to the SoS by the target date of June 2013. The Council confirmed at the inquiry that it now expects to adopt its new Local Plan in March 2014 [6.6].

#### *National planning guidance*

- 4.5 The National Planning Policy Framework (NPPF), published by the government in March 2012, provides the national policy guidance for this appeal. Also of relevance is the government publication *The Planning System: General Principles*.

#### *The Dawlish Parish Neighbourhood Plan*

- 4.6 While not part of the Development Plan, the Dawlish Parish Neighbourhood Plan ("DPNP"), and its history, is of relevance since it forms part of the context for this appeal.
- 4.7 As one of the 17 communities chosen by the government in 2011 to be Neighbourhood Plan "front-runners", Dawlish prepared its Neighbourhood Plan in advance of the adoption of the Neighbourhood Planning (General) Regulations 2012. As its Examiner noted, it is therefore unsurprising that it departed from the strict requirements of those Regulations, and of the Localism Act 2012. The DPNP was not proposed as a formal Neighbourhood Plan, and the Council made it clear that it would not be adopted as part of the Development Plan or as an SPD. Rather, it was envisaged as a non-statutory, informal community planning document that would help to inform the future planning of Dawlish through the (then) emerging Core Strategy (CD13, p1238).
- 4.8 The DPNP was submitted for examination in March 2012. The purpose of the Examination Hearings held in April 2012 was to determine whether, among other things, the DPNP was in general conformity with the strategic policies contained in the Development Plan for the area, and was positively prepared,

being based on a strategy which sought to meet objectively assessed development and infrastructure requirements (CD13, p1238).

- 4.9 The Examiner's Report included the key finding that because of its timing in relation to the production of strategic policies, it was not possible to demonstrate that the DPNP's provision for housing growth was based on an objective assessment of housing requirements, a key flaw which could not be remedied until the eLP was settled. The Examiner also found that the DPNP was neither positively prepared nor justified, and went on to recommend that it should not proceed to a referendum (CD13, pp1234-5).

## **5. Environmental Statement**

- 5.1 The application was accompanied by an Environmental Statement (APP 15, APP 17) made in accordance with the Town and Country Planning (Environmental Impact Assessment) (England and Wales) Regulations 1999 ("the EIA Regulations"). The ES includes a non-technical summary (APP 15). It covers all the matters normally associated with large-scale housing development, includes additional site-specific matters and sets out mitigation proposals. At the inquiry I heard further evidence on the characteristics of the site, local infrastructure, the impact on biodiversity and its habitats and the extent to which these could be mitigated, the provision of Suitable Alternative Natural Green Spaces (SANGS), and the relationship of the proposed development to the wider area. I am satisfied that all of this represents the necessary environmental information for the purposes of Regulation 3 of the EIA Regulations, and I have taken this information into account in making my recommendations.

## **6. The case for the Council**

The following paragraphs summarise the Council's case, which is set out more fully in its opening and closing submissions (INQ 10 and INQ 35)

### *Introduction*

- 6.1 The appeal must be determined in accordance with the Development Plan, unless material considerations indicate otherwise. In that regard the NPPF is a significant material consideration, but it is only one material consideration.
- 6.2 In relation to the extant Development Plan, the appeal site is outside the settlement boundary of Dawlish and in countryside where policies of strong restraint apply (SOCG 2.1.1, 6.2.4). Those policies of restraint are consistent with the NPPF, and retain full force. In addition, the site lies within the locally designated AGLV and accordingly receives further policy protection found in Policies ENV1 and ENV3 of the TLP and Policy S22 of the eLP. The proposal does not positively enhance the area. Further, the site contains significant amounts of BMV agricultural land, which is accorded strong policy protection by Policy CO14 of the DSP and Policy P1 of the TLP. There is no overriding need for the development that would outweigh the need to protect this finite resource.
- 6.3 It is important to recognise at the outset that the Council's refusal to grant planning permission was not bereft of officer support. The Officer's report to committee shows that the Service Manager – Spatial Planning supported at the time what later became the first four reasons for refusal (CD 18, p.1371, 5.20). It

did not fall to him to make the final recommendation in respect of the application, but under cross examination at this inquiry he was clear that if it had, he would have recommended refusal.

*First reason for refusal: conflict with the emerging Local Plan*

- 6.4 As a result of a decision made by full Council, following the recommendation of both the Overview and Scrutiny Committee (SoCG 6.3.3) and the Executive, Policy DA1 of the submission version of the emerging Local Plan allocates the western parcel of the appeal site for 3ha of employment use. It excludes the eastern parcel, which would remain designated as countryside (SoCG 6.2.3). The development would also be contrary to Policy EN2A of the eLP, and eLP Policy S22, which continues the policy of strict control over development in the countryside. The appeal scheme, if allowed, would negate the one allocation of employment land contained in the eLP.
- 6.5 It is common ground that the emerging Local Plan can be given weight (SoCG 5.2.6). The Council contends that the amount of weight it can be given is significant, in the light of the guidance set out in paragraph 216 of the NPPF.
- 6.6 Paragraph 216 deals firstly with the stage of preparation. The eLP is now at a well-advanced stage, having progressed through important stages since January 2012, when the appellant recognised that the Plan was already at an advanced stage and should command significant weight (APP 16, DAS p.30). The Plan is likely to be adopted by March 2014, which is less than a year away. It has been the subject of substantial local debate and, in compliance with the NPPF, takes on board local priorities. The RSSW and the remaining DSP policies will be revoked on 20 May 2013. The written ministerial statement supporting the revocation refers to the abolition “reinforce[ing] the importance of Councils’ Local Plans produced with the involvement of local communities, as the keystone of the planning system...” and describes the remaining DSP policies as “outdated” (INQ 24).
- 6.7 The guidance in paragraph 216 of the NPPF refers secondly to the extent to which there are unresolved objections. Of the witnesses before this inquiry it is Mr Thornley, because of his role and experience, who is best placed to carry out an assessment of the weight to be given to the relevant unresolved objections to the emerging Local Plan. His evidence is that, insofar as matters can be tested at this stage, the objections should not carry any real weight. Of particular note is that:
- the appellant is the only objector seeking allocation of the appeal site for housing. Others, including the Town Council, support the policies as they appear (LPA 1, 6.11). The appellant’s case is simply one of special pleading, unsupported by disinterested other parties;
  - representations as to whether DA1 should be retained as a 3ha employment site have been mixed, but that policy has support from a wide range of sources, including those identified below [6.14]. No other sites have been put forward as replacements (LPA 1, 6.23). This allocation is necessary in order to achieve the fundamental rebalancing aims of the eLP, in which the Council has identified the best area in which to make the necessary allocation;

- the appellant's objection to the continuation of the AGLV designation ignores the fact that the site is already designated as AGLV in the TLP, and its description of the land as "isolated" is simply not borne out by the facts. The eastern parcel forms part of a wider agricultural landscape to which it is closely linked in functional and visual terms (LPA 1, 6.14);
  - there have been no representations objecting to the overall approach to countryside development; and
  - while in his comments on the Recommendations from the Overview and Scrutiny Committee (CD 27) Mr Thornley raised some concerns in relation to eLP Policies DA1 and DA2, he made it clear in his evidence that these concerns were not such as would render the eLP unsound.
- 6.8 The third and final strand of the guidance in paragraph 216 of the NPPF concerns the degree of consistency of policies in the eLP with those of the NPPF itself. The Council maintains that its emerging Policies are entirely consistent with the NPPF, in particular with the drive for economic development.
- 6.9 That conclusion applies to eLP Policy S22. The words of Policy S22 are consistent with the idea of enhanced protection for countryside locations, and to the extent that the policy is not identical to the text of the NPPF, it furthers local plan making in a way that accords with the statutory provisions relating to the Development Plan. To approach this issue any other way would be to erroneously accord primary status to the NPPF (which is only a material consideration) over the statutory plan-led process.
- 6.10 Once it is recognised that the correct approach is to give significant weight to the eLP, then the conflict with emerging policy is clear. In relation to Policy S22 there is clear conflict, and the only objection to this policy is the special pleading of the appellant. In relation to Policy DA1 there is clear conflict, and again the only objection seeking housing on the site is the special pleading of the appellant. In relation to Policy EN2A there is clear conflict because the proposal fails, in the terms of that policy, "to...enhance" the area's landscape.

*Second reason for refusal: conflict with the extant Development Plan*

- 6.11 The proposal is in clear conflict with the Development Plan. The appeal site is designated countryside and AGLV. Policy ENV1 of the TLP applies strict control to development in (amongst other protected areas) the AGLV, requiring the promotion of positive enhancement to ensure the long term protection of such areas. Policy H7 of the TLP applies strict control to development outside settlement boundaries, prohibiting it unless it falls within certain exceptions that do not apply here. Those policies are consistent with the NPPF and therefore should continue to be afforded their full weight (LPA 1, 6.50-6.53).
- 6.12 The appeal site is visible from the A379, a key route serving Dawlish, and from Shutterton Lane. The proposed development would amount to an obvious encroachment of the urban area upon the AGLV and protected countryside, causing fundamental change to the site itself.
- 6.13 Accordingly, the proposal is in clear tension with the extant Development Plan and permission should be refused unless material considerations indicate otherwise.



*Third reason for refusal: the proposed development would undermine the employment strategy in the extant and emerging Development Plan*

6.14 This reason for refusal derives support from the following sources:

(1) The allocation contained in emerging Policy DA1

- 6.15 Ensuring the appropriate balance of employment and housing land use is a key strategic element of the eLP (LPA 1, 6.33). It is not a new problem for the area: it is why DSP Policy ST5 promotes a high degree of self-containment. It reflects a policy position taken in the extant Development Plan documents. The introductory chapter of the TLP sets out the key strategic issues, and states that amongst those designed to ensure that communities are better as a result of implementing the plan, the first is "reducing out-commuting and providing significantly greater local job opportunities" (CD4 p364, 1.7).
- 6.16 The introductory chapter goes on to state that development will therefore be managed to "*increase* the self-sufficiency of the district as a whole and the settlements within it; guide development to the most sustainable locations, *improving the balance* of housing, employment, facilities and other uses within towns... provide enough jobs for the working age population...(and)...provide for development at the town(s) of... *Dawlish*... reflecting their individual needs, *locally generated visions* and sustainability requirements" (emphasis supplied) (CD4 p367, 1.17).
- 6.17 The appellant did not object to the principle of an employment allocation within Dawlish, but rather supported such an approach; consistent with its obvious potential benefits to the community, and in accordance with the NPPF. That approach is also supported by Dawlish Town Council.

(2) The Roger Tym & Partners (RT&P) Report (2010)

- 6.18 This report contains the most up-to-date review of employment land. RT&P had no particular axe to grind when compiling the report, which was commissioned to be part of the evidence base informing the Local Development Framework to 2031 (CD12 p1063, 3). The report recognised that Dawlish was identified as one of only three priority settlements, and required strategic action and the management of a regeneration programme for its community (CD 12 p1081, 2.31). It identified the lack of readily available land for business development as a major constraint in delivering prosperity, and its further provision in Dawlish as a key action (CD12 p1083, 2.44). It noted that the Dawlish Business Park is in a popular location for local businesses that want good access to the main Torquay/Exeter road (CD12 p1203).

(3) The Examiner's report on the Neighbourhood Plan

- 6.19 It is clear that the Examiner considered the appeal site suitable for employment development. He spoke of the identified requirement of 3ha of employment land, and noted it had been the subject of allocation as early as the Preferred Options stage (CD13 p1242, 21). He noted that both the conflicting approaches before him contained valid planning arguments, as the backdrop to his recommendation that "consideration" be given to increasing the allocation of housing on the appeal site to that shown in the Preferred Options report, "including 3ha of employment land" (CD13 p1242, 22 and p1265, 3.16).

6.20 The Examiner expressly accepted as “well founded” the “proposals contained within the DPNP for the allocation of employment land to the east of the A379 following the development of the Sainsbury’s food store” (CD13 p1273, 5.18). He came to that conclusion having reflected on the scepticism about the ability of the Neighbourhood Plan to deliver jobs, and apparently partly in answer to (1) the acceptance of Dawlish’s poor competitive position relative to the urban centres of Exeter, Newton Abbot and Torbay and (2) the poor condition of the existing industrial estate.

(4) Officer advice to the Council

6.21 Mr Thornley’s advice to the Council was set out in the Committee Report on the application that is now the subject of this appeal, and was fully consistent with the three earlier sources of support set out here above (CD18/1371/5.20).

(5) The evidence of Mr Thornley

6.22 The town of Dawlish is specifically recognised as a priority area within the Employment Land Review, and redressing the current imbalance between jobs and homes requires an allocation of land for employment use (CD12 p1089, 2.31). Mr Thornley confirmed in evidence his view that the appeal site was the best site in Dawlish for such an allocation. There is no real evidence to the contrary. Mr Lloyd for the appellant did not seek to suggest that there were any other preferable employment sites within Dawlish.

6.23 Mr Thornley set out the clear reasons why the appeal site was the best area for an employment allocation. Its advantages include (a) the use of the key access road into Dawlish, namely the A379; (b) the existing access to the site via the Sainsbury’s roundabout; (c) the greenfield nature of the site; (d) the fact that it is close to existing services, with (e) no known abnormal costs to development; and (f) the proposal would build upon the existing cluster of economic uses in the immediate area, creating a significant economic hub (LPA1, 6.29-6.33). Whether or not the hub would be “significant” was the only point with which Mr Lloyd disagreed.

6.24 Mr Thornley could see no reason to suppose that employment development on the site would not be viable. His evidence is that the site is not necessary to meet objectively identified housing need, but is necessary to meet objectively assessed employment need.

(6) The absence of any particular criticism of the ability to use the site in the evidence given by Mr Lloyd for the appellant

6.25 Mr Lloyd’s evidence simply reinforces why an allocation for employment land is required. On the assumption that he is correct about weak demand in Dawlish compared to other main towns in Teignbridge, then in order to achieve the necessary rebalancing, the market requires precisely the kind of proactive support and direction that an allocation helps to provide. It is perhaps noteworthy that Mr Lloyd was more than once careful to qualify the fact that his evidence only dealt with the issue from a market demand perspective.

6.26 Mr Lloyd did not deny that in policy terms, there is a substantial rebalancing exercise to be undertaken in Dawlish. His analysis indicates that the location of the appeal site is the best available in Dawlish; he does not advance any detailed case to attempt to demonstrate that an employment use would not be

viable; and he was not realistically able to say what financing options might be available over the medium to long term of the Plan timetable to 2033 (APP1, 5).

- 6.27 The allocation is proposed to be supported by the use of funding because the Council has recognised that the current market for economic development is difficult (LPA1 6.38 and App 3). The making of an allocation is in line with the spirit of NPPF guidance about firstly, following the plan-led process and secondly, creating sustainable communities. It is entirely in line with local aspirations for more local employment. Moreover, the proposed allocation is a key element of the urban extension contained in eLP Policies DA1 and DA2. In Mr Thornley's view, the fact that the proposed allocation was key to the balance of the area helped to overcome the objection to the loss of BMV agricultural land; he made it clear that he would be much more concerned about placing such weight on the provision of housing land (in xx).
- 6.28 Mr Thornley did not shrink from the fact that permitting this appeal would therefore lead to an extremely risky approach in terms of ensuring that an employment allocation was provided in Dawlish by the eLP, and he considered that any such change would be significantly more difficult in terms of its implementation. He said he would currently be unable to resist planning applications for housing on proposed allocation site DA2, because the eLP allocates it primarily for housing. He correctly regarded potential reliance on this current appeal as a "flimsy" reason for refusing any such applications. The result would be a risk of no employment allocation being made, which would leave the plan in a "very difficult position in terms of the balance within Dawlish". He made it clear that the Council is very keen to see the emerging Local Plan adopted within a short timeframe. His view was that the progress made on the emerging Local Plan, and the likelihood of planning applications on DA2 being approved, meant that the emerging Local Plan had "almost shut [the] door" on an employment allocation within DA2 (in xx).
- 6.29 All of that evidence is also relevant to the weight to be accorded to eLP Policy DA1 in connection with the first reason for refusal.

*Fourth reason for refusal: the Council has a sufficient supply of housing*

- 6.30 The Council has a five-year supply of housing. On the appellant's calculations it is not necessary to include any of the allocations made in the eLP to reach that result, once it is recognised that the SHMA measure of demand should be preferred to the old DSP data. The updated version of Table 4.3 provided by Mr Bowden for the appellant gives 5.02 years on that basis (INQ 14). Mr Bowden for the appellant expressly accepted (in xx) that on his evidence, if the SHMA 2012 was used the Council had a five-year housing land supply.

