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# Appeal Decision

Inquiry held on 24-27 & 31 January and 1 February 2012

Site visits made on 23 January and 1 February 2012

**by Neil Pope BA (Hons) MRTPI**

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

**Decision date: 16 February 2012**

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**Appeal Ref: APP/U1105/A/11/2161479**

**Land at Courtlands Cross, Exeter Road, Lypstone, Exmouth, Devon, EX8 3NS.**

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a failure to give notice within the prescribed period of a decision on an application for outline planning permission.
  - The appeal is made by Strategic Land Partnerships against East Devon District Council.
  - The application Ref. 11/1293/MOUT, is dated 31 May 2011.
  - The development proposed is a mixed use development comprising residential development (C3), business floorspace (B1), doctors/dentist floorspace (D1), local shop (A1)/café (A3), crèche/nursery (D1), community floorspace (D2), together with associated open space and infrastructure.
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## Decision

1. The appeal is dismissed and outline planning permission is refused.

## Procedural Matters

2. Approval is sought in respect of access and layout only. Details relating to appearance, landscaping and scale are reserved for subsequent consideration.
3. East Devon District Council as the Local Planning Authority (LPA) would have refused permission for 6 reasons. These relate to the following matters: the location of the site outside the built-up area boundary of a settlement and the impact upon the landscape, amenity and environmental qualities of the area, including high grade agricultural land; the location of the scheme within a Green Wedge, which would damage the identity of Lypstone and result in sporadic development that could lead to settlement coalescence; a risk to highway safety and the interference with the free flow of traffic; inadequate provision for recreational facilities; inadequate information in respect of the impact upon the setting of the Grade II listed Courtlands House and; inadequate information relating to biodiversity and protected species.
4. At the Inquiry the LPA informed me that its fifth 'reason for refusal' (setting of Courtlands House) as set out within its Rule 6 Statement had been incorrectly taken from a previous scheme for a similar development on the site (Ref. 10/0694/MOUT). Instead, the LPA's concerns on this matter were those set out in the recommendation (reason No.5) contained within its committee report of 15 November 2011. In essence, this alleges a harmful impact upon the setting of Courtlands House and its Grade II listed boundary wall. I have noted these matters in determining the appeal.

5. Prior to the Inquiry, and after the receipt of further information and discussions with the Highway Authority, the LPA withdrew its concerns regarding traffic/highway safety. The LPA also informed me that following the completion of a planning obligation under the provisions of section 106 of the above Act, it no longer wished to pursue its concerns regarding biodiversity/protected species. I have noted these matters in determining the appeal.
6. At the beginning of November 2011, the appellant submitted a revised layout plan (Ref. 10780 L 01.04 rev P5) to the LPA. In essence, these revisions involve modifications to the access arrangements from Courtlands Lane, alterations to the internal spine road, alterations to the indicative tree planting, revised boundary treatment and the inclusion of a pathway. The appellant informed consultees of this revised plan and third parties who were originally notified as part of the application, including those who had written at 'application stage'. In addition, copies of the plan were made available for the public to view at Exmouth Library and the LPA's offices. A site notice was also displayed and a public notice was placed in a local newspaper. The LPA informed me that its 'reasons for refusal' were based upon this amended plan.
7. Having regard to the Planning Inspectorate's Good Practice Advice Note 09 'Accepting amendments to appeal' and the Wheatcroft Principles<sup>1</sup> the revisions, although different in detail, do not fundamentally change the nature of the application. The amendments have been publicised in an appropriate manner. The Statement of Common Ground that has been agreed by the LPA and the appellant relates to these revisions. Interested organisations and persons have also had opportunity to comment on these revisions before the Inquiry. Those members of the local community who appeared at the Inquiry informed me that their interests would not be prejudiced if I were to determine the appeal on the basis of the amended layout plan. I shall therefore determine the appeal accordingly.
8. The planning obligation (agreement) which was submitted at the Inquiry is signed by the appellant, Devon County Council and the LPA. It includes a mechanism for making available 40% of the proposed dwellings as affordable housing, provision for formal and informal open space within the development and financial contributions towards the cost of: providing and maintaining a habitat for Cirl Buntings within the vicinity of the site; primary and secondary education (including ICT equipment); providing and improving measures to reduce the potential cumulative impact upon Special Protection Areas (SPAs) or Special Areas of Conservation (SACs) within the vicinity of the site and; off site recreational facilities or an improved cycleway to the Exe Estuary.
9. A second planning obligation (unilateral undertaking) was also submitted at the Inquiry. This includes provision for maintaining the hedge adjacent to the A376, the installation of traffic control/one way barrier to prevent access by motorised vehicles from the site westwards along Courtlands Lane and provision for a free school bus service to the site.
10. I shall return to these planning obligations within my reasoning below and, in so doing, shall have regard to the tests set out in Circular 05/2005<sup>2</sup> and Regulation 122 of the Community Infrastructure Levy Regulations 2010.

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<sup>1</sup> Bernard Wheatcroft Ltd v SSE [JPL, 1982, P37]

<sup>2</sup> Planning Obligations

11. At the Inquiry an application for an award of costs was made by the appellant against the LPA. This application is the subject of a separate Decision.

### **Main Issues**

12. The five main issues are: a) the effect upon the character and appearance of the area, including the setting and identity of the village of Lympstone; b) whether there is a shortfall in deliverable housing land and the implications for the housing objectives and spatial vision for East Devon; c) whether the proposals would preserve the setting of designated heritage assets, having particular regard to the Grade II listed Courtlands House and its Grade II listed boundary wall; d) the effect upon nature conservation interests and; e) whether the scheme would include adequate provision to meet the recreational needs of residents of the proposed dwellings.