Housing demand

- 6.31 The SHMA is up to date, having been issued in May 2012 (CD9 pp991-992). Mr Bowden accepted the SHMA would be a key component of the evidence base required to develop and support a robust policy framework. Importantly the appellant accepted the methodology employed in two earlier iterations of the SHMA (2007 and 2010). Mr Bowden confirmed that the methodology used in the 2012 assessment was the same as the methodology the appellant accepted, and noted that it was a standard and established methodology. He did not advance any detailed critique of the SHMA 2012 figures or seriously

debate the correctness of the SHMA conclusions that “huge changes” had occurred in the economy and housing market of the UK, which had “major implications” for the housing market of Teignbridge (CD9 p1001, 24).

- 6.32 Despite preferring it to the SHMA, Mr Bowden did not know what data set formed the base for the DSP. However, he was bound to accept that data is now significantly old, in the order of 10 years (in xx). He also accepted that the (then) imminent abolition of the DSP meant the weight that could be attached to its figures was substantially reduced. Later, giving evidence for the appellant, Mr Tunnell said in re-examination that the weight to be attached to the DSP was “very limited”. That observation must apply equally to the question of housing numbers established by that Plan. The correctness of substantially reducing the weight attached to the DSP figures is significantly reinforced by the government’s decision to revoke the remaining DSP policies as from 20 May 2013 specifically on the basis that they are outdated (INQ 24).
- 6.33 Mr Bowden’s written evidence was significantly wrong in a number of respects. Firstly, he gave the impression that adopting the SHMA figures would leave out of account any residual deficit that had built up before its introduction. But that is not right; paragraph 62 of the SHMA confirms in terms that it takes into account the historical demand (CD9 p1011, 62). When cross examined about this Mr Bowden said he simply “had not looked into the detail to see whether it is dealt with”. It follows that the third row of his Table 4.3 (INQ 14) has no utility.
- 6.34 The SHMA was written with the provisions of the NPPF in mind (CD9 p1015, 77). That is another of its advantages. Paragraph 159 of the NPPF reinforces the purpose of the SHMA in providing Councils with a clear understanding of the up-to-date housing needs in their area. Mr Bowden did not suggest the SHMA failed to comply with paragraph 159 in any material way. He attempted to criticise the SHMA assessment as limited to five years, but that was a doomed attack because the SHMA covers the five-year period this inquiry is concerned with, and will review the need on a five-yearly basis with the assistance of updated figures (CD4 p373, 2.12).
- 6.35 That is the basis on which the Council has proceeded. The eLP adopts the SHMA 2012 analysis without alteration and thereby incorporates an objectively assessed level of need, in compliance with the NPPF.
- 6.36 In those circumstances, the need to prefer the objective and up-to-date measure of housing need contained in the SHMA 2012, to the old and soon-to-be-revoked DSP, is clear.

#### Housing supply

- 6.37 The second error in Mr Bowden’s approach was that he appeared to adopt as principles the ideas that a calculation of the five year land supply could not include (1) sites without planning permission and (2) sites within a SHLAA, whether or not they were later allocated (APP7 p17, 4.39-4.40). Both of those “principles” are wrong; as Mr Bowden ultimately conceded (in xx), the true test is contained in footnote 11 to paragraph 47 of the NPPF.
- 6.38 Mr Bowden’s third error was the application of far too high a threshold when assessing whether a site had a “realistic prospect”, in the terms of footnote 11, of contributing to the five-year housing land supply. He used the terms

“concrete” (twice) (INQ 6) and “categoric” (in xx) in relation to the standard of evidence required. He also said that a statement by the developer of what was “likely” to happen did not provide evidence, when plainly it does (INQ 6). That approach, together with the errors identified above, led him to significantly understate the likely contribution from allocated sites and SHLAA sites. Mr Bowden accepted in cross examination that if something was “likely” to happen, that met the test of a “realistic prospect”.

- 6.39 It is clear that both the analysis of a site in the SHLAA, and the allocation of such a site, are capable of being material to its deliverability. The Council’s evidence is that a number of sites, including this appeal site, have come forward for development in advance of the dates set out in the SHLAA. The sites identified total 1,128 dwellings (LPA 1, 6.85), and this confirms that the Council has taken proactive and substantial steps to strengthen further the supply of housing through granting planning permission on sites proposed to be allocated for housing in the eLP. That approach also serves to illustrate the Council’s commitment to meeting the objectively identified needs in its area.
- 6.40 It is true that the SHLAA has not been formally updated since 2009, but
- it remains the most up-to-date and detailed evidence base available to this inquiry;
  - three years have passed since those sites which were identified as being in the 6-10 years category were given that description;
  - the 6-10 years category was imposed in 10 of the sites simply due to the absence of planning permission and/or a developer at that stage;
  - Mr Bowden accepted in cross examination that the references to achievability in the SHLAA must be to PPS3 achievability (i.e. a reasonable prospect that housing would be delivered on the site within five years) (INQ 27);
  - as part of the eLP Preferred Options work, the SHLAA panel was reconvened to consider the allocations as a whole, and confirmed their achievability (LPA1, 6.81). The affordable housing provisions have been significantly reduced, from 50% to the measures now found in the emerging Local Plan, since the initial SHLAA assessments of the sites (LPA1, 6.81);
  - the likely dates of commencement and delivery were based on a site by site analysis, taking into account the uncertain economic conditions (LPA1, 6.82). Mr Bowden accepted (in xx) that the SHLAA panel’s approach in 2009 was cautious in large part due to the state of the market;
  - the relevant sites have now been allocated in the eLP, which is a factor capable of commanding significant weight in the light of (a) the considerations in respect of paragraph 216 of the NPPF discussed above [6.5–6.8], (b) the fact that the Council has recently been boosting its supply of housing by reference to applications that have been made on land allocated in the eLP, (c) the obvious impact allocation has in terms of generating developer interest, which in turn will lead to more planning applications being made on such land, and (d) the window of opportunity provided to potential developers of sites currently allocated in the eLP, in relation to any sites that may be the subject of objection between now and the final adoption of the emerging Plan; and

- by contrast, the appellant has not sought to discuss the proposed allocations on a case by case basis, preferring largely to rest on the unsound principle that neither SHLAA sites nor allocated sites were capable of being counted toward the 5 year housing land supply.
- 6.41 Making allowance for the sites proposed for allocation, which the Council has put forward as making a contribution within 5 years, the Council can demonstrate a 5 year housing land supply whichever measure of demand is chosen. If the SHMA is chosen, then it is only necessary to rely upon about 10% of the sites selectively chosen from the list of allocations. Using the appellant's updated Table 4.3 (INQ 16) for these purposes, including the selected allocations, leads to a housing land supply of between 5.51 years (based on the DSP figures) and 6.91 years (based on the SHMA figures). Excluding the emerging allocations entirely leads to a housing land supply of between 4.01 years (based on the DSP) and 5.02 years (based on the SHMA).
- 6.42 In relation to affordable housing, the eLP strikes the right balance between provision and viability. This site would provide affordable housing only at the level currently required by policy. Sites will continue to come forward with the appropriate levels of affordable housing provision, and so the provision of affordable housing should not be accorded significant weight in this case.
- 6.43 In any event, when assessing any under-provision in relation to the 5 year housing land supply and deciding what weight to accord to the NPPF paragraphs dealing with boosting the supply of housing, the decision-maker is entitled to take into account (a) the positive steps recently taken in relation to sites that have been granted permission, amounting to 1,128 units [6.39], (b) the comparatively advanced stage of the eLP and consequently the limited further amount of time before its adoption, and (c) on any view, the modest level of under-provision.
- 6.44 There are no material considerations of sufficient weight to displace the core principle of following the plan-led approach in this case.

*Sixth reason for refusal: loss of BMV agricultural land*

- 6.45 BMV agricultural land is in short supply. The DSP Agricultural Land Classification map (INQ 12) shows that is particularly so for Grade 1 land (LPA1, 6.92). There is a clear policy conflict both with DSP Policy CO14 and TLP Policy P1, in that applying these policies requires the appellant to demonstrate overriding need for the development. It is not possible to meet that high threshold in light of the points made above about 5 year housing land supply [6.30-6.43], and the proximity of the eLP to adoption.
- 6.46 Choices about BMV agricultural land, like choices about AGLV land, are best made through the plan-led process and there is no sufficient reason to displace that core principle in this case. It is only by that approach that the guidance in paragraph 112 of the NPPF can be fully met, with the asset of BMV agricultural land being considered across the Council's area as a whole.
- 6.47 The extant policies are consistent with the NPPF. Permission for development on BMV agricultural land will only be granted outside the plan-led process if an overriding case can be made. It is only in such circumstances that the normal requirement imposed by paragraph 112, to seek to use areas of poorer quality

land, can be set to one side. No attempt has been made to show that there are no options available to use land of a lower environmental quality (LPA1, 6.97). It is plain that the loss of over 7ha of Grade 1 land and nearly 4ha of Grade 2 land is significant in terms of paragraph 112.

### *Conclusion*

- 6.48 The proposal is clearly in tension with the Development Plan. Accordingly it should be refused unless material considerations indicate otherwise. In fact the most pressing material considerations provide further support for the Council's position, and militate against a grant of planning permission. The proposal would be directly contrary to eLP policy, which is entitled to significant weight; it would undermine part of the key strategy in the eLP in relation to the rebalancing of employment and housing in Dawlish (which has been recognised as a key planning need well before the eLP); and it would result in the development of BMV agricultural land, without adequate justification for that development.
- 6.49 The provision of housing is, in reality, the only material consideration to weigh in the scales. But the Council has demonstrated either that it has 5 years housing land supply, or that any deficit is now modest, as a result of recent proactive steps taken to significantly boost the supply. The eLP will ensure that affordable housing continues to be brought forward at viable rates. Thus, that material consideration is not of sufficient weight to overcome the Development Plan conflict and the various material considerations pointing towards refusal.

## **7. The case for Shutterton Park Limited**

The following paragraphs summarise the appellant's case, which is set out more fully in its opening and closing submissions (INQ 9 and INQ 36)

### *Introduction*

- 7.1 The site lies outside, but adjacent to, the 1996 adopted TLP settlement boundary of Dawlish. There is no argument that the Council must accommodate development needs beyond the boundaries in the TLP. Dawlish is a settlement recognised as being suitable for, and in need of, housing development. The appeal site has been recognised as a suitable location for development since at least 2010 (APP 11 Appx 1).
- 7.2 The TLP is recognised to be out of date. It provided for development needs for the period 1989-2001 (CD2 p67, 1.1): we are now in 2013. It is in the course of being replaced by the eLP, which reached its proposed submission version in November 2012. This contains a Policy DA1 proposing to allocate the western half of the appeal site for 3ha of employment land (CD4, 472), and at Policy S17 a reference to 'physical separation between Dawlish and Dawlish Warren' (CD4, p386). These policies differ from their equivalents in the draft submission version of the eLP (September 2012), which at DA1 proposed the whole appeal site to be allocated for at least 300 houses and made no mention of a 'gap' between Dawlish and Dawlish Warren (CD5, p617).
- 7.3 The eLP is not yet submitted to examination and the proposed Policies DA1 and S17 (among others) are subject to strong objection. Chief amongst the concerns raised is the absence of any evidential justification for the changes to

DA1 and S17 between the two versions of the eLP. The ostensible reason for that change rests on an assertion that there is a 'gap' between Dawlish and Dawlish Warren. That proposition has never had an evidential basis and is now expressly abandoned by the Council.

*The Council's reasons for refusal*

- 7.4 Officers recommended that planning permission be granted for the current proposal (CD18). Regrettably, members chose to overturn that strong recommendation and refuse the scheme for 6 reasons.
- 7.5 The first reason for refusal (conflict with emerging housing policy) relies on giving determinative weight to eLP policies which are under challenge and without evidential support. Similarly, its third reason for refusal (conflict with emerging employment policy) relies on giving determinative weight to an emerging employment allocation which is under challenge and without evidential support. Regardless of the history of its formulation, the draft employment allocation is unjustified by virtue of need or demand (APP 1).
- 7.6 The second reason for refusal (conflict with adopted policy) relies on giving determinative weight to a document which is time-expired and agreed to be out of date. That conclusion is not dependent on any view taken regarding the 5 year land supply: it is evident from the document itself, and reflected in a recent appeal decision at Stone Cross<sup>1</sup> (INQ 16, 5-15).
- 7.7 The fourth reason for refusal (5 year supply) is not actually a reason for refusal at all. Under the NPPF, one does not refuse sustainable development because one has a 5 year supply of housing land. It is, in any event, wrong as the Council can only claim a 5 year supply by deploying an impermissible sleight of hand and relying on sites in the eLP and SHLAA.
- 7.8 The fifth reason for refusal (the alleged 'gap' between Dawlish and Dawlish Warren) has, despite reflecting the pivotal assertion behind so much in this case, been abandoned. The 'gap point' is unsupportable as a proposition, and no longer forms any part of the Council's case. What the Council has not recognised, however, is the effect that concession has on its first and third reasons for refusal. The eLP Policy DA1 underpinning those reasons for refusal expressly loses its ostensible rationale, and they are left with none at all.
- 7.9 So by way of allegation of harm, or "adverse impacts" in the terminology of paragraph 14 of the NPPF, all that is left is the sixth reason for refusal (agricultural land quality). This is a make-weight objection, concerning a factor which played no part in the members' decision to oppose this site for housing development.
- 7.10 This appeal is a case, therefore, which throws into sharp focus the need for the SoS to be able to approve much-needed housing, in a location acknowledged to be sustainable, where the underpinning rationale for members' objection is now admitted by the Council itself to be simply unsupportable.

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<sup>1</sup> Ref: APP/C1435/A/12/2183344



*The Development Plan and weight*

- 7.11 For the purposes of determining this appeal the adopted Development Plan is simply the TLP (CD2), covering the period 1989-2001.
- 7.12 In the light of paragraphs 214 and 215 of the NPPF, very little if any weight can be given to the levels of development provided for in the TLP, nor in the boundaries for development intended to accommodate that growth. Consequently, while the principles of protecting the 'countryside' from urban development and designating AGLVs are not objectionable under the NPPF, the Proposals map adopted in 1996 is out of date as to where those policies apply. It is notable in this regard that not only countryside but also AGLV boundaries have altered through the plan process in order to accommodate development needs (APP 4), and the Council does not raise AGLV impact as justification for withholding residential permission on the appeal site.
- 7.13 For the purposes of paragraph 14 of the NPPF, therefore, the adopted Development Plan is "out of date" as regards the settlement and AGLV boundaries. It is "silent" as to the location of development needs post 2001, and post 2013. As a result, paragraph 14 is engaged irrespective of whether or not the Council can demonstrate a 5 year supply.
- 7.14 The emerging Development Plan is represented by the November 2012 proposed submission version of the Teignbridge Local Plan 2013-2033 (CD4). It is not a Development Plan document and there are significant objections to it, both as to amount and location of development. It has yet to be submitted to the SoS and the objections to its policies have yet to be examined.
- 7.15 As such, in accordance with paragraph 216 of the NPPF, the eLP is not able to be given significant weight. While it has progressed in the process since the September 2012 draft submission version, it has regressed in terms of its content by virtue of incorporating the 'gap' point and the consequential alterations to Policies DA1 and DA2 which are unsupportable. It has thus attracted profound objections, and is in conflict with the soundness test at paragraph 182 of the NPPF. Given the abandonment in this forum of the 'gap' point, it is not rational to conclude that any material weight can be given to a set of policies founded on an assertion now repudiated by the Council.
- 7.16 In terms of paragraph 14 of the NPPF, the eLP is "absent" as a piece of the Development Plan. It will remain so until adopted. In the context of this appeal, given the terms of paragraph 216 of the NPPF, it cannot be given anything more than limited weight. So unshakeably founded are the objections to the current versions of DA1 and S17 that it is difficult to see how it is rational to give those policies any weight.

*Section 38(6), the NPPF and the correct approach*

- 7.17 S 38(6) PCPA 2004 sets the legal framework for decisions such as this. The proposed development, by virtue of being outside the settlement boundary and within the AGLV, is contrary to the restrictive Policies H7, ENV1 and ENV3 of the adopted Local Plan (CD2 pp92,73,74). It is necessary then to turn to "other material considerations". The first of these is the weight to be given to the adopted Development Plan. For the reasons set out above, the

development boundary in the TLP is out of date, and the Council does not urge refusal on the basis of landscape harm to the AGLV.