### **Reasons**

#### *Character and Appearance*

13. The appeal site comprises 9.9 ha of agricultural land on a shallow ridge with lower land to the north, west and south. It forms part of the open countryside and the designated Area of Great Landscape Value<sup>3</sup> (AGLV) and Green Wedge<sup>4</sup> between the town of Exmouth and the village of Lympstone.
14. Notwithstanding existing boundary hedges, from the East Devon Way, which passes through the site, there are splendid views to the west across the Exe Estuary and towards the Haldon Hills. There are also pleasing views of Lympstone to the north across unspoilt rolling countryside. These views and the open qualities of the site are very attractive features of this public right of way.
15. From the A376 to the north, sections of minor roads to the north east and parts of Lympstone, the site is an integral component of the delightful countryside setting to the village. Parts of the site are also visible from the A376 to the south and in more distant views, including the Imperial Recreation Ground and the western side of the Estuary. From these areas the site forms part of the attractive countryside which abuts the north western edge of Exmouth.
16. Whilst Exmouth and Lympstone are in close proximity to one another the topography and intervening countryside form a clear break between the outer limits of these settlements. This also assists in setting them apart from the sporadic development that has taken place around Sowden Farm to the north west of the site. As set out in the supporting text to LP policy S6, this break in development is important in retaining the distinct identities of town and village.
17. I note the appellant's assessment/argument that the site is of 'medium sensitivity to change'. Whilst it does not fall within a nationally designated landscape, the section of the East Devon Way passing through the site is popular with visitors and those living nearby. As I saw during my visits, Courtlands Lane, which adjoins the site and denotes the northern limit of the built-up area boundary<sup>5</sup> of Exmouth, is also well used by walkers and cyclists.

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<sup>3</sup> Policy EN2 of the adopted East Devon Local Plan 1995-2011 (LP) and policy CO4 of the Devon Structure Plan 2001 to 2016 (SP)

<sup>4</sup> LP policy S6

<sup>5</sup> As defined on the LP Proposals Map and policy S2

- The fields on either side of this lane, including the appeal site, denote a clear break from the built-up area of the town and create a sense of countryside.
18. Having regard to many of the representations made by residents and visitors to the area, it is clear to me that the site is part of a cherished and valued landscape not least for its role in maintaining the distinct and separate identity of Lympstone. This is reflected within the Lympstone Parish Plan<sup>6</sup>, to which I attach some limited weight, and which states: "*The character of Lympstone is one of a discrete settlement and the preservation of the 'Green Wedge', 'The Coastal Preservation Area' and 'The Area of Great Landscape Value' between Lympstone and Exmouth are of supreme importance and must be preserved at all costs.*" The site is of more than 'medium sensitivity to change'.
  19. The proposed layout would be designed with the buildings set back from the edges of the site and served by a central spine road. Much of the existing hedgerows would be retained and the reserved matters could include new landscape planting along the boundaries of the site. This is intended to reduce the impact of the development upon the character and appearance of the area.
  20. Other than the loss of four sizeable fields, the proposal would not harm any of the other key landscape features which are identified within the LPA's published landscape character guidelines<sup>7</sup> for this 'lower rolling farmland and settled slopes' character area. However, the provision of 154 dwellings on this site, approximately 2,416m<sup>2</sup> of business premises and other non-residential buildings, as well as roads, car parking and lighting would dramatically alter the character and appearance of the site and the contribution it makes to the landscape and scenic qualities of the area. This major development proposal would have very much more than a limited visual impact on this AGLV.
  21. The development would seriously erode the unspoilt open qualities of the site and would markedly erode the integrity of the Green Wedge that separates Exmouth from Lympstone. Extensive planting along the northern boundary of the site and a gap of about 450m between the nearest proposed dwelling and the defined settlement boundary of Lympstone would not mitigate this major incursion into the setting of this village.
  22. For many of those living within Lympstone, the new buildings and their associated activities and paraphernalia would, due to the topography, appear much closer than 450m. For residents living along the northern side of Courtlands Lane, users of this road and the East Devon Way, the proposal would, in effect, link with the development in the vicinity of Sowden Farm.
  23. From parts of the village, Courtlands Lane and the East Devon Way the proposals would represent a very sizeable and unplanned/'creeping' encroachment of Exmouth into the surrounding countryside. Whilst the settlement limits of Lympstone and Exmouth would not physically touch, the proposal would blur the distinction between the town and village. This would considerably damage the setting and individual identity of Lympstone.
  24. I note the appellant's arguments that the scheme would not result in settlement coalescence and the layout would be designed to discourage any suggestion of future expansion to the north. However, as borne out by the numerous letters of representation and the evidence given at the inquiry by

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<sup>6</sup> Not part of the development plan but endorsed by the LPA and used to inform decision making in the District

<sup>7</sup> East Devon District Council Landscape and Character Assessment and Management Guidelines 2008

- some interested parties, for many of those already living within the area this would fail to allay their perception that the development would amount to or, at the very least, encourage coalescence.
25. For visitors travelling to Exmouth along the A376, the scheme would in effect, appear to move the 'entrance' to Exmouth 'to the exit' from Lympstone. If permitted, the proposal would not provide a more robust edge to Exmouth than exists at present. Furthermore, unlike the Dinan Way extension, which is allowed for within the LP, approving the appeal scheme could be interpreted by some as weakening the protection afforded to the Green Wedge and, in turn, could increase the pressure to release adjoining land for development.
  26. There is much greater strength in the arguments of the LPA and the local community on the matter of coalescence. The proposal would be at odds with and could undermine the provisions of LP policy S6.
  27. My attention has been drawn to numerous appeal decisions from elsewhere. These include a scheme for a much larger mixed use development in a Green Wedge in Leicestershire (Ref. APP/T2405/A/10/2138666). I note the findings of the Inspector and the decision of the Secretary of State to allow that appeal. However, each case must be determined on its own merits.
  28. The site in Leicestershire was adjacent to a motorway and dual carriageway. It was also sub-divided by local roads and in part, was heavily treed and included overhead power lines. A strategic review of that Green Wedge also found that it did not separate the existing residential area from any other settlement. This is quite unlike the situation before me. These are material differences and this decision does not set a precedent that I am bound to follow.
  29. From the East Devon Way, the proposal would considerably erode the unspoilt open qualities of the site. Most, if not all, of the alluring views that currently exist across the site would be blocked or extinguished by the new buildings. In future, users of this route would walk through a small orchard flanked by buildings on either side with associated parking areas before crossing a new spine road and continuing between more houses and alongside a children's play area. This would be a very poor substitute for the 'natural' scenic qualities and 'countryside experience' which are currently available to walkers. Although this forms a small part of the overall length of this long distance path the proposal would seriously diminish the enjoyment of this section of the East Devon Way.
  30. When seen from the south, some of the new buildings would appear on the skyline and would elongate the small ribbon of houses along Courtlands Lane. Development would extend up to and beyond Courtlands House on the northern side of this lane. Whilst this would be seen against a foreground of open countryside, it would have the effect of consolidating the existing sporadic development around Courtlands House and, to a limited extent, detract from the countryside setting of this part of Exmouth.
  31. The harmful impact of the development would continue throughout the hours of darkness with upper floor lights in the new dwellings and possibly new street lighting being apparent along this ridge. This and the other harm that I have identified above to the appearance of the area would conflict with the provisions of LP policy EN2 and SP policy CO4.
  32. Due to the topography and distance from the railway and National Cycle Network route 2 (NCN 2), the proposal would not intrude into any important

views along the eastern side of the Estuary. It would be a considerable distance from public vantage points on the opposite side of the Estuary, including the Haldon Hills. When looking across the Estuary, the development would not stand out as a conspicuous feature or have any perceptible impact upon the character or appearance of the area. However, this would not diminish the harmful impacts that I have identified above in respect of the AGLV, Green Wedge and East Devon Way.

33. The proposal would seriously harm the character and appearance of the area, including the setting and identity of the village of Lympstone. This harm and the conflict with the 'saved' development policies that I have found lead me to conclude that in landscape/settlement terms this site is unsuitable for housing.

#### *Housing Land/Spatial Vision*

34. Both main parties agree that there is only a 2.72 years supply of deliverable sites for housing within the District. This is an important material consideration. As set out in Planning Policy Statement (PPS) 3 'Housing', where less than a five year supply of deliverable sites exists, local planning authorities should consider favourably planning applications for housing, having regard to the policies in PPS3, including the considerations in paragraph 69.
35. On behalf of the appellant, it was accepted that if substantial harm arose in respect of any of the matters referred to in paragraph 69 of PPS3 then, depending upon the circumstances of the case, permission could be refused. I note from two recent appeal decisions for housing in East Devon that notwithstanding the lack of a 5 year supply of deliverable sites permission has been withheld (Refs. APP/U1105/A/11/2155312 & 2156973).
36. Each case must however be determined on its own merits. These other appeals in East Devon relate to villages that are much smaller in size and further down the settlement hierarchy than Exmouth<sup>8</sup>. Under SP policy ST15 Area Centres, unlike villages, are intended to provide a strategic focus for the provision, amongst other things, of housing<sup>9</sup> and employment opportunities to meet local needs and those of their rural hinterland, and only those needs. These appeal decisions and others drawn to my attention from elsewhere are not directly comparable to the case before me and do not set a precedent.
37. These include the Secretary of State's decision in 2008 in respect of a much larger housing scheme at Exminster (Ref. APP/P1133/A/08/2063604). Since that time progress on the Regional Spatial Strategy (RSS) has stalled. The Secretary of State's proposed changes are very unlikely to progress further, with provision in the Localism Act 2011 to revoke RSS. This is very different to the situation in 2008. As a consequence, the proposed changes to the RSS now carry only very limited weight.
38. The LPA accepts that the appeal scheme could result in the delivery of high quality housing and would achieve a good mix of housing, including accommodation for families. It also recognises that the development would use land effectively and efficiently. After some delay and confusion, the LPA also accepted that the site was in a sustainable location in transport terms and re-affirmed what it had agreed within the Statement of Common Ground.

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<sup>8</sup> A designated Area Centre under LP policy S2.

<sup>9</sup> SP policy ST17 sets out the housing and employment provision 'at the Exeter PUA' and 'Elsewhere' in East Devon