- 7.18 Up-to-date planning policy is, rather, to be found in the SoS's national policy, contained in the NPPF. Where the Development Plan is "absent, silent or relevant policies are out of date", paragraph 14 of the NPPF requires that decision-takers should grant permission, unless any adverse impacts of doing so would significantly and demonstrably outweigh the benefits.
- 7.19 In this case, the adopted settlement boundary is out of date, the Development Plan is silent as to the quantum or location of development needs post 2001, and the eLP is, by definition, "absent". The appeal site is recognised to be a sustainable location. The question of whether or not planning permission should be granted therefore falls to be determined by assessing whether the adverse impacts significantly and demonstrably outweigh the benefits.
- 7.20 The proposed development accords with each of the three dimensions of sustainable development set out in paragraph 7 of the NPPF. Providing market and affordable housing in a sustainable location amounts to a social as well as an economic and environmental good, to which the planning system and the policies of the NPPF attach significant positive weight. Against that, all that is left by way of alleged harm is the loss of agricultural land, and the displacement of a proposed employment allocation which is itself unjustified in policy and evidence. These two factors by no means demonstrably and significantly outweigh the benefits of bringing forward housing development at this sustainable location.

*Inspector's first main issue: housing land supply*

- 7.21 At all stages up to and including the committee report on this application, the Council accepted and acknowledged that it could not demonstrate a 5 year housing land supply (CD18 p1361, 3.90). It must therefore come as a surprise to the Council's Service Manager for Development Control, as well as to the appellants, to have Mr Thornley opine on behalf of the Council that it does have a 5 year supply.
- 7.22 The only way in which he could achieve such an about-turn was to claim that sites yet to be allocated in the eLP may be counted as part of the deliverable supply. That proposition may stem from Mr Thornley's view that whether something is allocated in the statutory Development Plan, or is merely proposed to be allocated in an emerging Development Plan, is simply a "semantic" difference (in xx). Consequently, Mr Thornley accepted that if he is not able to rely on all of the emerging sites, he cannot claim a 5 year supply. In fact, the situation is worse for the Council even than that.
- 7.23 Assessment of housing land supply requires consideration of both requirement and supply. Here both are in issue.
- 7.24 As to requirement, the last adopted component of the Development Plan with a strategic requirement is the DSP. This is about to be revoked. It gave an annual requirement of 500pa for the period 2001-2016. Against this requirement, the Council's delivery has to date (2011/2012) fallen short by 1,385 units (APP 7 table 4.1). That persistent failure to deliver triggers the requirement for a 20% buffer as per paragraph 47 of the NPPF, but the

shortfall must also still be accounted for as an unfulfilled need. A range of appeal decisions identify that this should be done using the “Sedgefield” approach of addressing the backlog within the first 5 years of the Plan.

- 7.25 The Council would prefer to use the requirement figure of 620 dpa, set out in the eLP, for the period 2013-2033. However, that figure is subject to unresolved objections and, following paragraph 216 of the NPPF, cannot be relied upon (APP 7, 4.24). One of those objections is that this figure “wipes the slate clean” of the shortfall from the DSP. The Council relies on the 2007 SHMA, as updated in May 2012, but that document demonstrates that the Council has never met its own assessments of housing need (CD9 p999, 14) and, in addition, admits that the modelling assumptions spread the backlog of need over 10 years (CD9 p1011, 63). This does not accord with the Sedgefield approach, but it is also not the DSP backlog, of which no mention is made in the SHMA methodology. Lastly, it is apparent that the draft annual total requirement of 620 pa is woefully short of the correct figure, given that it is agreed the annual requirement for affordable units alone is 1,032 (SOCG 6.7.9).
- 7.26 Taking account of the shortfall that the Council’s failure to deliver housing has created gives a requirement of 4,662 units (including the 20% buffer); the Council contends for 3,720 units on its eLP figure basis (INQ 14, table 4.3).
- 7.27 Turning to supply, the appellant’s updated table 4.2 submitted at the inquiry (INQ 6) gives the respective parties’ positions prior to cross examination. The row headed “sites in the emerging Local Plan” records the Council’s reliance on 1,404 units. That represents, in effect, its claimed surplus against its own lower (and erroneous) requirement figure. Without these, the Council cannot claim a 5 year supply, whether or not the preferred requirement is drawn from the Council’s assessment or the appellant’s. In addition, the Council claims a further 107 units from sites in the TLP which have not yet come forward.
- 7.28 By virtue of paragraphs 47 and 49 of the NPPF, it is the task of the Council to “demonstrate” that it has a 5 year supply of specific, deliverable sites. The Council must bring the evidence that it has such a supply.
- 7.29 Footnote 11 to paragraph 47 identifies what is meant by “deliverable”. This sets up a presumption of deliverability where there is an extant planning permission. That is a presumption which can be dislodged by appropriate evidence. In such cases, it would be for the appellant to bring the evidence to rebut that presumption. Where, however, the planning permission has expired, the presumption of deliverability no longer applies. The starting point must be, therefore, that they are not deliverable. That reasoning applies with even more force to sites where planning permission has not yet been granted.
- 7.30 The Inspector who determined an appeal in Chapel-en-le-Frith<sup>2</sup> (APP7, 4.39) was therefore correct to start with the assumption that sites without planning permission should not be in the 5 year supply. It may be that this does not rule them out categorically, if compelling evidence were available as to why development could be expected from them. However, it would be for the Council to demonstrate why, notwithstanding the absence of a planning permission, reliance could be placed on their delivery. In respect of the 107

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<sup>2</sup> Ref: APP/H1033/A/11/2159038

units from the 17 year-old allocations in the TLP which have not yet come forward, the Council has not sought to do so for 5 of the 6 sites, and has proffered little meaning evidence for the sixth (APP 10.1).

- 7.31 Where a site not only has no planning permission, but is not yet even an allocation, there is an even further remove from the ability to rely on deliverability. For such sites the Council has not yet even accepted the principle of suitability, let alone established viability. Such sites are, in policy terms, no better off than an unallocated site, and cannot be claimed as a source of deliverable sites in order to defeat the grant of permission on a site of equal planning status. Consequently, the appellant is right simply to dismiss these as a source of supply.
- 7.32 Even if such sites were admissible, the Council would need to present evidence that they were deliverable. It only attempted to do so in respect of 3 of the sites (APP 10.1). The Council needs all 1,404 units from these unallocated sites if it is to make out its case. It has not even begun that exercise. Ironically, the reliance it sought to place on the SHLAA actually served only to undermine its case further: in each case the SHLAA panel concluded that the site would not deliver within years 1-5, partly because the sites were not allocated (APP 10.4 and 10.5).
- 7.33 The inevitable conclusion is that the Council cannot rely on these sites which have no permission. As such, even on its best case on other supply factors, and even assuming it has correctly assessed requirement, the Council cannot demonstrate a 5 year supply of deliverable housing sites.
- 7.34 The situation as regards affordable housing is parlous, but at least here the figures are agreed (SoCG 6.7.6-11). The total need for affordable housing to 2017 is 5,159 dwellings, or 1,031 dpa. Against this, eLP Policy WE2 promises only 1,568 units. Thus, the Council is planning to fail to meet its objectively judged affordable housing need. It is setting its Local Plan on a course contrary to paragraphs 47 and 14 of the NPPF.
- 7.35 As such, the provision of housing at the appeal site, in what is recognised to be a sustainable location for housing, and incorporating 105 units of affordable housing, is a positive factor that weighs very significantly in favour of granting planning permission. In Dawlish, the existing need is 398 and the anticipated need for the next 5 years is a further 129; that is 527 units. Given that the eLP only identifies 900 new dwellings at Dawlish, with only a proportion of those to be affordable, the Council is, again, planning not to meet its objectively judged needs for affordable housing. The provision of 105 units at the appeal site is a very material contribution to alleviating the chronic and continuing undersupply of affordable housing in Dawlish.
- 7.36 In conclusion, both as to general requirement and specifically the affordable needs of the District and settlement, the Council is failing in its requirements against the NPPF and significant weight should be given to the delivery of housing through the appeal proposal. This is a major benefit in the positive side of the scale in the paragraph 14 balancing exercise.

*Inspector's second main issue: effect on the character and appearance of the area*

- 7.37 The appellant and the Council are agreed that landscape and visual impact do not warrant the refusal of planning permission for this scheme. As such, when

striking the balance required by paragraph 14 of the NPPF, it is not contended that alone or taken together with any other harm, the landscape and visual impact significantly and demonstrably outweigh the benefits of granting permission for the proposed development.

- 7.38 This is important because it is not denied that there would be a change to the character of the fields themselves. But such a change is the inevitable effect of putting housing on what is currently undeveloped land. To object on that basis would be to object to all greenfield, edge of settlement proposals, whereas it is common ground not only that such development is acceptable, it is necessary.
- 7.39 The Council is right to concede that there is no landscape or visual objection to housing development on the appeal site. It accords with the SEA of the submission version of the Local Plan (CD24 p1478), and the Landscape Officer's consultation response on the planning application (CD18 p1356, 3.59-60 and p1362, 3.93), as well as her more recent e-mail (INQ 7).

*Inspector's third main issue: effect on the provision of employment land*

- 7.40 There are two linked, but distinct, aspects to this. The first is what weight can be given to the eLP Policy DA1 as an employment allocation, and the second is what weight can be given to it in any event in the light of the appellant's uncontroverted evidence on employment need, demand and existing supply.
- 7.41 On the first, the origin of an employment allocation on eLP DA1 lies in the ashes of the DPNP. At the time of the DPNP, the Development Plan had reached the Preferred Options Core Strategy stage of January 2012. This proposed 350 new homes on 10ha at Shutterton Lane as Policy DA1, and 3ha of employment land and 460 new homes at Secmaton Lane as Policy DA2 (CD6 pp 765 and 766).
- 7.42 On the basis of the alleged 'gap' between Dawlish and Dawlish Warren, housing development on site DA1 was resisted through the DPNP process. The emerging DA1 housing provision was, therefore, 'flipped' on to DA2 (Secmaton Lane), and DA2's 3ha of employment land was flipped on to the western half of DA1 (the eastern half being left undeveloped).
- 7.43 The independent Examiner of the DPNP was, unsurprisingly, baffled by this. He noted the "main reason" for opposing housing on DA1 was the unsupported and insupportable 'gap' point (CD13 p1263, 3.10), now abandoned by the Council. But the reason for the proposed employment allocation was also, he found, the DPNP Steering Group's "desire to avoid major housing south of Shutterton Lane" (CD13 p1264, 3.13). The DPNP was found unsound and effectively aborted.
- 7.44 In the Draft eLP of September 2012, proposed Policy DA1 remained 10ha of housing development at Shutterton Lane, and proposed Policy DA2 maintained its 3ha of employment along with the housing at Secmaton Lane (CD5, pp 617-618). Against the recommendations of the Council's Service Manager for Spatial Planning and Delivery (CD27, p1501 and CD28, pp1507-1508), Members once more promoted the 'gap' point and flipped the 3ha of employment land, in line with the now defunct DPNP, through the Overview and Scrutiny Committee, the Executive and Full Council and into the Proposed Submission version of the eLP. The recommendations of the Overview and Scrutiny Committee show the

'gap' point in operation and give no rationale for the flipping of the employment land (CD26 p1490).

- 7.45 The 'gap' point, always a bad one, has now been repudiated by the Council. No evidence has been led by the Council to justify the 'flipping' of employment and housing allocations. Not surprisingly, the change of policy is the subject of strong objection by the appellant and, in the light of paragraph 216 of the NPPF, no significant weight can be given to the currently proposed employment allocation of eLP Policy DA1.
- 7.46 If that were not enough to refute the Council's third reason for refusal, the evidence of actual employment need, market demand and existing supply would do so on its own. Thus, even if eLP Policy DA1 were to be taken to have full, statutory Development Plan weight, the appellant's uncontroverted evidence would mean that there would be no justification for refusing this scheme by virtue of that allocation.
- 7.47 First, Mr Lloyd's evidence for the appellant showed that on the Council's own evidence base, 3ha of employment land at Dawlish is significantly in excess of any identified need for employment land. The Council relies on the RT&P Employment Land Review (CD12), but this would only support a figure of 16.5ha across the District rather than the 70ha proposed, leading not to 3ha at Dawlish, but 1.13ha (APP1 3.5-3.8; CD12 p1143, 5.53).
- 7.48 Secondly, Mr Lloyd establishes that there is limited market demand for additional land or employment space in Dawlish, such that this 3ha allocation would simply not be taken up. Indeed, by proposing through the eLP an over-supply of employment land allocations in better located situations, the Council is making it less, not more, likely that an allocation at Dawlish would be implemented (APP1, sections 4 and 5). Dawlish already has high vacancy rates on its existing employment sites (CD12, Appx at p1203).
- 7.49 Thirdly, Mr Lloyd demonstrated that there is already sufficient land and business space in Dawlish. There is available land of 1.8ha, compared with the 'need' of 1.13ha; a 0.67ha existing surplus (APP1, 4.2; CD12, p 1157 table 6.4). In addition, there is available, existing developed space at Dawlish equivalent to a further 0.5ha (APP1, para 4.4).
- 7.50 Against this, the repeated refrain of the Council's desire to "re-balance housing and jobs in Dawlish" rings hollow. There is no need to allocate more land or space in Dawlish to achieve this.
- 7.51 Mr Thornley suggested to the Inspector that he would not take account of a decision by the SoS to allow the current appeal when considering the status of eLP Policy DA2. That cannot be right. Mr Thornley himself originally proposed DA2 for 3ha of employment, and did not support the 'flipping' of this allocation on to DA1. It is not rational now to claim that DA1 is the only, or best, location for the allocation of employment land. If the SoS grants permission for the appeal site to be developed for housing, the obvious solution (if 3ha is still to be allocated) is to flip it back to where it was first placed, on DA2. The SEAs for DA1 show it performing better as a housing site than as an employment site (CD24 p 1478; CD23 p1462), so DA1's allocation in preference to DA2 is on the face of it irrational and unsound anyway.

7.52 If it turns out that 3ha of employment land cannot be secured on DA2, it is far more likely that is because, as Mr Loyd's evidence conclusively shows, no additional allocation is justified at Dawlish. The Council's own documents show that need is limited to 1.13ha, and there is ample existing land and business space to accommodate that, even assuming a demand.

*Other matters*

7.53 Agricultural land quality formed no part of the consultation response from the Service Manager for Spatial Planning (INQ 13). It formed no part of the reason for de-allocating the appeal site for housing under eLP Policy DA1 (CD26 p 1490). It formed no part of the assessment of options under the SEA for the Draft eLP, nor the Proposed Submission version (CD24 p1478; CD23 p1462). It formed no part of the site selection process in the SHLAA or for the emerging allocations in the eLP. It was therefore neither a reason why the Council opposed this site, nor a reason why it ostensibly prefers other sites.

7.54 The policy on agricultural land value set out at paragraph 112 of the NPPF is a factor to be taken into account. The committee report, properly, does that (CD18 p1359). It notes that the District has a relatively high percentage of Grade 1 agricultural land totalling 1550ha, and that the loss of this site, representing just 0.43% of Grade 1 land in the District, is not significant. It also notes that the eLP proposes development on the western half of the appeal site in any event. On no basis could this factor justify a conclusion that the harm of granting permission would significantly and demonstrably outweigh the benefits, as required by paragraph 14 of the NPPF.

7.55 An objector to the scheme asserted that paragraph 119 of the NPPF is engaged, and so deprives the scheme of the presumption in favour of sustainable development contained in paragraph 14 [8.41]. That is misconceived. Paragraph 119 is engaged when an "appropriate assessment" under the Habitats Regulations is "required". By Regulation 61 of the Habitats Regulations, an appropriate assessment is only required if a plan or project is considered to be likely to have significant effects on a European protected site. Schemes such as this one, therefore, undergo a screening stage by the competent authority (here the Council) to consider whether or not the plan or project is likely to have such effect and hence whether an appropriate assessment is required. In so doing, mitigation measures are able, indeed, required, to be taken into account as part of the scheme.

7.56 That process was undertaken in this case. The result of the screening process was that, with the mitigation proposed, the likelihood of a significant effect could be excluded and no appropriate assessment was required (CD20). Paragraph 119 of the NPPF therefore does not bite.

7.57 The appellant and the Council agree that there is no unacceptable impact on the highways network either by reason of capacity, safety or in terms of accessibility. There is no objection from the Highway Authority (SoCG paras 2.10.1-10).

*Striking the paragraph 14 balance*

7.58 The injunction of paragraph 14 is that permission should be granted unless the adverse impacts of doing so significantly and demonstrably outweigh the benefits of the scheme.

- 7.59 The benefits of the scheme are manifest and of very great weight. The provision of housing in the context of a shortfall in both market and affordable housing, in a location and manner without landscape or visual objection, ecological, amenity or traffic objection is a combination of factors of significant weight. In addition, the scheme scores positively and strongly on each of the three dimensions of sustainable development set out in paragraph 7 of the NPPF: economic, social and environmental. It is a sustainable location for development, as acknowledged by the Council at all stages.
- 7.60 Against this, the harm that is alleged amounts to the loss of agricultural land and the denial of a draft employment site. As to the latter, no significant weight can be given to the draft employment allocation and there is uncontroverted evidence that there is neither need nor demand for it. As to the former, at no previous stage has it been suggested that this is a determining factor either for or against this scheme or any other housing proposal in the District.
- 7.61 The real reason behind Members' opposition to this site – in the DPNP, the Local Plan process and finally on the application – is to be found in the wholly spurious 'gap' point which manifested itself as the now defunct fifth reason for refusal. That, very properly, has been abandoned by the Council as unsupportable.
- 7.62 None of the other matters raised could remotely qualify as "significantly and demonstrably" outweighing the benefits of this extremely commendable scheme for much-needed housing, in a sustainable location on the edge of a settlement capable of, and in need of, additional housing growth.

## **8. The cases for interested parties**

Oral representations made in addition to those of the main parties are summarised below; where speakers made substantially the same points, these are not reiterated. Copies of the speakers' notes and supporting material provided to the inquiry are attached (INQ 17 – 22; TP 3).

### *Cllr A Connett*

- 8.1 This representation relates to the traffic the development, if approved, would generate on the A379 through Starcross and Kenton, where it would exacerbate an already difficult situation. At Exminster, there is already great difficulty leaving the village at the northern junction with the A379, and traffic queues in the morning rush, both to exit the village and to travel into Exeter either via Countess Wear or Marsh Barton. In addition, traffic on the A379 increases significantly in the summer with visitors on holiday and caravans booked into the holiday camps at Dawlish and Dawlish Warren.
- 8.2 DCC suggests that development in Dawlish proposed in the draft Local Plan will not generate significant additional traffic, and that the A379 is capable of carrying the additional traffic. It must therefore follow that only modest additional traffic will be generated in Exeter, but yet DCC has sought a financial contribution of £143,000 from this development toward outbound lane improvement for Countess Wear in Exeter. DCC has failed to properly and fully consider the impact that developments in Dawlish will have on the estuary communities, and has failed to secure developer contributions for



much-needed highway improvements in these villages. The communities of Starcross, Kenton and Exminster, and residents living along the A379, should not be forgotten or overlooked in the planning process.

- 8.3 If the appeal is to be allowed, adequate and appropriate financial provision should be made for highways and safety improvements in Starcross, Kenton and Exminster which, mindful of viability issues, could be achieved using the already agreed contribution towards highways.

*Cllr H Clemens*

- 8.4 Dawlish was one of 17 pioneering Parish and Town Councils awarded £20,000 from the government towards preparing a Neighbourhood Plan. About 25 members of the community assembled to prepare the plan, representing all walks of life; none were planners but all cared passionately for the town. They were assisted by 2 officers from the Council, who dedicated most of their time to it for well over 12 months.
- 8.5 Meetings were long and detailed, but members were happy to give their time as it was important for the town and parish, and was attracting attention far and wide. It was therefore very disappointing to hear, at the Public Examination of the Plan, the appellant's team virtually dismiss the work done as meaningless, because it was done without the benefit of an adopted District Local Plan.
- 8.6 The Neighbourhood Plan was found unsafe mainly on the grounds that it could not be completed without an adopted Local Plan that would have prescribed the housing numbers. The appellant's representative argued that there was no evidence to support the 900 homes being proposed, and that even 1600 would probably be too low. While the debate as to whether Teignbridge as a whole has a five year supply of housing land is a matter for the professionals, Dawlish has far in excess of a five year land supply for its own needs, probably well in excess of eight years, and there are at least three major developers now building in Dawlish.
- 8.7 Some have argued that disaggregation does not apply, but there is an appeal decision for a site in Tipton St John<sup>3</sup>, made on 13 January 2012, where the Inspector found the disaggregated position was relevant when considering the housing objectives and spatial vision for the district.
- 8.8 Teignbridge Councillors debated long and hard before agreeing to the reduced housing figure of 12,400 for the Local Plan. Strong arguments were put forward for an even lower number, as more recent housing needs surveys were suggesting. To allow this appeal would mean the numbers would rise to 12,750 and encourage more speculative applications to follow before we have an adopted Local Plan. As a result of the DPNP, after numerous public consultations a disproportionately high number of houses was accepted compared to any other parish in Teignbridge, please do not allow it to go even higher.
- 8.9 If "localism" meant that public opinion had the final say on new housing applications, then no houses would be built at all. The appellant's

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<sup>3</sup> Ref: APP/U1105/A/11/2156973

representative exploited the differences of opinion between Mr Thornley and Council members as to where the housing and employment land should be. But it is quite reasonable to have this difference of views. If localism means anything at all then this is localism working at its best; the local Council sets the housing and employment land requirements, and the local residents say where they would prefer it to be.

*Cllr J Petherick*

- 8.10 The Localism Act was intended to put into practice the government's intention to devolve more power to communities over development in their areas. Dawlish chose to participate in this process, but its efforts seem to have fallen on stony ground, and this has caused a great deal of disappointment.
- 8.11 The latest version of the draft Local Plan, approved by the full Council, does not include housing on the appeal site. Shutterton Lane is narrow, old, and home to an abundance of wildlife. There are five properties at its midpoint, some of them thatched, which would be adversely affected. The development would result in the loss of rural countryside within the AGLV, and the loss of habitat for many different species, including otters and cirl buntings.
- 8.12 Deer have been seen grazing in the wooded area to which there is no public right of access [INQ 20]. Part of this area would be dissected by a roadway linking the two areas of housing development, and there is no logic to its description as a wildlife corridor. There must be grave concerns about the impact this development would have on the existing wildlife. Families moving in to the new houses would be likely to have pets, such as cats and dogs, which would reduce the populations of small rodents and birds.
- 8.13 There is a need to think very hard before allowing the residential development of such an area. A large section of hedgerow will be removed, according to the appellant's own DAS, and this will have further adverse effects for wildlife. Emergency access to the development would supposedly be via Shutterton Lane, but this unclassified road is currently unsuitable for HGVs.

*Mr R Vickery*

- 8.14 A projection of housing completions in Dawlish parish, contained in the Council's evidence [LPA 2.4] shows that over the next five years an average of 72 dwellings per year will be delivered from existing developments on site, and approvals given but not yet started on site. The proposed 20 year housing target for Dawlish in the eLP is 900 dwellings, which is actually based on the rate of growth over the past 10 years. That was how the proposal came to be agreed in the meeting of the DPNP working group. This target of 45 yearly completions is easily exceeded by the supply over the next five years, so there is no immediate need to add to that supply.
- 8.15 Dawlish is to provide a larger proportion of the District's housing needs than Teignmouth in the Teignbridge Local Plan Submission Version, due to geographical limitations in that town. The 12% (of 620 for the District) allotted to Dawlish amounts to an average of 74 homes annually over the next five years. There is no supportable case for Teignbridge to locate any further disproportionate part of its housing needs in and around Dawlish. There are other applications, waiting on the adoption of the Local Plan, which will ensure

a supply of homes in the areas identified for sustainable housing development. The current proposal is therefore premature.

- 8.16 The inclusion of the appeal site in the January 2012 Core Strategy Preferred Options reflected the Council's invitation to landowners to offer sites for development, but does not reflect the existing Local Plan designation or the views of the public. Dawlish is constrained by tight boundaries on three sides, which lead to very few options for major growth. This appeal site is not sustainably connected to other residential areas and facilities, and so would generate numerous additional car journeys. By contrast the Secmaton Lane site is within easy walking distance of primary and secondary education and sports and leisure facilities, without crossing major traffic routes.
- 8.17 The relevance of the DPNP, prepared with the active encouragement of central government, is in the allocation of part of the appeal site for future employment uses, while housing growth is to the north west, across Secmaton Lane. This was not a casual decision; it was led by the preferred linking of housing across Secmaton Lane, and to avoid goods and service traffic criss-crossing the A379. It would also enable the construction of an internal road linking the appeal site to the existing industrial estate, and so relieve the main road of much service traffic. The loss of allocated land for employment uses undermines the strategy for sustainable growth and is unacceptable.
- 8.18 It is clear that the scale of the proposed development will make a major visual impact on the landscape at a point where the rural landscape starts to be an evident part of the hinterland. The outline design ideas show road layouts with little reference to topography, no solution to the proposal for an important focal building at the point where the development would have maximum impact on the point of arrival into the built-up part of Dawlish, and no evidence that the intention to provide landscaping and planting to soften the visual impact could actually be achieved. It is submitted that this proposal does not show the capacity to deliver the quality of layout and screening that it pretends.
- 8.19 The TLP identifies the appeal site as countryside and an AGLV. Just because the operating period of that Plan has expired, there is no cause to throw away the judgments that informed it. Approximately 57% of the appeal site is classified as Grade 1 Agricultural Land. While this would disappear in a full residential development, use of part of the land for an employment scheme could leave part of the higher quality land for market garden or other sensible uses.
- 8.20 The eastern part of the appeal site forms an identifiable buffer between the working and residential part of Dawlish, and the holiday zone of Dawlish Warren. Dawlish Warren was separately identified in the TLP, and there is a case for ensuring that it retains its seasonal holiday flavour. It is recommended that this appeal is refused in the interest of maintaining a rural margin to Dawlish that emphasises the natural landscape setting within the low rolling hills of the Lower Exe valley, in contrast to the steeper valleys falling from the ridges running off the Haldon Hills.
- 8.21 The proposal makes no provision for allotments to mitigate the urban character of high-density residential development.

8.22 The modest number of objections made to the proposal at application stage may well be explained by the sheer number of public consultations on planning matters that have taken place in the area in a short space of time. It is likely that the public have become over-consulted and confused by the various plans and their purposes. It is submitted that the eLP should be accepted as the correct reference point for housing developments in Dawlish 2013-2033.

*Ms V Mawhood*

- 8.23 The local action group DARE has been working over more than 10 years to encourage residents and electors to take part in various consultations and emerging Plans. In early 2011 Dawlish became one of the first places chosen to take part in a new planning process, and DARE was pleased to work with other representatives in preparing a new Neighbourhood Plan.
- 8.24 Publications indicated that the Neighbourhood Plan “will inform a new local Development Plan for Teignbridge for the next 20 years”, and the new system was presented as an opportunity for local people to play a part in planning the future of their community. To ignore this pilot scheme would surely have the potential to bring the new system into question.
- 8.25 At the same time as the Steering Group was working on the Neighbourhood Plan, it seems that the appellant’s representatives were in discussions with planning officers. Nevertheless the Steering Group, led and advised by planning officers, produced a compact and coherent Plan which amply provides for the anticipated growth of Dawlish.
- 8.26 It is important that the current proposal be viewed in conjunction with the proposals contained in the eLP. Rather than being against development, DARE supports the areas already identified for housing on the north-western side of the A379, as being more suitably located in terms of access to schools, sports and leisure facilities and green space. This currently proposed housing development on the eastern side of the A379 would have the disadvantage of being adjacent to an already designated employment area and industrial estate.
- 8.27 DARE supports the retention of the north-western parcel of the appeal site to allow for natural expansion of the established employment area of Dawlish. A link between the old and new areas could be put in place, with a logical system of entry and exit into the expanded estate, thus reducing interruption of the traffic flow on the A379. Development of the appeal site for housing would frustrate this potential employment use, and bring into question the sustainability of the housing already proposed on the north-western side, adjacent to Secmaton Lane.
- 8.28 There is some question as to whether employment opportunities have increased in proportion to development over the last 25 years. The loss of the appeal site for future potential employment development would surely go against the concept of sustainable development at the heart of the NPPF.
- 8.29 DARE believes that the housing needs of the present will be met within the eLP, and without the 350 homes that are the subject of this appeal. When a proposal was made to omit the phrase “at least” with regard to the 900 homes allocation for Dawlish, the planning officer recommended it be retained to

allow flexibility of numbers. It has been acknowledged that the 350 homes indicated in the appeal proposal could be absorbed into the identified sites on the north-western side of the A379 if necessary. It was acknowledged by Professor Crowe at the Examination in Public of the Devon Structure Plan, at which Dare was represented, that Dawlish is particularly constrained.

- 8.30 There would therefore appear to be no over-riding need for this appeal proposal to be approved. To do so would, in DARE's opinion, bring into question the planning process in general. Why produce a Neighbourhood Plan if it will not "inform" the Local Plan, and why produce an emerging Local Plan if developers can appear to drive a coach and horse through it?

*Mr D Seaton, on behalf of Devon Partnership NHS Trust and Devon Swan Holidays Ltd*

- 8.31 The eLP is at an advanced stage in its progress toward adoption, and in its current version has the support of the Full Council. The extensive consultation and large degree of support for the provisions of the Plan are factors that should be accorded some weight in the determination of this appeal. The Neighbourhood Plan is aligned with the strategic policies of the eLP and that Plan should be allowed to proceed to fruition, rather than be thwarted by a speculative attempt to 'rip value' from a site that is plainly available for development in principle.
- 8.32 In *South Northamptonshire District Council v Secretary of State for Communities and Local Government*<sup>4</sup>, the High Court quashed an Inspector's decision which was based on the NPPF without recognising the Development Plan's priority. Therefore, in this case, it is plain that the provisions of the Development Plan represent the starting point for determining the appeal.
- 8.33 The spatial strategy of the Plan plainly requires a balance of housing and employment to be provided at Dawlish, in a manner that should improve the self-sufficiency of the settlement. The Teignbridge Employment Land Review (ELR) identified that an under-provision of workplaces means the main district settlements experience high outflows of working residents (CD12 p3, 7). Evidence provided for an appeal at Milbury Farm<sup>5</sup> (TP3, Appx 3) showed that 47% of employed Dawlish residents worked within Dawlish, with the predominant outflow to Exeter (22%) and smaller, but statistically significant, outflows to Torbay, Newton Abbot and Teignmouth. This data confirms the conclusions of the ELR that Teignbridge's employment land objectives should focus on improving the balance of working residents to local jobs, thereby reducing net out-commuting.
- 8.34 There is a clear business node at the north-eastern tip of the town, recently expanded with the Sainsbury's store, planning permission for which also included business units. This new supply will aid the take up of employment land, which has slowed in recent years due to the lack of suitable new supply. Since we are now into a new Plan period, provision needs to be made for the period from 2001 onwards. Experience suggests that new employment units are often taken up quite quickly. The appellant appears to be arguing that

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<sup>4</sup> [2013] EWHC 11 (Admin)

<sup>5</sup> Ref: APP/P1133/A/08/2063604

there is no identified need for additional employment space, based on a critique of the ELR. The ELR considers the period 2006-2026 but fails to consider the period 2001-2006, so there is a 5 year growth period that has been missed in this analysis.

- 8.35 The ELR points out that nearly all the existing estates have a low vacancy rate (CD12 p3, 12). There can be little doubt that the appeal site is the best location for employment space in Dawlish. It fronts the A379 and is adjacent to Sainsbury's and Shutterton Business Park. It is not particularly constrained by nearby residential properties that might affect suitability for business use.
- 8.36 The appeal site's degree of separation from the settlement of Dawlish means that it is not a good location for housing or a community centre. It would be an isolated community. The appeal site is not walkable from the Gatehouse Primary School, due to the distance and the need to cross the A379.
- 8.37 The appellant appears to argue that the appeal site is available for residential development, but not for any other use. Land is either available for development, or it is not. No evidence has been presented to demonstrate that the appeal site is not viable for employment uses. The inclusion of Class A employment uses could cross-subsidise the delivery of Class B employment uses. The appeal site is serviced, and is not topographically challenging. The topography on the opposite side of the road (the DA2 proposed allocation) is more challenging, and it would be more costly to provide employment space on that side of the A379.
- 8.38 The appeal proposal is not only contrary to the existing spatial vision of the Development Plan but also that of the eLP. The guidance on prematurity set out in the NPPF is a material consideration in this case. Allowing this appeal would prejudice decisions about the location of development that are critical to the successful delivery of the overall spatial vision for Dawlish, and would be likely to lead to pressure to reduce the scale of the DA2 allocation by 350 units. This in turn could prejudice the delivery of crucial infrastructure for Dawlish. Key elements of the DA2 allocation, and important components of the infrastructure for Dawlish, are a new link road between Elm Grove Road and the A379; a community building that could be managed in conjunction with the primary school; and a healthcare element close to the A379 junction. It is important that the significant cost of the link road provision is spread over the residential allocation, otherwise its viability would be prejudiced.
- 8.39 In order to protect and enhance tourism Policy ENV6 of the Local Plan requires the retention of open land between settlements. The holiday area of Dawlish Warren is a separate entity from the urban area of Dawlish, and the purposes of Local Plan Policies HD3 and HD1 are to support the tourist industry and maintain the 'family holiday' character of the area. The proposed enclosure within an urban environment would have a detrimental impact on this character. The existing woodland is an important visual break between the A379 commercial road frontage and the Dawlish Warren holiday area. Residential development of the appeal site would obscure open views of the countryside to the north.
- 8.40 In terms of completions and stock of consents, housing supply at Dawlish is commensurate with its defined role in the Development Plan. Further, it is unlikely that the proposed scheme would deliver in full over the 5 year period;

no more than 138 of the proposed homes would be likely to be provided in that time. Such housing shortfall as exists in the District should not be met at Dawlish; to do so would represent a significant breach of the spatial vision of the Development Plan, and would thwart the emerging Local Plan.