39. However, in response to the appellant's case regarding a pressing need for housing within the District as a whole, the LPA contends that the scheme would be at odds with the spatial vision for the area and its disaggregated approach to housing land supply.
40. Notwithstanding that the LP period has expired, the spatial vision for East Devon, including LP policies S1, S2 and S3, is 'saved'. The Statement of Conformity with the SP also states that the LP is sufficiently flexible to allow it to contribute towards meeting development needs over the period to 2016. Under LP policy S2, the bulk of new development outside the Exeter Principal Urban Area (PUA) is intended to be accommodated at Exmouth and Honiton.
41. During my site visits, I saw considerable development activity taking place at Cranbrook<sup>10</sup>. However, there remains a gross deficiency in the delivery of housing at this new settlement. In this part of the District there is less than a 1 year supply of deliverable housing sites. It is unlikely that this shortfall will be met by 2016.
42. My attention has also been drawn to the site's inclusion within the Exeter-Sub Market Area<sup>11</sup> (SMA) of the Exeter Housing Market Area. The site has strong functional and good public transport links to Exeter. Nevertheless, the Exeter SMA does not form part of the spatial vision for the District and the site is a considerable distance from the 'at Exeter PUA' and Cranbrook.
43. The proposal would not contribute materially to the strategic objective of creating a sustainable urban extension to Exeter. Moreover, permitting the scheme on the basis that it could assist in meeting the shortfall in delivery at the PUA/Cranbrook would be at odds with the provisions of SP policy ST15 and LP policy S2. Any approval made on this basis would not meet the local needs of Exmouth and its hinterland.
44. Under the LPA's disaggregated approach, the appeal site lies within the 'rest of East Devon', where 10.15 years supply of deliverable housing exists. However, the appellant's analysis indicates that the bulk of this supply has not been directed to Exmouth and Honiton, as provided for by LP policy S2, but instead, has gone to other Area Centres, Local Centres and elsewhere. This supports the appellant's argument that the spatial vision for the District does not appear to have been implemented as intended by the development plan.
45. The evidence before me indicates that there is an acute shortage of affordable housing within Exmouth. There is also some evidence to suggest that the employment needs of the town are not being adequately met. This is most unsatisfactory especially for those in need of housing and local businesses seeking to expand or relocate to more suitable premises. Whilst this is not solely attributable to the manner in which the spatial vision appears to have been implemented, it is likely to be a contributing factor.
46. LP policy S2 does not mention a percentage split in the 'bulk' of new development between the various settlements or between Exmouth and Honiton. If, as is conceivable, a lower percentage split was attributed to Exmouth than ascribed by the appellant, the appellant's predicted housing shortfall to 2016 in this part of the District would be reduced. The extent of this reduction would be dependent upon interpretations of LP policy S2. In all

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<sup>10</sup> This new settlement forms part of the 'at Exeter PUA' referred to in SP policy ST17.

<sup>11</sup> Defined in the Exeter & Torbay Strategic Housing Market Assessment 2007

- probability, some shortfall appears likely, although it is very far from certain that this would be as great as that suggested by the appellant.
47. Whatever assumption/percentages are used in assessing housing delivery against the spatial vision, building about 60 affordable dwellings on the site would make an important contribution towards meeting Exmouth's housing needs, irrespective of its inclusion within Lympstone parish. The LPA accepts that the provision of affordable housing in the town has been disappointing and points to housing schemes being approved that fall under the threshold for requiring an element of affordable housing. It is unlikely that any other housing site(s) would deliver this scale of housing for the town up to 2016.
  48. The proposed 60 affordable homes is an important benefit of the scheme. In addition, the new business units would strengthen the local economy during very difficult economic circumstances. This would also create employment opportunities. The provision of affordable housing and the delivery of economic growth are corporate priorities of the LPA. In accordance with the Ministerial Statement of 23 March 2011<sup>12</sup>, this weighs heavily in favour of an approval. I also note the policies within the Draft National Planning Policy Framework. However, as this is only in draft form, it carries little weight.
  49. Providing much needed general market and affordable housing, as well as business premises, to meet the needs of Exmouth would accord with the spatial vision. There is nothing to show that the proposal would prejudice the delivery of housing development 'at the Exeter PUA'/Cranbrook or that adding to the housing land supply figures for the 'rest of East Devon' would undermine the settlement hierarchy or housing objectives of the development plan.
  50. The LPA informed me that further increasing the housing land supply figure for the 'rest of East Devon' would make the figure "*look slightly strange*". However, this does not amount to harm and it is rather telling that the 'reasons for refusal' make no reference to any conflict with the spatial vision.
  51. I note that in April 2010, and notwithstanding, at that time, a recognised 9 yr supply of housing land for the 'rest of East Devon', the LPA approved a scheme for 103 dwellings in an Area of Outstanding Natural Beauty at Sidmouth (Ref. 09/2093/MFUL). Whilst this is not adequate grounds for permitting the appeal scheme, it suggests an inconsistency in the LPA's approach to decision making.
  52. My attention has also been drawn to the New East Devon Local Plan 2006 to 2026 Consultation Draft (emerging LP) and a report<sup>13</sup> undertaken by the LPA in respect of potential strategic allocations for Exmouth. This report forms part of the evidence base to the emerging LP. It includes the appeal site and an adjoining area of land as one of 14 potential strategic sites. There is also a suggestion that the appeal site could accommodate a new school.
  53. The emerging LP is at an early stage and carries very limited weight. The appeal site is not one of the proposed allocations to be taken forward and if any application was made for educational use on the site it would need to be considered on its own merits. Furthermore, although the two preferred sites are not free of constraints, they do not appear to be in close proximity to a neighbouring village or lie within an AGLV, Green Wedge or be bisected by a popular long distance footpath.

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<sup>12</sup> 'Planning for Growth' Statement by the Minister of State for Decentralisation

<sup>13</sup> Exmouth Evaluation of Potential Strategic Allocations 2010

54. It is evident from the strategic allocations report and the emerging LP that additional housing, in the form of urban extensions, are necessary to meet the needs of Exmouth. However, the inclusion of the appeal site within this report does not convey any tacit approval. The development plan process is the appropriate mechanism for considering the preferred choice of sites. These documents do not lend weight to the case for releasing the appeal site.
55. Some interested parties have expressed concerns that the proposal would undermine the Council's plan-making process and deny the local community the opportunity of determining its preferred choice of housing within the Exmouth area. One of the LPA's witnesses also alluded to this as part of his evidence. However, the Council eventually informed me that its case did not raise any issues of 'prematurity' in respect of the emerging LP. On behalf of the appellant, it was also argued that the proposal was not strategic in scale and there would be ample choice for the local community to determine where the future growth of Exmouth should take place. The concerns of interested parties on this matter would not be a sound basis for withholding permission.
56. I conclude on the second main issue that there is a shortfall in deliverable housing land across the District as a whole. When taking a disaggregated approach, there is no such shortfall in respect of the 'rest of East Devon'. However, there is nothing of substance to show that the proposal would undermine or harm the housing objectives and spatial vision for East Devon, including the emerging spatial vision.