- 8.41 Paragraph 14 of the NPPF is not engaged. This is because the proposed development requires an Appropriate Assessment and therefore, as set out at paragraph 119 of the NPPF, the presumption in favour of sustainable development does not apply. It is agreed between the Council and the appellant that the proposed development would have a detrimental impact upon the integrity of Natura 2000 sites, unless mitigated by the payment of a financial contribution toward the acquisition and management of new SANGS as part of the Dawlish Coastal Park. The proposed Coastal Park is a long way from delivery; the Council does not own the land, there is significant doubt as to whether it could be acquired within the necessary timetable, and so there can be no certainty that the proposed mitigation would be provided in time to offset the impacts associated with occupation of the proposed dwellings.
- 8.42 It is noteworthy that a similar matter falls to be considered by the High Court (in July) in respect of the judicial review of an Inspector's appeal decision at Sentry's Farm, Exminster<sup>6</sup>. The currently proposed development would be likely to have a significant detrimental effect upon the integrity of Dawlish Warren SAC, and therefore a decision to allow this appeal would be contrary to the provisions of the Conservation of Habitats and Species Regulations 2010.
- 8.43 There are also concerns about a number of the provisions contained in the S.106 Agreement. It is not clear how and why the financial contributions toward Habitat Mitigation, curlew buntings and SANGS would in fact be spent, and whether the mitigation would be effective. It is not clear what the "Air Quality Contribution" relates to, and while the "Employment Land Contribution" of up to £600,000 is said to be for the acquisition of employment sites in Dawlish, it is no good simply providing the money if no suitable sites can be found. The Agreement only sets land aside on the appeal site for the provision of a Community Building, which would in any event be a poor location for such a facility; it does not guarantee that the Community Building would ever be provided.

## **9. Written representations**

- 9.1 18 letters of objection to the proposed development, and 1 letter of support, were received by the Council at the application stage (collected in Folder TP 1). Further objections were received by the Planning Inspectorate at the appeal stage (collected in folder TP 2). Many of these written representations set out similar concerns to those subsequently articulated by those who spoke at the inquiry, as outlined above.
- 9.2 Other matters raised were the lack of capacity at local schools; the adverse impact of increased traffic flows on the local road network; planning permission recently granted for significant residential development at Dawlish; the desirability of developing brownfield sites before Greenfield sites; concerns about highway safety; and the potential for the proposed new dwellings to

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<sup>6</sup> Ref: APP/P1133/A/11/2158146

increase existing problems with sewer capacity. Sainsbury's was supportive of the proposal, as it considers its store adjacent to the appeal site well-placed to serve new residential communities in the area.

## **10. S.106 Agreement**

- 10.1 A S.106 Agreement (INO 29), executed by the appellant, the land owner, the Council and the County Council, was submitted and discussed at the Inquiry.
- 10.2 The Agreement secures the provision of 30% of the proposed new residences as Affordable Dwellings, and provides for their continued future affordability. The Council has confirmed that the terms of the Agreement meet its requirements in this regard, and the provision for affordable housing accords with LP Policy H9. The Agreement also provides for 1,037m<sup>2</sup> of land to be set aside within the development for a multi-purpose community building, and its marketing in accordance with a strategy to be agreed with the Council. In these respects I am satisfied that the provisions of the Agreement accord with the statutory tests, set out in Regulation 122 of the Community Infrastructure Levy (CIL) Regulations 2010, as being necessary, directly related to the development, and fairly and reasonably related to it in scale and kind.
- 10.3 The occupiers of the proposed new housing would increase demand upon a variety of existing local services and infrastructure. The Council has provided undisputed evidence to demonstrate that the requested financial contributions would be necessary to offset the additional pressure for indoor recreation facilities and health service facilities, and that the sums involved have been calculated by reference to the scale of the development here proposed. Accordingly I find that the Indoor Recreation Contribution and Health Contribution would accord with the statutory tests.
- 10.4 The Agreement also makes provision for a financial contribution toward the provision of a pedestrian/cycle link at the south west corner of the appeal site, to secure safe access to Exeter Road and the bus stop on the Sainsbury's access road; a series of payments relating to the costs of extending existing bus services into the appeal site for 3 years, starting from date of first occupation of a dwelling; a series of payments toward highway improvements at Countess Wear in Exeter, calculated on the basis of the increased vehicular movements through that area likely to arise as a result of the proposed new housing; payment toward the provision of street lighting along a 600m length of Secmaton Lane, being the route future occupiers of the proposed development would likely walk to school; payments toward the provision of a shared-use footway on Dawlish Warren Road and dropped kerbs on the footways of Exeter Road, to address safety issues for pedestrians and cyclists; and, to meet LP policy aims of promoting sustainable modes of transport, payments toward the provision of secure cycle-parking facilities at Dawlish Railway station, and sustainable travel vouchers for future occupiers of the proposed dwellings. I am satisfied that all of these comply with the tests set out in CIL Regulation 122.
- 10.5 The Agreement contains a number of measures to mitigate the ecological impact of the proposed Development [12.61]. On the basis of evidence agreed between the appellant and the Council that the proposed development would reduce or remove the appeal site's capacity to provide cirl bunting breeding territory, a financial contribution toward the provision and management of



suitable off-site habitat, calculated by reference to figures provided by the RSPB, would be paid prior to commencement of the first phase of development.

- 10.6 In partnership with neighbouring Councils, Natural England and others, the Council has adopted a Joint Interim Approach (JIA) (INQ 33) toward determining housing and tourism developments that would, in the terms of the Conservation of Habitats and Species Regulations 2010, have a “likely significant effect” on the Exe Estuary SPA and Dawlish Warren SAC through impacts from recreational use. That adopted approach was to identify and cost the projects and management needed to avoid any significant adverse effects on the integrity of the SPA and SAC up until 2026, at which point a longer term strategy is to be put in place. That calculation, updated in 2011 to reflect more recent information, and detailed in the Council’s evidence (INQ 33) resulted in a requirement of a £350 contribution per dwelling for new residential development. The s.106 Agreement in this case makes provision for a financial contribution of £350 per dwelling, to be spent on mitigation measures, to the end of satisfying the Council that there would be no likely significant effect on the SPA and SAC.
- 10.7 In addition, the s.106 Agreement makes provision for financial contributions toward the acquisition, maintenance and management of SANGS, to mitigate the impact that recreational use by future occupiers of the proposed dwellings might otherwise have on the SPA and SAC. The total of the contributions would be calculated in accordance with the JIA. The Council has identified the Dawlish Coastal Park as its preferred site for the provision of SANGS, but since there is some doubt as to the timetable for its delivery [8.41], the s.106 Agreement contains provisions to ensure that the phasing of the development, and occupation of the dwellings, would be in step with the delivery of commensurate amounts of SANGS. As an alternative, if the Council were unable to acquire and provide its intended SANGS in time, the S.106 Agreement makes provision for the owner of the appeal site to provide SANGS on other land, with the prior approval of (and for eventual transfer to) the Council. The phasing and occupation of the development would again be linked to the delivery of commensurate amounts of SANGS.
- 10.8 I am satisfied that the Cirl Bunting Contribution, the Habitat Mitigation Contribution and the proposed measures concerning the provisions of SANGS all meet the requirements of CIL Regulation 122.
- 10.9 The Agreement makes provision for the payment of an “Air Quality Contribution”, on the basis that the proposed development would result in an increase of traffic flows through an Air Quality Management Area (AQMA), at Iddesleigh Terrace in Dawlish. The sum would be calculated by reference to the formula contained in the Council’s statutory Air Quality Action Plan, and would be put towards the cost of developing and implementing measures to mitigate the impact that additional car journeys would have on the Iddesleigh Terrace AQMA (INQ 30 & INQ 33). On that basis, I am satisfied that this contribution also meets the tests of CIL Regulation 122.
- 10.10 In addition, the Agreement makes provision for the payment of financial contributions toward the provision of local Primary School facilities, and the

provision of off-site employment land. The appellant does not accept the Council's argument that these two contributions are necessary.

- 10.11 As regards the Education Contribution, it is common ground that there is sufficient local capacity to provide school places for the 53 secondary-school age children likely to be among the future occupiers, and that there would also be 88 primary-school age children to be accommodated. There are two primary schools, Gatehouse School and Cockwood School, within the 1.5 miles from the appeal site recognised as "safe walking distance" by the County Council acting in its function as Local Education Authority; I do not share the appellant's view that this safe walking distance could reasonably be doubled to 3 miles to include Westcliff School. Using forecast figures based on the 2013-2014 academic year and methodology set out in its *Education Section 106 Infrastructure Approach* document, the County Council has estimated that these two primary schools would have capacity for an additional 64 children, necessitating a contribution of £2,840.38 for each new dwelling after the first 256 were occupied.
- 10.12 The appellant has used projections from the County Council's School Forecast Module, which takes account of projected demographic changes in the existing population, to calculate that Gatehouse School and Cockwood School would have capacity for 77 additional children in 2014/15. However, the terms of the S.106 Agreement rightly provide that the Education Contribution would not become payable until the phase of development in which number of dwellings occupied would exceed that for which primary school places were available (256 by the County Council's calculation, 308 by the appellant's figures). On the basis of the appellant's evidence that it would not expect the initial phases of the proposed development to be occupied until 2014/2015 (SoCG app 4), it seems unlikely that 256 of the new houses, still less 308, would be occupied within that period; the pressure for more primary school places may well arise after that period, in years for which no forecast data has been provided.
- 10.13 There can be no certainty of accuracy as to the predicted available school spaces, given that the calculations are based on forecasts and projections, and nor can there be any certainty as to the occupancy rates and dates of the proposed new dwellings. Taking all of this into account, the Education Contribution calculated by the County Council seems to me to be fair and reasonable; it is directly related to the proposed development, and necessary to make it acceptable in planning terms. I therefore find that it meets the requirements of CIL Regulation 122.
- 10.14 The "Employment Land Contribution" is a payment of a maximum of £600,000 toward the acquisition by the Council of 3ha of employment sites in or around Dawlish, based on independent valuation advice that the cost of acquiring such land would be £200,000 per hectare. For reasons set out below [12.48 – 12.58], I consider there are doubts as to whether the allocation of a further 3ha of employment land at Dawlish is needed, and that even if it were it could be accommodated on an alternative site. That being the case, the Employment Land Contribution cannot be demonstrated to be fairly, reasonably or directly related to the proposed development, or necessary to make it acceptable in planning terms. It therefore fails the requirements of CIL Regulation 122.

10.15 I conclude that the planning obligations contained in the S.106 Agreement, with the exception of the Employment Land Contribution, can be taken into account in determining this appeal.

## **11. Conditions**

- 11.1 The SoCG contains a list of agreed conditions (INQ 15, 9.1.1) and three further conditions about which agreement had not been reached (INQ 15, 7.9). All of these were discussed at the inquiry. As a result of those discussions, and having regard to the advice set out in Circular 11/95 *The Use of Conditions in Planning Permissions*, I have amended the construction or content of some of those conditions and amalgamated others. The list of conditions thus amended is attached as Appendix C to this report. I recommend that the conditions in this Appendix be imposed if the Secretary of State decides to allow the appeal and grant planning permission for the proposed development.
- 11.2 It is necessary to attach the now standard condition requiring compliance with the submitted plans, in so far as they relate to matters not reserved for future determination. The application was submitted in outline with matters of appearance, landscaping, layout, access and scale reserved for future determination, so it is also necessary to attach conditions setting out the timetable for submission and approval of these reserved matters. I accept that provision should be made for phasing of the development and consequently the submission of the reserved matters applications. I see no reason to depart from the main parties' agreed deadline of two years for reserved matters applications in respect of Phase 1, and as discussed at the inquiry, have also included a five-year deadline for the other phases.
- 11.3 A condition requiring the Council's approval of a site-wide drainage strategy prior to the commencement of any development is needed, to ensure that this mitigates ecological impacts in terms of surface water discharge attenuation and water quality, as well as addressing the findings of the Flood Risk Assessment and the requirements of the Environment Agency. To protect the living conditions of neighbouring residents, and minimise disruption to visitors, it is necessary to attach a condition requiring prior approval of a Construction Method Statement; rather than attach a separate condition concerning air-quality monitoring, I have included this as one of the matters to be addressed by the Statement. I have however adopted the Council's preferred approach of separate conditions dealing with piling and preventing the burning of waste, since the former may need to be addressed on a phase-by-phase basis, and the latter (amended slightly to specify the construction period only, as it may otherwise operate to prevent future householders from lighting legitimate bonfires) clearly meets the tests of enforceability and precision.
- 11.4 A number of the conditions agreed between the parties required the provision of further details which, while certainly necessary, should in my view be addressed at reserved matters stage, when they can be assessed in the light of the detailed layout and design features then put forward. These details include access routes within the development, street lighting and furniture, and car parking provision; surface and foul water drainage details for each particular phase, to accord with the site-wide drainage strategy; an updated Travel Plan relevant to each phase; ground, slab, and finished floor levels; and a management plan for ecology and biodiversity matters, including a timetable

for delivery and ongoing maintenance. I do not consider it appropriate, at this outline stage, to impose deadlines for the implementation or completion of any of these matters because conditions doing so can, if necessary, be attached to relevant approvals of reserved matter applications.

- 11.5 I have attached a condition concerning improvements to the foul sewer, to ensure that capacity is adequate to meet the needs of the development before any of the new dwellings are occupied. At the inquiry, subsequent to the execution of the S.106 Agreement, the Council and the appellant reached agreement that the disputed conditions concerning the completion of off-site highway works, and phasing of the development to be commensurate with the provision of SANGS, were no longer needed. I share that view; I consider these matters to be adequately addressed by the provisions of the S.106 Agreement [10.4; 10.7], such that no additional conditions are necessary.

## 12. Inspector's conclusions

12.1 At the start of the inquiry, I identified the three main issues in this appeal as (1) whether or not the Council can demonstrate a 5 year supply of housing, and the implications of that in local and national policy; (2) the effect of the proposals on the character and appearance of the area; and (3) the effect that granting planning permission for the current proposal would have on the provision of employment land. Before turning to these, it will be helpful to clarify the policy context.

### *The Planning Policy context*

12.2 The proposed development would fundamentally conflict with adopted Development Plan policies aimed at restricting residential development on land which, like the appeal site, lies outside any defined settlement limit, within a designated AGLV, and includes BMV agricultural land. Conflict with Development Plan policies is not, however, the end of the matter. Planning law<sup>7</sup> requires that applications for planning permission must be determined in accordance with the Development Plan, unless material considerations indicate otherwise. One such material consideration is the fact that the Council is in the process of producing a new Local Plan; another is the guidance set out in the NPPF.

### The emerging Local Plan

- 12.3 Paragraph 216 of the NPPF explains that weight may be given 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; and (3) the degree of consistency between relevant policies in the emerging Plan and those in the NPPF.
- 12.4 The eLP is likely to be adopted in March 2014 [6.6]. Having previously described an earlier version of the eLP as at an advanced stage and attracting significant weight [6.6], the appellant's evidence to the inquiry was that while the more recent version has progressed in terms of the process toward adoption, it has regressed in terms of its content [7.15]. That rather misses the point: the content will be scrutinised at the forthcoming Examination in Public, and it is not for me, or even the SoS, to pre-empt that part of the process. What is at issue for current purposes is, in the term used by the NPPF, the "stage of preparation" that the eLP has reached. I consider that having now attained the form in which it will be submitted for public examination, the eLP can rightly be described as having reached an advanced stage of preparation.
- 12.5 All of the policies relevant to this appeal are the subject of unresolved objections (LPA 1, appx 1). I note that some of these objections were made by the appellant, but they are not rendered immaterial or weightless simply by virtue of the appellant having a clear interest in whether or not the eLP allocates this particular site for employment or for housing [6.7]. Again, it is not for the decision-maker in this current appeal to pre-empt the Examination in Public by attempting to assess the merit of the various objections. That

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<sup>7</sup> S.38(6) of the PCPA 2004 and S.70(2) of the TCPA 1990

they remain unresolved, and that there is sufficient evidence to suggest they are not wholly spurious, is in my view enough to lessen the weight that may be given to the proposed Policies they concern.

- 12.6 In summary, the policies of the eLP carry some weight, the extent of which I shall address further in my consideration of their application to this proposal.

The NPPF

- 12.7 The NPPF sets out the government's national planning policies, and explains at paragraphs 2 and 12 that while it does not change the statutory status of the Development Plan as the starting point for decision making, it is a material consideration which must be taken into account in planning decisions.

- 12.8 Paragraph 14 of the NPPF then explains how the presumption in favour of sustainable development, which it describes as "a golden thread running through both plan-making and decision-taking", should operate. Its guidance concerning decision-taking covers situations where development proposals accord with the Development Plan (which, as set out above, is not the case here), and situations where the Development Plan is silent, absent or relevant policies are out-of-date.

- 12.9 For the purposes of the current appeal, the Development Plan consists solely of the TLP [4.1]; since this was adopted prior to 2004, paragraph 215 of the NPPF is relevant. It states that "due weight should be given to relevant policies in existing plans according to their degree of consistency with this framework". There is no dispute that the principle of designating settlement boundaries to protect the countryside from urban development accords with the guidance of the NPPF [7.12], and I find no inconsistency between the NPPF and TLP Policies in this respect.

- 12.10 The Council accepts that more housing at Dawlish is needed, and will have to be located outside the settlement limit currently identified in the TLP [7.1]. While the eLP proposes housing allocations on land outside that boundary, the location and the amount of the housing needed remain the subject of objections yet to be resolved. In my judgment paragraphs 14 and 215 of the NPPF cannot properly be interpreted, in these circumstances, as requiring that until such time as the settlement limit is amended by the new Local Plan, its existence be disregarded as "out of date" [7.13]. To take that approach would effectively be to sanction residential development in the countryside without regard to the quantified need for it.

- 12.11 I am confirmed in this view by the terms of paragraph 49 of the NPPF, which directly addresses the circumstances in which existing Development Plan policies will be overridden by the need to provide sufficient housing. It does this by reference to the quantified housing need for the area, specifying that policies relevant to the supply of housing will be rendered out-of-date if the local planning authority cannot demonstrate a five-year supply of deliverable housing sites.

- 12.12 The appellant drew my attention to an appeal decision in which the Inspector considered that a development boundary identified in a Local Plan assigned over 14 years ago was, "in practical terms" (INQ 16, para 13), out of date [7.6]. However, in that case there was a more recently adopted component of the

Development Plan which conflicted with the Local Plan, in that it acknowledged the LP development boundary would have to be breached to deliver the level of housing required. There is no such internal conflict between components of the Development Plan here.

- 12.13 Taking all of this into account, I am not persuaded that the correct approach here would be to regard the existing settlement limit as out-of-date by operation of paragraph 215. It is, and will remain, part of the adopted Development Plan until it is replaced by the adoption of the emerging Local Plan [4.2]. That replacement Plan may make provision for the settlement limit to be re-drawn but any such alteration, and indeed the extent of the housing need which should inform it, has yet to be the subject of rigorous testing at an Examination in Public.
- 12.14 In order to determine whether Development Plan policies relevant to the supply of housing should be considered out-of-date by operation of paragraph 49, it is necessary to establish whether the Council is able to demonstrate a five-year supply of deliverable housing sites. The most logical way to do that is firstly to consider the housing requirement for the next five years, and then to assess whether the supply of deliverable sites is sufficient to meet it.

#### *Housing requirement*

- 12.15 The most recently adopted component of the Development Plan to have set out a housing requirement figure was the DSP, which specified a need for delivery of 7,500 dwellings in Teignbridge over the period 2001-2016, equating to an annual requirement of 500 [7.24]. However, the DSP is no longer a part of the Development Plan [1.8, 6.6]. Further, the data and calculations which informed its housing requirement figure are now in the order of 10 years old [6.32].
- 12.16 More recent evidence of the District's housing need is available, in the form of the SHMA published in May 2012, which identifies a requirement for delivery of 3,101 dwellings in Teignbridge over the period 2012-2017 (CD9 p 1013), equating to an annual requirement of 620. However, this figure is subject to unresolved objections, and has yet to be thoroughly tested at an Examination in Public [7.25].
- 12.17 It is common ground that there has been a consistent under-supply of housing in Teignbridge, such that the 20% buffer required by paragraph 47 of the NPPF should be applied to the calculation of housing need (INQ 15, 6.7.2). A further complication is that against the housing requirement contained in the DSP, the Council's delivery has to date fallen short by 1,385 units [7.24]. I recommended in my earlier report on an appeal at Moreton-in-Marsh that any residual shortfall in housing supply ought to be addressed promptly by including it the requirement for the next five years' provision, and the SoS agreed with that approach<sup>8</sup> [7.24]. Based on the DSP figure, these adjustments would result in a five year housing requirement for Teignbridge of 4,662 dwellings [7.62].

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<sup>8</sup> Ref: APP/F1610/A/10/2130320, para 174

- 12.18 The Council and the appellant were unable to agree whether the existing 1,385 dwelling shortfall had properly informed the housing requirement figure set out in the SHMA 2012. The text of that document refers to a “backlog of need” [6.33] but does not explain how this has been calculated, or include any reference to the deficit against the DSP housing requirement [7.25]. It may be the case that the “backlog of need” takes due account of (or stands as an effective proxy for) the deficit against the DSP, but even if that is so, the SHMA deals with the backlog over a period of 10 years, rather than 5 [7.25]. It is not possible to re-work the SHMA calculation of housing requirement on the basis that the shortfall should be addressed within 5 years rather than 10, because the figures used are not shown.
- 12.19 For the purposes of this appeal, then, there are two alternative methods of calculating the District’s five year housing need. The first, based on the old DSP figure, produces a requirement for 4,662 dwellings [7.62]. The second, based on the more recent but untested SHMA 2012, involves an incalculable underestimate [12.18] the correction of which, along with the addition of a 20% buffer [12.17] and potentially the need to address a larger backlog than has been assumed [12.18], is likely to result in a housing requirement at least similar to, and possibly substantially greater than, that calculated using the old DSP figure.

#### *Housing supply*

- 12.20 There are a number of differences between the Council and the appellant as to how the supply of deliverable sites should be calculated. Perhaps the most fundamental of these is whether, by reference to guidance in the NPPF, sites which do not have planning permission can be taken into account [6.37, 7.29].
- 12.21 Footnote 11 to Paragraph 47 of the NPPF states that sites with planning permission should be considered deliverable until permission expires. My attention was drawn to an appeal decision in which the Inspector considered that this strongly implied that a site which no longer has, or has not yet received, planning permission for housing should not be considered deliverable in the terms of the Framework [7.30].
- 12.22 In my view, it is important to bear in mind that had the authors of footnote 11 wished to specify that only sites with planning permission should be considered deliverable, it was open to them to say so in terms. Instead, the footnote provides that once planning permission for a particular site expires, so does the presumption of that site’s deliverability. It does not necessarily follow that such sites, or others which have not yet received planning permission, are precluded from meeting the “deliverability” test set out at the start of footnote 11. That test does not specify that there must be an extant grant of planning permission: what it says is that the site should “... be available now, offer a suitable location for development now, and be achievable with a realistic prospect that housing will be delivered on the site within five years and in particular that development of the site is viable”.
- 12.23 That being the case, sites which are allocated for housing by the Local Plan, but do not yet have planning permission, may be counted as part of the five-year housing supply provided they are deliverable. Very little evidence as to the deliverability of such sites in this case has been provided; the Council relies largely on the simple fact of allocation [6.39]. However, despite the



principle of residential development thus being established, none of these sites came forward for housing in the last 17 years. That timescale has included periods of greater economic prosperity than currently persist, and I share the appellant's view that there is now little realistic prospect of housing being delivered on these sites in the next five years (APP 7, 4.41-4.42).

- 12.24 An exception to this is the Council-owned site at Brunswick Street in Teignmouth. The evidence of the Council is that it will be redeveloping the site to provide commercial and residential space in the next 2-3 years, and in the absence of any persuasive evidence that this could not happen, I consider it can be counted as part of the five-year supply (INQ 6).
- 12.25 As to the sites proposed for allocation in the eLP, again these may form part of the housing supply, provided that they are "deliverable" in the terms of the NPPF. In that regard, the Council relies heavily on the majority of them having been considered "achievable" by the SHLAA panel in 2009 [6.40]. However, the Panel concluded that none of these sites would be deliverable within 1-5 years [7.32]. In the absence of any information as to how the constraints which informed the SHLAA categorisations may subsequently have been overcome, it is not enough to assume that because three years have passed since the SHLAA panel made its assessment, these sites will have progressed three years closer to deliverability [6.40]. That may be very far from the case. The example of the allocated but still undeveloped sites above [12.23] indicates that allocation in a Local Plan is not a reliable indicator that housing will necessarily be delivered.
- 12.26 The Council points out that a number of sites have come forward for development in advance of the dates set out in the SHLAA, and that planning permission has already been granted for some [6.39]. That may be so, but it is not evidence of the deliverability of any of the remaining proposed allocation sites now relied upon by the Council. I understand that the Council has received planning applications and expressions of developer interest in respect of some of the sites, including part of the DA2 allocation (INQ 28), but that does not necessarily give rise to a realistic prospect that housing will be delivered on those sites within 5 years; planning applications can be refused, and interest can fade. I am not satisfied that there is sufficient evidence on which to conclude that the proposed allocation sites are available, suitable, achievable and viable, and so I consider that they should not be counted as part of the supply of deliverable housing sites.
- 12.27 The Council has rightly included in its five year supply those sites which have extant planning permission, but the appellant has raised concerns about the deliverability of a number of these. As regards the BCT site, the Council has provided evidence of at least some demand for the light-industrial element (INQ 6), and I am not persuaded that the appellant's doubts about the overall viability of the scheme constitute "clear evidence", as required by footnote 11, that the residential element will not be implemented within 5 years.
- 12.28 I do not see any convincing reason to consider the delivery programmes for either the Penns Mount or Houghton Barton Hele Park sites over-optimistic. I note that the S.106 contributions required from the latter equate to a higher figure than the proposed CIL rate for that area, but that does not constitute clear evidence that the scheme would not be viable (INQ 6). For similar reasons

I consider the timing and viability concerns advanced by the appellant in respect of the Newcross site, for which the Council has resolved to grant planning permission subject to a (now completed) S.106 Obligation, do not cast sufficient doubt on the deliverability of that site to exclude it from the five year housing supply (INQ 6).

- 12.29 The final component of the District's housing supply is windfall sites. During the period 2001-2012 these provided 1976 dwellings, equating to an annual average of 179 (LPA 1 Appx 4). However, over the four years since the start of the economic downturn (2008/9 to 2011/12) the annual average has been just over 140 dwellings (APP 7 p20, 4.6). The Council considers this reduction to be clearly associated with economic circumstances, but maintains there is no reason why the provision of windfalls will not pick up again. That may be so, but in the light of current economic forecasts and continuing constraints on access to finance (APP 7 4.64), I consider it would be unrealistic to rely for the next 5 years on pre-2009 levels of housing delivery from windfall sites.
- 12.30 My attention was drawn to an appeal decision in Honeybourne<sup>9</sup> where the Inspector decided, on the evidence then before him, to exclude large windfalls from calculations of future delivery (APP 7, 4.65). I do not, on the evidence now before me, agree with the appellant's contention that because there will in future be an up-to-date Local Plan in place, large windfalls should be excluded from this District's five-year housing supply. A windfall site is, by definition, a site which has unexpectedly become available (NPPF, p57). The allocation of sites in the Local Plan is selective, and the selection process includes an assessment of availability. Sites assessed as unavailable can, whether large or small, become unexpectedly available for a wide variety of unforeseeable reasons; that is the point of including an allowance for windfalls.
- 12.31 Nor do I see any convincing reason to conclude that the advent of CIL will necessarily have an adverse affect on the future viability of windfall sites, or perceptions thereof (APP 7, 4.61-4.62). Based on the Council's methodology, which accords with the guidance in the NPPF, but using the recent average of 140 dwellings per year as more representative than the longer-term average of 179 [12.30], I consider that a windfall allowance of 283 is appropriate.

*Conclusions on the housing supply position*

- 12.32 Taking all of this into account, I consider that the Council has a supply of housing land sufficient to deliver 3,474 dwellings over the next five years. This clearly falls a long way short of its five year housing requirement, whether that is calculated by reference to the DSP or SHMA figures [12.19]. While I appreciate that the Council is taking pro-active steps to improve its housing supply [6.39], it is currently unable to demonstrate a five-year supply of housing.
- 12.33 I acknowledge that 'disaggregation' [8.7] of a District's housing requirement may sometimes be appropriate, for example where the Development Plan makes provision for a large amount of housing to be delivered in the form of a new community (INQ 19). However, I have not been presented with any substantive reason why Dawlish, Teignbridge's third largest settlement, should

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<sup>9</sup> Ref: APP/H1840/A/12/2171339

be considered separately to the rest of the District. In any event, the proposed eLP housing provision for Dawlish is informed by the DPNP, and some serious doubts as to its robustness have been raised [7.14].

12.34 One of the key findings of the Examiner's Report on the DPNP was that it was not possible to demonstrate that the provision it made for housing growth was based on an objective assessment of housing requirements [4.9]. As the Examiner noted, it is extremely difficult for an objective assessment of development needs to be undertaken at a neighbourhood level; he found that the approach followed by the DPNP Steering Group had been to assess the level of housing which would be "acceptable" to the local community, rather than that which would be necessary (CD13, p1270). That appears to be borne out by representations made to this inquiry; I was told that the proposed 20-year housing target for Dawlish of 900 dwellings, agreed by the DPNP and subsequently imported to the eLP, was based on the rate of growth over the past 10 years [8.14]. There is no evidence that this calculation paid due regard to objective assessments of future housing need. The final figure also appears to have been influenced by concerns that Dawlish was being expected to meet a "disproportionate" amount of the District's housing needs [8.8, 8.15].

12.35 I share the view of the DPNP Examiner that the correct approach to determining the contribution which Dawlish should be expected to make to the future supply of new housing in Teignbridge must be through the Local Plan process, using the evidence-base assembled for that purpose (CD13 p1255 para 2.22-25). In the meantime, for the purposes of this current appeal I consider the proposed eLP housing target for Dawlish to be a figure that carries very little weight. The evidence presented to this inquiry, and analysed above, indicates that the District as a whole has a significant shortfall in its housing provision.

*The implications of the housing supply position*

12.36 Paragraph 49 of the NPPF states that if a local planning authority cannot demonstrate a five-year supply of deliverable housing sites, relevant policies for the supply of housing should not be considered up-to-date. This in turn has implications for the application of paragraph 14 of the NPPF, which sets out how the "presumption in favour of sustainable development" is intended to operate. It explains that where relevant policies are out of date, then (unless material considerations indicate otherwise) permission should be granted unless any adverse impacts of doing so would significantly and demonstrably outweigh the benefits when assessed against the policies in the Framework taken as a whole, or specific policies in the Framework indicate development should be restricted.

12.37 It is therefore necessary to identify the benefits and the adverse impacts of the current proposal, and then to weigh them very carefully in the balance.

*The effect on the character and appearance of the area*

12.38 The appeal site is located outside the settlement limit for Dawlish and so is classified as "countryside" for the purposes of LP Policy H7, which seeks to limit development there to uses which do not include new open-market housing. Since the terms of this policy have a direct bearing on the location of residential development it is a "relevant polic[y] for the supply of housing",

and by operation of paragraph 49 of the Framework, must be considered out of date due to the absence of a five year housing land supply [12.32]. For the same reason, LP Policy ENV4 must be considered out of date (LPA1, 6.51) and little, if any, weight attaches to emerging Policy S22 of the eLP.

- 12.39 The fact that the appeal site is located in the countryside does not of itself, then, act as a policy bar to the proposed development. Nevertheless, the impact that the proposed development would have on the character and appearance of its surroundings remains an important consideration.
- 12.40 The appeal site is part of a designated AGLV, where LP Policies ENV1 and ENV3 seek to promote positive enhancement to secure the long-term protection of such areas. These aims also inform Policy EN2A of the eLP. Clearly, building houses would fundamentally alter the existing pastoral appearance of the appeal site: its character would change from that of rural landscape to that of urban housing development [7.38]. The proposed development would erode part of the AGLV, appearing in public views as an encroachment of the urban area into the countryside [6.12]. These changes would conflict with the aims of existing and emerging Development Plan policies.
- 12.41 Nevertheless, the SOCG (para 6.2.7) records the Council's view, subsequently clarified at the inquiry, that the proposed development would not cause any actual harm to the landscape such as would warrant refusing planning permission [1.6, 7.37]. This accords with advice provided by its Landscape Officer in response to the application (LPA 3 appx 1) that the proposal be supported in principle despite some inevitable adverse landscape and visual impacts [7.39].
- 12.42 Existing mature trees and hedgerow boundaries within and on the perimeter of the site would be retained, as would the majority of the central belt of broadleaved woodland and wetland habitat. The opinion of the Council's Landscape Officer was that significant impacts would be limited to the immediate locality, and these would be mitigated by the low-lying nature of the site, areas of woodland and context adjacent to the urban area (LPA 3). Based on what I saw during my visits to the site and surrounding area, I agree with that assessment.
- 12.43 It is material to note that because the appeal proposal is in outline, with details of scale, layout, appearance, access and landscaping all reserved for future determination, it would remain open to the Council to refuse to grant planning permission for reserved matters applications which failed to make adequate and appropriate provision for landscaping and planting, or to achieve a high quality of design consistent with the appeal site's location at the point of arrival into the built-up part of Dawlish [8.18].
- 12.44 It is also material to note that the eLP includes proposals to re-draw the boundary of the AGLV so as to exclude the western half of the appeal site, and to allocate 3ha of that western half for the development of employment uses. The SEA for that proposed employment allocation concluded the landscape impact would be minimal as a result of topography and nearby development (CD23, 1460): the SEA for the earlier proposed allocation (in the Draft eLP) of the appeal site for housing reached exactly the same conclusion (CD24, 1478).