#### *Setting of Heritage Assets*

57. Both main parties have undertaken detailed assessments, using guidance produced by English Heritage<sup>14</sup>, of the likely impact of the scheme upon heritage assets. As a consequence, there is much agreement between the main parties on this issue. At the Inquiry, the LPA also informed me that the impact upon the setting of Courtlands House would not be adequate justification for withholding permission.
58. Courtlands House is a large colourwashed stuccoed house, parts of which date from the 18<sup>th</sup> century or maybe earlier. Although accessed from Courtlands Lane to the north, this building appears to have been designed so that it gradually reveals itself along the entrance drive and in effect, 'turns its back' on this lane. The appeal site and other agricultural land to the north were not important elements in the designed setting of this house which sits within a country estate. The main and historic designed views to and from this building are to the south and west across the open fields and the Exe Estuary. There are no important or significant views of this building from Courtlands Lane.
59. The proposal would not affect the extensive vistas to the south and south west of Courtlands House. I agree with both main parties that the loss of open fields to the north of this building and the construction of a sizeable housing estate alongside would have only a minor adverse impact upon the setting of this listed house and a negligible adverse impact upon the overall significance of this heritage asset. This would not justify withholding permission.
60. The roadside boundary to Courtlands House is defined by a stone and brick garden wall. The Grade II listed part of this wall comprises the 8 ft high, crenellated, 19<sup>th</sup> century section. This is limited to the Courtlands Lane

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<sup>14</sup> The Setting of Heritage Assets (2011)

boundary of the house and grounds. Whilst setting is not in itself a heritage asset, the fields which make up the appeal site are an integral part of the agricultural landscape which lies immediately to the north of this wall. These contribute to the significance of this wall as a strong visual boundary and an impressive means of enclosure to this country estate.

61. On behalf of the appellant, the proposal is described as likely to have a moderate adverse impact on this boundary wall and a minor adverse impact upon its overall significance. However, I agree with the LPA that replacing open fields with a suburban housing estate in such close proximity to this wall would considerably erode its setting and undermine the function and significance of this heritage asset. The conspicuous and prominent siting of some of the proposed dwellings would also diminish the imposing nature of the wall when travelling along Courtlands Lane. The proposal would harm the setting of this heritage asset and have much more than a minor adverse impact upon its significance. This would conflict with SP policy CO7 and LP policy EN9.
62. I note the concerns of some interested parties, including the National Trust, regarding the impact upon the setting of other nearby listed buildings, including the Grade I listed A La Ronde, the Grade II registered Historic Park and Garden at A La Ronde and The Point-In-View, as well as the Grade II listed St. Peter's School. I viewed these in relation to the appeal site during my site visits. These heritage assets are a considerable distance from the appeal site and the topography, including intervening vegetation, would ensure that the proposals would not harm their settings.
63. I conclude on the third main issue that the proposals would harm the setting of the Grade II listed boundary wall to Courtlands House.

#### *Nature Conservation*

64. Section 40 of the Natural Environment & Rural Communities Act 2006 provides that regard must be given to the purpose of conserving biodiversity. National<sup>15</sup> policies/advice and the development plan<sup>16</sup> also require development proposals to avoid or mitigate any adverse impacts upon sites that are recognised for their national and international importance for wildlife.
65. The site is within 400 metres of the Exe Estuary SPA, Site of Special Scientific Interest (SSSI) and Ramsar site. This area supports internationally important populations of wintering waterbirds. The site is also less than 2.5km from the East Devon Heaths SPA, East Devon Pebblebed Heaths Special Area of Conservation (SAC) and SSSI, which is noted for its rare and vulnerable specialist heathland wildlife, and is within 3.1km of the Dawlish Warren SAC.
66. Surveys undertaken by the RSPB in 2009, 2010 and 2011 have recorded a breeding territory for Cirl Bunting within the vicinity of the appeal site. Some local residents have also reported sightings of lapwings in the site. The proposal is not directly connected with or necessary to the management of the above Natura 2000 and Ramsar sites. It has the potential to result in the loss of habitat, particularly those used by Cirl Buntings for breeding and foraging. I also agree with Natural England that in combination with other residential schemes within the wider surroundings, the proposal has the potential to result

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<sup>15</sup> Circular 06/2005 'Biodiversity and Geological Conservation – Statutory Obligations and their impact within the planning system' and PPS9 'Biodiversity and Geological Conservation'

<sup>16</sup> SP policy CO10 and LP policy EN4

- in increased recreational activity/pressure within these protected sites. If this were to arise, it could have a significant effect on rare and vulnerable sites which have been designated for their nature conservation importance.
67. The appellant's Appropriate Assessment Considerations report and Addendum thereto, take into account the comments of Natural England and the RSPB. It also recognises the interim approach to assessing development proposals that has been devised by the local planning authorities bordering the Exe Estuary, Natural England, the RSPB and the Exe Estuary Management Partnership. In essence, financial contributions are sought to finance a range of mitigation measures to avoid any significant adverse effects on the integrity of protected sites. These include the provision of Suitable Alternative Natural Green Space to draw recreational pressure away from the Exe Estuary. The RSPB has also informed me that it is engaged in discussions with a local landowner over the possibility of managing some neighbouring farmland in a manner that would be conducive to supporting Cirl Buntings.
68. The planning obligation (agreement) would include a 'Cirl Bunting Contribution' (£61,475) towards the provision and maintenance of a habitat for this protected species within the vicinity of the site. In addition, there would be a 'Habitats Regulations Contribution' of £350/dwelling towards the provision and improvement of measures to reduce the potential cumulative impact upon the SPAs or SACs. There would also be provision for an 'On-Site Biodiversity Management Plan' to provide and maintain areas for encouraging biodiversity.
69. I agree with the LPA, the appellant, Natural England and the RSPB, that these provisions of the planning obligation would all be required to avoid harming protected species, mitigate any significant effects upon the integrity of the nearby sites of national and international importance, as well as conserving biodiversity. These provisions are necessary to make the development acceptable in planning terms, are directly related to the proposal and fairly and reasonably relate in scale and kind to the development. They accord with the tests I have noted in paragraph 10 above. I am therefore able to take them into account in determining this appeal.
70. Whilst some trees and limited sections of hedgerow would be lost as part of the proposals this would be unlikely to result in any significant impact upon other wildlife interests. The reserved matters would also include substantial new/replacement planting.
71. I conclude on the fourth main issue that the proposal would be unlikely to have any harmful effect upon nature conservation interests.

#### *Recreational Provision*

72. The revised layout plan that I have noted in paragraph 6 above does not show any play areas within the site for use by residents of the proposed dwellings. Instead, two Local Areas for Play (LAPs) and one Locally Equipped Area for Play (LEAP) are shown on the layout plan which accompanies the planning obligation (agreement) that was submitted at the Inquiry. This tends to support the LPA's argument that these have been introduced as an 'after thought' rather than being considered from the outset of the design process.
73. However, I note that the scheme was advanced following a meeting with officers from the LPA. Whilst I have been informed that neither party took minutes of this meeting, it was open to the LPA to request such information

- within the prescribed period for determining the application. The appellant would have been aware of the need to provide these play areas as part of the development and it is unlikely that such matters would not have been in the mind of the designer when formulating the layout plan.
74. The LPA is unconcerned over the quantum of space but has expressed concerns over its form and quality and has identified conflict with LP policy RE3. Paragraph 9.20 of the supporting text to this policy includes a requirement for LAPs to have seating areas for carers, include a buffer zone to adjacent houses and be very readily accessible, within one minute's walk of users homes.
75. One of the proposed LAPs would be centrally located within the site and would be overlooked from some of the surrounding dwellings. There would also be some overlooking of the LAP that is shown towards the south western corner of the site from some of the houses alongside. Both of these spaces would be within a one minute walk of users homes and the LAP near the south western corner of the site would also be immediately adjacent to a footway/cycleway that runs through the site. It would be possible to provide a landscape buffer to adjacent houses and seating area for carers. Whilst the LPA may not wish to adopt these LAPs, they would accord with the provisions of LP policy RE3.
76. Paragraph 9.21 of the supporting text provides, amongst other things, that a LEAP should include a buffer zone of at least 20 metres from adjacent houses and should be within five minutes walking times of users homes. The proposed LEAP would be 20 metres from the nearest proposed dwellings (plots 37, 44, 47 and 48) and within five minutes walking time of most of the dwellings. However, its location towards the north eastern corner of the site could result in some residents with small children taking slightly longer to access this play facility. Although not ideal, on balance, the LEAP would accord with the objectives of LP policy RE3. The scheme would also accord with national policies relating to recreation<sup>17</sup>.
77. The LPA has argued that the LEAP should be more centrally located and closer to community facilities. However, it would be overlooked from some of the neighbouring houses and in all likelihood, it would be well-used by incoming residents. Whilst the Council has implied that this facility would be at odds with guidance<sup>18</sup> produced by Play England, it has not provided any relevant extracts to support its assertions. Whilst Play England has an important role in ensuring young people have access to local play provision and play space, I would be surprised if its guidance was intended to be rigidly applied.
78. The off-site recreational provision which forms part of the planning obligation (agreement) includes a financial contribution (£1,459.12/dwelling) towards improving the tennis courts in Phear Park Exmouth, including a multi-use court for basketball, netball and soccer, or floodlighting a pitch at Exmouth Rugby Club, or athletic jump pits at Exmouth Community College, or all weather sports facilities at Exmouth Football Club, or improvements to Exmouth Cricket Club or an improved cycleway trail between the site and the NCN 2.
79. Whilst all of the above projects are laudable, other than the plan to link the site with NCN 2 it is doubtful whether contributions towards these other recreational facilities would be directly related to the development and

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<sup>17</sup> Planning Policy Guidance Note 17 'Sport and Recreation'

<sup>18</sup> Design for Play: A guide to creating successful spaces

necessary to enable it to proceed. Although Phear Park is a public park it is unclear to me what harm would arise to this facility if the development was to proceed and how any such harm would be remedied by financial contributions. These aspects of the obligation would be at odds with the tests I have noted in paragraph 10 above. I am unable therefore to take them into account.

80. However, using the contributions towards the cycle link would be necessary to assist in reducing the need to travel by car and would meet some of the recreational needs of residents. It would be directly related to the development and fairly and reasonably related in scale and kind. I have therefore taken this element of the obligation into account.
81. I conclude on the fifth main issue that the scheme would include adequate provision to meet the recreational needs of residents of the proposed dwellings.