- 12.45 The Council resolved not to defend the fifth of its reasons for refusing planning permission, and no longer raises any objection to the proposal on the grounds that it “would result in the loss of the natural break between the town of Dawlish and Dawlish Warren” [1.4]. Some of the objections to the proposal relate to the perceived function of the eastern part of the appeal site as a buffer between Dawlish and Dawlish Warren, such that residential development of this area would adversely affect the character of Dawlish Warren and harm its tourist industry [8.20; 8.39]. However, in the absence of any substantive evidence to the contrary, I see no real reason to fear that any such harm would necessarily follow. Close links between Dawlish Warren’s holiday accommodation and the attractive settlement of Dawlish may well be perceived as a benefit by visitors, and the presence of housing on the appeal site would not be detrimental to the holiday resort’s family-friendly character, or result in its ‘enclosure’ within an urban environment.
- 12.46 In summary, I find that the proposed development would not cause any far-reaching adverse change to the surrounding landscape. Nevertheless, it is important not to lose sight of the fact that it would harmfully alter the character and appearance of the area, through the loss of rural landscape to urban development, and the consequent extension of the built-up part of the settlement into undeveloped countryside. This adverse impact needs to be weighed in the overall planning balance.

*The effect on the provision of employment land*

- 12.47 The appeal site is not allocated for employment use in the TLP, and there are no policies of the Development Plan which would operate to restrict the nature of any acceptable development upon it to that, and no other, purpose. Rather, the Council’s concern in this regard is that since the eLP contains a proposed Policy that allocates the western half of the appeal site for 3ha of employment use, granting permission for the currently proposed residential development would undermine its strategy for the sustainable growth of Dawlish over the next 20 years [6.14 – 6.29].
- 12.48 That proposed strategy, advanced by emerging Policies S3, EC1 and EC2, is to promote an improved balance of jobs to working population by allocating employment land; supporting job creation; and maintaining a range of suitable and available sites and buildings for employment, so as to reduce the need for out-commuting. This approach is informed by the findings of the District’s most up-to-date ELR, the Roger Tym and Partners report of 2010. The ELR identified the lack of readily available land for business development as a major constraint in delivering prosperity, and identified further provision in Dawlish as a “key action” [6.18].
- 12.49 Each iteration of the eLP has, as a consequence, contained proposed allocations for employment land at Dawlish. At the Preferred Options Core Strategy Stage in January 2012, the proposal was that 3ha of land for employment uses (along with, among other things, 460 new houses) be allocated on land at Secmaton Lane. At that time, the proposed allocation for the current appeal site was 350 houses [7.41].
- 12.50 The DPNP, submitted for examination in March 2012, took a different approach. It proposed that 3ha of land for employment uses be allocated at the current appeal site, along with up to 60 houses, with the Secmaton Lane

site allocated for (among other things) 750 houses [7.42]. The DPNP Examiner concluded in his report that there was no doubt that in deciding to depart from the approach proposed in the emerging Core Strategy the DPNP Steering Group had sought to make a balanced choice, but that the consideration of environmental factors and spatial planning arguments on which that choice was based had not been clearly articulated. He went on to recommend that the plan should not proceed to a referendum (CD13, p1264).

- 12.51 The September 2012 Draft Submission version of the eLP maintained the Core Strategy's approach, allocating 3ha of employment land and "at least 550 homes" to the site at Secmaton Lane and "at least 300 homes" to the current appeal site [7.44]. However, the Council's Overview and Scrutiny Committee recommended, largely against its Officer's advice, that these allocations be reversed, in line with the approach that had been taken in the DPNP. The recommendations were accepted by the Full Council, and so the allocations in the latest, Proposed Submission version of the eLP are for 3ha of land for employment use on the appeal site (Policy DA1), and (among other things) "at least 860 homes" on the Secmaton Lane site (Policy DA2).
- 12.52 These allocations remain the subject of unresolved objections [7.3]. The appellant also questions whether there is any need for the eLP to allocate 3ha of employment land at Dawlish, on the basis of more recent evidence, produced for the purpose of this appeal, to the effect that there is already sufficient land and business space to meet identified needs [7.46 – 7.49].
- 12.53 In the light of all this, I can well understand concerns that to grant planning permission now for housing on the appeal site would pre-empt decisions about the location of large-scale development that should properly be made as part of the Local Plan process [8.15; 8.38]. I have neither the remit, nor anything like sufficient information, to establish the amount of employment and housing land that will be required to meet objectively-assessed needs; those are matters to be resolved through the EIP. Similarly, I am in no position to assess the comparative merits of the appeal site and the site at Secmaton Lane, having (quite rightly, in the context of the current appeal, which must be considered on its own merits) not been provided with details of the latter.
- 12.54 *The Planning System: General Principles* provides advice on the circumstances in which it may be justifiable to refuse planning permission on grounds of prematurity where an emerging Plan is being prepared, but has not yet been adopted. Generally, these are restricted to where a proposal is so substantial, or where the cumulative effect would be so significant, that granting permission would prejudice the eLP by predetermining decisions about the scale, location or phasing of new development which are being addressed in its emerging Policies.
- 12.55 In this case, there is evidence to suggest that the housing requirement for Teignbridge is higher than the SHMA 2012 figure used to inform the current eLP housing allocations [12.18 – 12.19]. Further, my conclusions on the District's housing supply position indicate that even if planning permission were to be granted for 350 houses on the appeal site, there would still be a substantial shortfall against the five-year housing requirement [12.32]. That being the case, there is no certainty that granting permission for the current proposal would necessarily lead to a consequent reduction in the amount of housing

allocated on the site at Secmaton Lane, such as might prejudice the viability of the proposed new infrastructure [8.27; 8.38].

- 12.56 At earlier stages of the eLP process, the Council preferred the Secmaton Lane site as the location for the proposed allocation of employment land; the SEA carried out for the Draft Submission version of the eLP found that the site would be suitable for that proposed purpose [7.51]. In the event that planning permission were granted for the current proposal, there is no obvious reason why the employment use allocation, if it were still considered necessary in the light of more recent evidence, could not once again revert to form part of the mixed-use allocation on the Secmaton Lane site. The extent of the Council's concern that granting planning permission for residential development on that site in the meantime might run the risk of preventing any employment allocation being made at Dawlish [6.28] will be a material consideration to be duly weighed in its determination of any such applications.
- 12.57 Bearing all this in mind, I attach only limited weight to the possibility that permitting the currently proposed development might undermine the eLP strategy for the sustainable growth of Dawlish. There is evidence to suggest that allocation of 3ha of employment land may no longer be a necessary component of that strategy, but if rigorous testing of all the evidence at the forthcoming EIP established that it was required, then a suitable alternative location exists.

#### *The loss of BMV agricultural land*

- 12.58 Policy P1 of the TLP provides that development of BMV agricultural land will only be permitted where there is a strong case for development on that site which overrides the need to protect such land. While paragraph 112 of the NPPF takes a slightly different approach, it still requires the economic, and other, benefits of BMV agricultural land to be taken into account [6.46].
- 12.59 The proposed development would result in the loss of 7.1ha of Grade 1 land (representing 0.43% of the District total of 1550ha), and 3.7ha of Grade 2 land [2.2; 7.54]. The Officer's report to the Planning Committee advised that this area of the District has a relatively high percentage of BMV land, when compared to the District as a whole (CD18, p1359). It is also material to note that in the context of the need to allocate land for housing within the eLP, the Council considered the loss of the appeal site's BMV agricultural land acceptable at the Preferred Options and Draft Submission stages [7.53]. The currently proposed employment allocation would itself result in the loss of the BMV agricultural land contained in the western parcel of the appeal site.
- 12.60 The loss of part of the District's finite resource of BMV agricultural land would be an adverse impact of the proposed development. However, I consider that the extent of the harm would be lessened by fact that the loss would be small in terms of overall proportions, and has clearly been countenanced as acceptable by the Council in the process of preparing its eLP. Further, in the light of my finding that there is a shortfall in the District's housing supply [12.36], there is a strong case, in the terms of LP Policy P1, for the residential development of the appeal site. Whether or not the benefits of the proposed development would override the need to protect BMV agricultural land, and outweigh other adverse impacts, will be informed by the overall planning balance to which I return below.

## *Ecology*

- 12.61 The appeal site lies around 700m to the west of the Exe Estuary Special Protection Area (SPA) and the Dawlish Warren Special Area of Conservation (SAC), statutorily designated sites of international importance which constitute “European sites” for the purposes of the Conservation of Habitats and Species Regulations 2010. The grassland, wetland and broadleaved woodland areas of the appeal site provide habitat for a variety of wildlife, including curlew buntings and otters, and a number of its hedgerows are species-rich and “important” in terms of the Hedgerow Regulations 1997 (as amended).
- 12.62 The development proposal incorporates a package of measures aimed at mitigating its ecological impacts, including a scheme to attenuate surface water discharge rates and prevent any deterioration in water quality within the Exe Estuary SPA; financial contributions toward the provision of off-site habitat for curlew buntings and other off-site habitat mitigation measures; and arrangements for the provision of SANGS so as to prevent the adverse impacts that the recreational needs of future occupiers could otherwise have upon the SPA and SAC.
- 12.63 Under Regulation 61 of the Conservation of Habitats and Species Regulations 2010, an “appropriate assessment” needs to be undertaken in respect of any plan or project which is likely to have a significant effect on a European site. The Council carried out a screening assessment of the impacts of the currently proposed development, alone and in combination with other proposals (CD20). This concluded that the development would have no likely significant effect on the special interest of SPA or SAC, provided the proposed mitigation measures were delivered, and so no appropriate assessment was necessary [7.55 – 7.56].
- 12.64 I am satisfied that the terms of the S.106 Agreement entered into by the appellant and the Council [INQ 21] ensure that adequate provision of SANGS would be put in place prior to the occupation of the proposed dwellings [10.5 – 10.7], and the other relevant financial contributions would be paid at appropriate stages of the development. The timely provision of the drainage strategy and improvements to the sewer system, and the ongoing maintenance and management of retained and newly-created habitats, could be secured by conditions [11.3 – 11.5].
- 12.65 On the basis that the S.106 Agreement and the proposed conditions would operate to ensure delivery of the proposed mitigation measures, I see no reason to depart from the findings of the Council’s screening assessment, with which the appellant’s ecological adviser and Natural England were in agreement (INQ 30 & INQ 33). I therefore find that paragraph 119 of the NPPF, which states that the paragraph 14 presumption in favour of sustainable development does not apply to development requiring an appropriate assessment under the Birds or Habitats Directives, is not relevant to the current proposal [8.41].
- 12.66 The majority of the existing broadleaved woodland and wetland habitats on the appeal site would be retained, and a large proportion of the existing hedgerows, with scope for additional planting. The future retention, maintenance and proper management of these habitats would be addressed by an Ecology and Biodiversity Management Plan approved by the Council [11.4].



12.67 Taking all of this into account, I consider that while the proposed construction of dwellings on the appeal site could clearly not be described as beneficial to the ecology of the area, the adverse impacts would be limited by the proposed mitigation measures.

*Local involvement in the planning system*

12.68 It is only fair to bring to the attention of the SoS the concern, raised by a number of interested parties, that to grant planning permission for this proposal would appear to undermine the government's stated intention, set out at paragraph 17 of the NPPF, of "empowering local people to shape their surroundings" [8.9; 8.10; 8.30]. Many local residents, keen to take up new opportunities for involvement in the planning process, invested considerable time and effort in the preparation of the DPNP on the understanding that it would help to shape the District's new Local Plan. I can understand why they may feel that allowing a housing development on appeal, on a site not proposed for housing development in the DPNP or the latest version of the eLP, is exactly the kind of top-down interference that the new planning system was intended to prevent.

12.69 However, paragraph 17 of the NPPF also explains that every effort should be made to identify, and then meet, the development needs of an area. Paragraph 47 states that "To boost significantly the supply of housing, local planning authorities should use their evidence base to ensure that their Local Plan meets the full, *objectively assessed* needs for market and affordable housing..." (my emphasis); the need to allocate sufficient land for housing is further emphasised by the terms and operation of paragraph 49 [12.36].

12.70 The existence of widely differing views as to the amount of new housing that should be provided at existing settlements is not surprising, since it reflects the tension between the understandable concerns of local residents who wish to protect the qualities of their community and its environment, and the needs of other local people for housing. For the same reason there is tension in policy, between the desire for decisions to be taken locally and the requirement to ensure sufficient provision of land for new development, in particular a five-year supply of deliverable housing sites.

12.71 The emerging Local Plan will not be adopted until March 2014, when it will set out the contribution which Dawlish should be expected to make to the future supply of new housing in Teignbridge [6.6]. But in the meantime, the District has a significant shortfall in its housing provision [12.35]. My interpretation of the approach set out by the NPPF is that in the circumstances of the current case, action to address the housing shortfall should not be delayed to await adoption of the eLP, and planning permission for the current proposal should be granted unless any adverse impacts of doing so would significantly and demonstrably outweigh the benefits.

*Other matters*

12.72 The S.106 Agreement secures provision of 30% of the proposed dwellings as Affordable Housing [10.2]. This is no more than is required by current Development Plan policy [6.42], but in light of the acknowledged need for more affordable housing in the District, and the existing shortfall at Dawlish, the fact

that the proposed development would deliver up to 105 new affordable dwellings is a consideration that weighs in its favour [7.35].

12.73 The Highway Authority has raised no objection to the proposed development, subject to the inclusion of appropriate conditions and financial contributions [7.57]. The need for the requested contributions was assessed in the light of the available evidence and the statutory requirements of CIL Regulation 122 [10.4]. Concerns have been raised that financial contributions ought also to have been requested toward “necessary highway works” in Starcross, Kenton and Exminster, but I have not been provided with any detail of the nature and cost of those works, or evidence as to why they would be necessary to mitigate the specific impacts of this particular proposal. Since a financial contribution toward any such works was not considered necessary by the Highway Authority, its absence is not a factor which weighs against the proposed development [8.1 – 8.3].

*The overall planning balance*

12.74 The currently proposed development would conflict with Development Plan policy. However, my conclusion that the Council is currently unable to demonstrate a five year supply of deliverable housing sites means that relevant policies for the supply of housing should not be considered up-to-date. This in turn means that by operation of the ‘presumption in favour of sustainable development’ set out in the NPPF, planning permission should be granted unless any adverse effects of doing so would significantly and demonstrably outweigh the benefits.

12.75 Permitting the proposed development would have the substantial benefit of taking a positive step toward addressing the District’s current shortfall in housing provision. It would provide much-needed open-market housing, and much-needed affordable housing. The houses would be well-located in terms of proximity to the existing settlement, within acceptable walking distance of local facilities and readily accessible by public transport [2.1; 2.4; 10.4; 10.11 – 10.13].

12.76 The main adverse impact of the proposal would be the loss of part of the rural landscape to urban development, and the consequent extension of the built-up part of Dawlish into undeveloped countryside that is designated AGLV [12.46]. Other adverse impacts would be the loss of a small part of the District’s BMV agricultural land [12.60], and the loss of wildlife habitat [12.67], albeit there would be a large degree of mitigation for the latter. For the reasons set out above, I attach only limited weight to the possibility that permitting the proposed residential development of the appeal site might have an adverse impact upon the eLP strategy for the sustainable growth of Dawlish [12.57].

12.77 In my judgment, the adverse impacts of granting permission for the proposed development are not such as would significantly and demonstrably outweigh the benefits; rather, the benefit of reducing the District’s housing shortfall through the residential development of the appeal site would outweigh the harm caused in other respects.

**13. Inspector's recommendation**

13.1 I therefore recommend that the appeal should be allowed, subject to the conditions set out in the attached Schedule C.