#### *Other Matters*

82. Some of the highway concerns raised by interested parties were illustrated in Mr Mildenhall's video which was shown at the Inquiry. I have no doubts that at certain times of the day, especially during the summer months, users of the narrow country lanes in and around Lympstone face difficulties when encountering oncoming motor vehicles. However, the proposed development would include a new access onto the A376 and the amended layout would have a one way access into the site from Courtlands Lane. This would prevent motor vehicles from the site using this lane. It would also allow those who already use Courtlands Lane to either access the A376 via Courtlands Cross, as at present, or travel through the site and enter the main road via the new junction. The traffic control measures contained within the planning obligation (unilateral undertaking) would assist in securing this and would accord with the tests I have noted in paragraph 10 above. Four new passing bays would also be provided along Courtlands Lane. This would allow traffic to pass more easily along this part of the local highway network.
83. The proposal would also extend the footway along the northern section of the A376 to allow residents of the site to access the bus services along this main road. A new cycle way would be provided within the site and, as I have noted above, the planning obligation (agreement) would facilitate off site access to NCN 2. This agreement would also include provision for a Travel Plan to encourage incoming residents to travel by public transport, bicycle or on foot rather than by car. Residents would also be able to access Lympstone, including the train station, via the East Devon Way. The LPA and Highway Authority agree that in transport terms the site is in a sustainable location.
84. There would inevitably be some increase in vehicular traffic into Lympstone and along some other sections of the minor road network. However, the Highway Authority, having also considered the appellant's detailed Transport Assessment, is content that the scheme would not have any detrimental impact on the local road network or pose a significant risk to highway safety interests. Whilst I do not set aside lightly the concerns of those who are very familiar with the local highway network, there is no technical evidence to refute the findings of the appellant's transport consultants. On balance, the appellant's arguments on highway matters are more convincing.
85. Many residents of the proposed dwellings would be children. The number of pupils on the school roll at Lympstone C of E Primary School exceeds capacity,

- as do the numbers of pupils on the school roll at Exmouth Community College. Some children from the development would be likely to attend these establishments. If this were to arise, it could harm the quality of education provision within the area.
86. The financial contributions contained within the planning obligation (agreement) are based on a formula that includes Department for Education Cash Multiplier Rates for extensions to existing educational sites, with a separate allowance for ICT. The County Council's representative informed me that additional educational provision could be accommodated at both sites, although for Lympstone C of E Primary School it would compromise play area. Whilst this would be most unfortunate, greater harm would ensue if the school was forced to accommodate a sizeable influx of children without adequate classrooms. The proposed contributions would be necessary to limit harm to the quality of local education. This is directly related to the development and fairly and reasonably related in scale and kind. It meets the tests I have noted above in paragraph 10. I am therefore able to take them into account.
87. The provisions within the planning obligation (unilateral undertaking) for a free school bus service to other primary schools in Exmouth could be of benefit if children were to attend other schools. However, it has not been proven that this is necessary for the development to proceed and I note that it is not required by the Education Authority. This would not meet the tests I have noted above in paragraph 10. I am unable therefore to take it into account.
88. The proposal would entail the loss of grades 2 and 3a agricultural land. As set out in PPS7<sup>19</sup> the presence of best and most versatile land should be taken into account alongside other sustainability considerations, including the quality and character of the landscape, when determining planning applications. I note the appellant's arguments that the site does not form part of a larger agricultural holding and has "*not performed a historic food production function*".
89. Nevertheless, the appeal site could make a small, but important contribution towards meeting Government objectives for guaranteeing the security of food supply. Notwithstanding that the LPA's preferred options for the future growth of Exmouth include grade 2 and 3 agricultural land, the irreversible loss of best and most versatile agricultural land weighs against the sustainability credentials of the proposal. Whilst my decision does not turn on this matter, this adds some limited weight to the arguments for withholding permission.
90. The application was accompanied by a detailed flood risk assessment and an investigation into the geology and hydrology of the site. On behalf of the appellant, I was informed that the concerns of a neighbouring landowner in respect of surface water drainage had been considered and would form part of the reserved matters. Neither the Environment Agency nor the water company have objected to the scheme. Both main parties agree that a planning condition could be attached to an approval requiring the submission of drainage details. The proposal would be unlikely to increase the risk of flooding or pollute existing watercourses or water supplies.
91. The proposed houses would be sited and could be designed so as to avoid any serious overlooking of existing properties along Courtlands Lane. The road layout would also be designed so that traffic would not cause any serious noise

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<sup>19</sup> Sustainable Development in Rural Areas

- disturbance for neighbouring residents. Whilst the outlook from properties along the northern side of Courtlands Lane would change, the new buildings would be sited to avoid any overbearing impact upon those living alongside.
92. The loss of some private views across part of the site would be insufficient grounds for withholding permission. Whilst there is likely to be considerable noise disturbance during the construction phase, this would be temporary in nature. A planning condition could be attached to an approval requiring the submission of a Construction Method Statement to limit harm.
93. The planning obligation (unilateral undertaking) also includes provision for retaining and maintaining the hedge alongside the A376. This has not been requested by either the LPA or the Highway Authority and is not necessary to enable the development to proceed. This would not meet the tests referred to in paragraph 10 above. I am unable therefore to take it into account.
94. In addition to the Parish Plan that I have noted above, Lympstone Parish Council is also in the process of producing a new Neighbourhood Plan. It is clear to me that very many parishioners are prepared to meet the housing needs of the local community whilst safeguarding the valued Green Wedge. The Parish Council may well be right that this is the sort of community that the Government envisages as fulfilling its 'Big Society' and 'Localism' policies.
95. Local opposition or support for a proposal is not in itself a ground for refusing planning permission. Nevertheless, I am mindful of the overwhelming, if not unanimous, opposition to the scheme. Some of these concerns are founded upon valid planning reasons. I also understand the analogy drawn by the Parish Council regarding the appeal scheme and remarks attributed to the Prime Minister on 8 January 2012, in respect of development in the countryside and a "*great big housing estate being plonked down from above*". However, even if accurate, these remarks do not carry the same weight as the written Ministerial Statement I have noted above.