*Jessica Graham*

INSPECTOR

## Appendix A: APPEARANCES

### FOR THE LOCAL PLANNING AUTHORITY

Mr W Beglan, of Counsel                                  Instructed by the solicitor to the Council

He called:

Mr S Thornley BSc BTP MRTPI      Service Manager, Spatial Planning and Delivery,  
Teignbridge District Council

### FOR THE APPELLANT

Mr C Boyle, Queen's Counsel                                  Instructed by Nabarro LLP

He called:

Mr S Lloyd BSc(Hons)(Est.Man.) MRICS	Senior Director, DTZ
Mr C Bowden BA(Hons) MPhil MRTPI	Director, Navigus Planning
Ms A Bromfield BSc(Hons) MSc MRTPI	Associate Director, Arup
Mr C Tunnell BSc MPhil MRTPI	Director, Arup

### INTERESTED PERSONS

Mr A Connett                                  Member of Devon County Council, Exminster and  
Kenton Division and Teignbridge District Council,  
Kenton and Starcross Ward

Mr H Clemens                                  Member of Teignbridge District Council and  
Chairman of its Planning Committee

Mr J Petherick                                  Member of Teignbridge District Council and  
Dawlish Town Council

Mr R Vickery AA Dipl Arch                                  Member of Dawlish Town Council and chairman  
of its Planning Committee

Ms V Mawhood                                  Representing DARE

Mr D Seaton BA(Hons) MRTPI                                  Managing Director, PCL Planning Ltd,  
representing Devon Partnership NHS Trust and  
Devon Swan Holidays Ltd

## Appendix B: DOCUMENTS

### CORE DOCUMENTS

CD 1	National Planning Policy Framework
CD 2	Teignbridge Local Plan 1989 - 2001
CD 3	Devon Structure Plan 2001 - 2016
CD 4	Local Plan 2013 – 2033, Submission Version (November 2012)
CD 5	Local Plan 2013 – 2033, Draft Submission Version (September 2012)
CD 6	Teignbridge Core Strategy, Preferred Options Version (January 2012)
CD 7	Teignbridge Annual Monitoring Report 2011
CD 8	Teignbridge Residential Land Monitor Report, as at 31 March 2012
CD 9	Teignbridge Strategic Housing Market Assessment Update 2012
CD 10	Teignbridge District Council Report to Planning Committee in respect of application ref: 11/02555/MAJ
CD 11	Teignbridge District Council Report to Planning Committee in respect of application ref: 12/01409/OUT
CD 12	Teignbridge Employment Land Review (Roger Tym) 2010
CD 13	Dawlish Parish Neighbourhood Plan: Examiner's Report
CD 14	Devon Structure Plan First Review: Landscape Policies Map Supplementary Paper
CD 15	Teignbridge District Landscape Character Assessment 2009
CD 16	Teignbridge District Urban Fringe Study Consultation Draft 2003
CD 17	Dawlish Parish Neighbourhood Plan: Revised Draft for Examination (March 2012)
CD 18	Teignbridge District Council Report to Planning Committee in respect of application ref: 12/02281/MAJ
CD 19	Late Representations / Updates to Report of Service Manager – Development Management in respect of application ref: 12/02281/MAJ
CD 20	HRA Scoping Opinion
CD 21	EIA Scoping Opinion
CD 22	Desktop study of Agricultural Land Quality
CD 23	Sustainability Appraisal / Strategic Environmental Assessment for the Teignbridge Local Plan 2013 – 2033 Proposed Submission Version (October 2012)
CD 24	Sustainability Appraisal / Strategic Environmental Assessment for the Teignbridge Local Plan 2013 – 2033 Draft Submission Version (August 2012)
CD 25	Report to the Overview & Scrutiny Committee (emerging Local Plan) dated 4 September 2012
CD 26	Report to the Executive and officer comments: Recommendations from the Overview & Scrutiny Committee (emerging Local Plan) of 4 September 2012
CD 27	The comments of the Council's Service Manager for Spatial Planning and Delivery on the recommendations of the Overview & Scrutiny Committee
CD 28	The responses of the Council's Service Manager for Spatial Planning and Delivery to questions to the Executive Committee
CD 29	Minutes of the Planning Committee meeting on 26 November 2012

## THE COUNCIL'S DOCUMENTS

LPA 1	Proof of Evidence of Mr Thornley
LPA 2	Appendices to Mr Thornley's Proof of Evidence, comprising:
LPA 2.1	Regional Planning Guidance for the South West (RPG 10)
LPA 2.2	Summary prepared by the Council of comments received on the proposed submission version of the emerging Local Plan
LPA 2.3	Teignbridge District Council's Economic Development Delivery Plan 2012-2015
LPA 2.4	Five Year Housing Land Supply Calculation
LPA 3	Proof of Evidence of Ms Maidment
LPA 4	Appendix to Ms Maidment's Proof: Consultation response dated 14 August 2012

## THE APPELLANT'S DOCUMENTS

APP 1	Proof of Evidence of Mr Lloyd
APP 2	Summary Proof of Evidence of Mr Lloyd
APP 3	Appendices to Mr Lloyd's Proof of Evidence, comprising:
APP 3.1	Site Plan
APP 3.2	Marketing particulars
APP 3.3	HBF – Building a recovery
APP 3.4	Employment multiplier
APP 4	Proof of Evidence of Mr Dunseath
APP 5	Summary Proof of Evidence of Mr Dunseath
APP 6	Appendices to Mr Dunseath's Proof of Evidence, comprising:
APP 6.1	Appeal site
APP 6.2	Teignbridge Local Plan October 1996 Proposals Map Sheet 5 and Key to Maps
APP 6.3	Core Strategy Development Plan Document 2013-2033 Preferred Options 2012
APP 6.4	Teignbridge Local Plan 2013-2033 Proposed Submission Policies Map and Key
APP 6.5	Teignbridge District Landscape Character Assessment 2009
APP 6.6	Teignbridge District Urban Fringe Study Consultation Draft August 2003
APP 6.7	Composite overview of AGLV boundary alterations
APP 7	Proof of Evidence of Mr Bowden
APP 8	Summary Proof of Evidence of Mr Bowden
APP 9	Appendices to Mr Bowden's Proof of Evidence, comprising:
APP 9.1	Committee reports on Teignbridge District Council five year supply position
APP 9.2	Moreton-in-Marsh appeal decision
APP 9.3	Sites within 5 year supply – comparison of the Council's and the appellant's positions
APP 10	Mr Bowden's Rebuttal Evidence, comprising:
APP 10.1	Updated tables 4.2 and 4.3 of Mr Bowden's Proof of Evidence (APP 7)

- APP 10.2 A table (agreed with the Council) setting out the current positions of the Council and the appellant on deliverability issues for the 5 year housing land supply
- APP 10.3 Documents relating to deliverability issues for various sites identified by the Council
- APP 10.4 A table summarising deliverability issues identified in the SHLAA 2010 for the emerging Local Plan sites relied upon by the Council
- APP 10.5 Relevant extracts from the SHLAA 2010
  
- APP 11 Proof of Evidence of Ms Bromfield
- APP 12 Summary Proof of Evidence of Ms Bromfield
- APP 13 Appendices to Ms Bromfield's Proof of Evidence, comprising:
  - APP 13.1 Evolution of Policy DA1 – Site Boundary
  - APP 13.2 Appellant's written representations to the emerging Local Plan – December 2010
- APP 14 Ms Bromfield's Rebuttal Evidence: e-mail chain dated 22 March 2013 between Arup and Devon County Council concerning the education contribution
  
- APP 15 Appeal documents: Volume 1 Part 1 (A4 binder)
- APP 16 Appeal documents: Volume 1 Part 2 (A3 binder)
- APP 17 Appeal documents: Volume 2
- APP 18 Appeal documents: Volume 3

#### THIRD PARTY REPRESENTATIONS

- Folder TP1 Representations received by CDC in response to the application
- Folder TP2 Representations received by the Planning Inspectorate in response to the appeal
- TP 3 Mr Seaton's written statement (and appendices) on behalf of Devon Partnership NHS Trust and Devon Swan Holidays Ltd

#### DOCUMENTS SUBMITTED AT THE INQUIRY

- INQ 1 List of appearances on behalf of the appellant
- INQ 2 List of appearances on behalf of the Council
- INQ 3 Copy of the Council's letter dated 17 December 2012 notifying interested parties that the appeal had been lodged
- INQ 4 Copy of the Council's letter dated 11 March 2013 notifying interested parties of arrangements for the inquiry
- INQ 5 Index of Core Documents, agreed by the Council and the appellant
- INQ 6 Update to Mr Bowden's Rebuttal evidence (Document 10.2), and copies of associated e-mail correspondence
- INQ 7 Copy of e-mail correspondence between Mr Dunseath and Ms Maidment, submitted by the appellant
- INQ 8 Draft S.106 Agreement
- INQ 9 Copy of opening submissions made on behalf of the appellant
- INQ 10 Copy of opening submissions made on behalf of the Council
- INQ 11 Copy of p.30 of the Design and Access Statement
- INQ 12 Enlarged copy of SP Map 9: Agricultural Land Classification, submitted by the Council

- INQ 13 Copy of the "consultation response from Spatial Planning and Delivery" made in connection with the application now the subject of this appeal
- INQ 14 Update of document INQ 6, submitted by the appellant
- INQ 15 Signed Statement of Common Ground
- INQ 16 Copy of appeal decision ref: APP/C1435/A/12/2183344, submitted by the appellant
- INQ 17 Copy of oral submissions made by Cllr A Connett
- INQ 18 Copy of oral submissions made by Cllr H Clemens
- INQ 19 Copy of appeal decision ref: APP/U1105/A/11/2156973, submitted by Cllr Clemens
- INQ 20 Photographs submitted by Cllr J Petherick
- INQ 21 Copy of oral submissions made by Mr R Vickery
- INQ 22 Copy of oral submissions made by Ms V Mawhood
- INQ 23 A1 sized copy of Tree Protection Plan (drg. no. 03674 TPP 07.06.12)
- INQ 24 Government press release concerning the abolition of Regional Strategies and Structure Plans, published 27 March 2013, submitted by the Council
- INQ 25 Copies of correspondence between the appellant's solicitor and the Council concerning complaints made about Dawlish members, with an explanatory memorandum from the Council's solicitor
- INQ 26 Extract from appeal decision ref: APP/F1610/A/10/2130320; paragraphs 167 – 234 Inspector's conclusions and recommendation, submitted by the Council
- INQ 27 Copy of paragraph 54 of (the now superseded) Planning Policy Statement 3, submitted by the Council
- INQ 28 Copy of the "consultation response from Design & Heritage – Landscape Officer" made in connection with planning application ref: 12/03797/MAJ (dwellings and associated infrastructure at Gatehouse Farm, Secmaton Lane) submitted by the appellant
- INQ 29 Certified copy of S.106 Agreement executed by the appellant, the land owner, the Council and the County Council on 11 April 2013
- INQ 30 Further information regarding the justification for, and calculation of, various financial contributions contained in the S.106 Agreement, prepared (at the request of the Inspector) by the Council and approved by the appellant
- INQ 31 Note setting out Mr Tunnell's qualifications and experience, provided by the appellant
- INQ 32 Cover and document verification sheet of Ms Bromfield's proof of evidence, showing it to have been approved by Mr Tunnell
- INQ 33 Further information provided by the Council regarding the Air Quality and SANGS/Habitat Mitigation contributions, as requested by the Inspector
- INQ 34 Map of the local highway network identifying roads for inclusion in the Inspector's site visit, provided by Ms Mawhood
- INQ 35 Copy of closing submissions made on behalf of the Council
- INQ 36 Copy of closing submissions made on behalf of the appellant
- INQ 37 Copy of costs applications made on behalf of the appellant
- INQ 38 Copy of the response, made on behalf of the Council, to the appellant's costs applications



## Appendix C: SUGGESTED CONDITIONS

- 1) The development hereby permitted shall be carried out in accordance with the following approved plans, in so far as those plans relate to matters not reserved for future determination: 3270-201 Rev C, 3270-202 Rev F, 3270-203 Rev C, 3270-204 Rev F, 3270-205 Rev C, 3270-206 Rev C, 3270-106 Rev A and 03764 TPP 07.06.12.
- 2) Prior to the submission of any applications for approval of details of the access, appearance, landscaping, layout, and scale, (hereinafter called "the reserved matters"), a Phasing Plan shall be submitted to and approved in writing by the local planning authority. Reserved matters applications for each of the phases identified in the approved Phasing Plan shall be submitted to and approved in writing by the local authority before any development in that particular phase begins, and the development shall be carried out as approved.
- 3) Application for approval of the reserved matters for the first phase of the development (as identified in the Phasing Plan approved under condition no. 2 above) shall be made to the local planning authority not later than two years from the date of this permission. Application for approval of the reserved matters for all other phases shall be made not later than five years from the date of this permission. The development hereby permitted shall begin either before the expiration of two years from the date of approval of the last of the reserved matters for the first phase, or before the expiration of five years from the date of this permission, whichever is the later.
- 4) No development shall take place until details of a site-wide drainage strategy, incorporating the principles of sustainable urban drainage systems, has been submitted to and approved in writing by the local planning authority. Thereafter, development shall only be carried out in accordance with the approved details.
- 5) No development shall take place until a Construction Method Statement has been submitted to, and approved in writing by, the local planning authority. The approved Statement shall be adhered to throughout each phase of the construction period. The Statement shall provide for:
  - i) the parking of vehicles of site operatives and visitors
  - ii) loading and unloading of plant and materials
  - iii) storage of plant and materials used in constructing the development
  - iv) the erection and maintenance of security hoarding including decorative displays and facilities for public viewing, where appropriate
  - v) wheel washing facilities
  - vi) measures to control the emission of dust and dirt during construction, including details of an air-quality monitoring scheme
  - vii) a scheme for recycling/disposing of waste resulting from demolition and construction works
  - viii) highway management procedures.

- 6) Before any phase of the development hereby permitted is commenced, details of the method, timing and duration of any piling shall be submitted to and approved in writing by the local planning authority. The development shall be carried out in accordance with the approved details.
- 7) The details to be submitted as part of the reserved matters applications for each of the phases identified in the Phasing Plan approved under condition no. 2 above shall include
  - details of estate roads, cycle ways, footways, footpaths, verges, junctions, street lighting, retaining walls, service routes, surface water outfall, road maintenance / vehicle overhang margins, embankments, visibility splays, accesses, car parking and street furniture;
  - details of foul and surface water drainage for that phase, in accordance with the site-wide drainage strategy approved under condition no. 4 above. Details shall include design calculations and percolation tests for surface water management proposals, copies of any necessary discharge consents and construction consents, arrangements for ongoing maintenance and management, and details of surface water drainage adoption agreements;
  - an updated Travel Plan, relevant to that particular phase;
  - full details of existing ground levels, proposed ground levels and all slab and finished floor levels in that phase; and
  - a detailed management plan for landscape and ecology, open space, landscaping and habitat creation, identifying full details of features for breeding birds; together with a maintenance plan, and a timetable for its delivery and ongoing management.
- 8) There shall be no burning of waste on site during the construction period.
- 9) No part of the development hereby permitted shall be occupied until foul sewer improvement works have been completed such that the local planning authority has confirmed in writing, on the advice of the relevant statutory undertaker, that there is adequate public foul sewer capacity for the development.

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## Appendix D: GLOSSARY OF ACRONYMS AND ABBREVIATIONS

AGLV	Area of Great Landscape Value
BMV	Best and most versatile
CD	Core Document
CIL	Community Infrastructure Levy
DAS	Design and Access Statement
DCC	Devon County Council
DCLG	Department of Communities and Local Government
dpa	Dwellings per annum
DPNP	Dawlish Parish Neighbourhood Plan
DSP	Devon Structure Plan
Draft eLP	The Draft Submission version of the emerging Local Plan (September 2012)
eLP	The Proposed Submission version of the emerging Local Plan (November 2012)
ES	Environmental Statement
ha	Hectare
LP	Local Plan
NPPF	National Planning Policy Framework
PCPA	Planning and Compulsory Purchase Act
RSSW	Regional Strategy for the South West
RT&P	Roger Tym and Partners
S.106	Section 106 of the Town and Country Planning Act 1990
SANGS	Suitable Alternative Natural Green Space
SHLAA	Strategic Housing Land Availability Assessment
SHMA	Strategic Housing Market Assessment
SoCG	Statement of Common Ground
SoS	Secretary of State for Communities and Local Government
SPD	Supplementary Planning Document
TLP	Teignbridge Local Plan
xx	Cross examination



## Department for Communities and Local Government

### **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 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**

Decisions on called-in applications under section 77 of the TCP Act (planning), appeals under section 78 (planning) may be challenged under this section. 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 under this section must be made within six weeks from the date of the decision.

#### **SECTION 2: AWARDS OF COSTS**

There is no statutory provision for challenging the decision on an application for an award of costs. The procedure is to make an application for Judicial Review.

#### **SECTION 3: 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 report of the Inspector's report of the inquiry or hearing within 6 weeks of 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.