### *Planning Balance*

96. I have found that there is a shortfall in deliverable housing land across the District. There is also nothing to show that the proposal would undermine or harm the housing objectives and spatial vision for East Devon. In addition, the benefits of the scheme, including delivering affordable housing and business premises/employment are considerable. These benefits outweigh the harm to heritage assets that I have identified and, as a consequence, there would be no conflict with the provisions of PPS5<sup>20</sup>. This would also be sufficient to outweigh the harm that I have identified in respect of the loss of some of the best and most versatile agricultural land. However, I have also found in respect of the first main issue that this is not a suitable site for housing. When the serious harm that I have identified to the character and appearance of the area is weighed with these other considerations the balance tips against an approval.

### *Overall Conclusion*

97. Given all of the above, I conclude that the appeal should not succeed.

*Neil Pope*  
Inspector

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<sup>20</sup> Planning for the Historic Environment

## **APPEARANCES**

### FOR THE LOCAL PLANNING AUTHORITY:

Mr R Clarke of Counsel	Instructed by the Solicitor to East Devon District Council
<i>He called</i>	
Mr M Dickens MRTPI	Planning Policy Manager
Mr N Blackmore BSc (Hons), CMLI	Principal Landscape Architect
Mr A Breckon MRTPI	Senior Planning Officer
Mr S Guy IHBC	Principal Conservation Officer
Mr A Seddon	Solicitor to the Council ( <i>Spoke in respect of the Planning Obligations</i> )

### FOR THE APPELLANT:

Mr D Corsellis	c/o Stephens Scown Solicitors
<i>He called</i>	
Mrs S Planton Dip LA, CMLI	Principal Landscape Architect and Regional Manager, SLR Consulting Ltd
Mr R Morton BA (Hons), MIfA	Consultancy Project Manager, Cotswold Archaeology
Mr D Seaton MRTPI	PCL Planning
Mr C Morrison	Parsons Brinckerhoff ( <i>Spoke in respect of the ecology contributions in the planning obligation</i> )

### INTERESTED PERSONS:

Cllr B Ingham	Ward Member, East Devon District Council
Cllr T Dumper	Member of Exmouth Town Council but not appearing on behalf of the Town Council.
Cllr R Eastley	Member of Lympstone Parish Council
Cllr D G Atkins	Ward Member, East Devon District Council and member of Lympstone Parish Council
Cllr R Longhurst	Member of Lympstone Parish Council
Mr D Mildenhall	Local resident and appearing on behalf of Lympstone Parish Council

Ms H Dimond BA, MPhil, Dip Hist Con, IHBC, MRTPI (rtd)	Local resident and appearing on behalf of Lymptone Parish Council
Mr M Robertson	Residents of Courtlands Lane and other users of the local amenity provided by the fields
Mr S Niles	Devon County Council ( <i>Education</i> )
Mr Z Schuller	Devon County Council ( <i>Transport</i> )
Ms A Newsome	Natural England
Mr G Bloomfeld	RSPB

#### LIST OF DOCUMENTS SUBMITTED AT THE INQUIRY

Document 1	Opening Submissions on behalf of the appellant.
Document 2	Drawing No. 10780 L 01.05 Rev C 'Proposed Open Space Areas'.
Document 3	Drawing No. 10780 L 01.04 Rev P5 'Masterplan' scale A0.
Document 4	Structure Plan policy CO5.
Document 5	Local Plan policy TA8 and extract from Local Plan Proposals Map.
Document 6	Appeal decision Ref. APP/U1105/A/11/2156973.
Document 7	Statement made by Cllr Ingham.
Document 8	Statement made by Cllr Dumper.
Document 9	Statement made by Cllr Eastley
Document 10	Statement made by Cllr Atkins.
Document 11	Cllr Longhurst's Statement and Appendices.
Document 12	Map submitted by Cllr Longhurst showing public vantage points.
Document 13	Statement made by Ms Dimond.
Document 14	Mr Mildenhall's speaking notes.
Document 15	Statement made by Mr Robertson.
Document 16	Rebuttal to Mr Mildenhall's evidence.
Document 17	Extract from the Landscape Institute's and Institute of Environmental Management and Assessment's Guidelines for Landscape and Visual Impact Assessment.
Document 18	Accessibility Plan.
Document 19	Additional photographs to Mr Blackmore's proof of evidence.
Document 20	Amended Viewpoint 1 to Mr Blackmore's proof
Document 21	List of suggested planning conditions.
Document 22	Planning Obligation (Agreement) dated 26 January 2012.
Document 23	Affordable housing completions in East Devon.
Document 24	Extracts from Structure Plan Explanatory Memorandum.
Document 25	Advertisement details regarding Plumb Park.
Document 26	Addendum to Appropriate Assessment Considerations.
Document 27	Letter from Mrs Leigh.
Document 28	Planning Obligation (Unilateral Undertaking).
Document 29	Maps showing public views from the appeal site and Cranbrook.
Document 30	Plan showing distances from nearest dwellings to LEAP.
Document 31	The LPA's closing submissions.
Document 32	The appellant's closing submissions.
Document 33	The appellant's cost application.
Document 34	The LPA's response to the costs application.
Document 35	Mr Mildenhall's video (local highway network).