



Appeal Decision

Inquiry Held on 19 - 22 April 2022 and 26 April 2022

Site visit made on 25 April 2022

by Stephen Normington BSc DipTP MRICS MRTPI FIQ FIHE

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

Decision date: 30th June 2022

Appeal Ref: APP/X1118/W/21/3283943

Former Yelland Power Station, Lower Yelland, Yelland, Barnstaple, Devon EX31 3EZ

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant full and outline planning permission.
- The appeal is made by Yelland Quay Limited against the decision of North Devon District Council.
- The application Ref 60823, dated 16 March 2016, was validated by the Council on 19 December 2018 and was refused by notice dated 15 June 2021.
- The development proposed is a Hybrid application comprising:

(A) full application for access and scale of site including raising of ground levels, removal of any contamination, demolition of buildings, flood defence works, site access works and highway infrastructure, together with purpose built bat building and vehicle parking for Tarka Trail.

(B) outline application for 250 dwellings (Use Class C3(a)), up to 3000sqm employment space (Use Class E(g)(i) and E(g)(ii) was Use Class B1). Retail Space of up to 250sqm gross floorspace (Use Class E(a) was Use Class A1); Space for the Sale of food and drink of up to 2000sqm Gross floorspace (Use Class E(b) was Use Class A3); Service and Community Space of up to 500sqm Gross floorspace (Use Class E(d) E(e), E(f) and F1(a), F1(b), F1(e), and F2(b) was Use Class D1 and D2); layout including all associated infrastructure, roads, footpaths, cycleway, drainage (including attenuation works), landscaping and appearance, public open space and utilities.

Decision

1. The appeal is allowed and full and outline planning permission is granted for a hybrid application comprising (A) full application for access and scale of site including raising of ground levels, removal of any contamination, demolition of buildings, flood defence works, site access works and highway infrastructure, together with purpose built bat building and vehicle parking for Tarka Trail. (B) outline application for 250 dwellings (Use Class C3(a)), up to 3000sqm employment space (Use Class E(g)(i) and E(g)(ii) was Use Class B1). Retail Space of up to 250sqm gross floorspace (Use Class E(a) was Use Class A1); Space for the Sale of food and drink of up to 2000sqm Gross floorspace (Use Class E(b) was Use Class A3); Service and Community Space of up to 500sqm Gross floorspace (Use Class E(d) E(e), E(f) and F1(a), F1(b), F1(e), and F2(b) was Use Class D1 and D2); layout including all associated infrastructure, roads, footpaths, cycleway, drainage (including attenuation works), landscaping and appearance, public open space and utilities at former Yelland

Power Station, Lower Yelland, Yelland, Barnstaple, Devon EX31 3EZ in accordance with the terms of the application, Ref 60823, dated 1 March 2016 and as validated on 19 December 2018, subject to the conditions set out in the attached schedule in annex C.

Application for costs

2. At the Inquiry an application for costs was made by Yelland Quay Limited against North Devon District Council. This application is the subject of a separate Decision.

Preliminary and procedural matters

3. Prior to the opening of the Inquiry the appellant and the Council agreed an amended description of the proposed development from that contained on the application form. This was further amended on 31 May 2022, prior to the close of the Inquiry. This clearly distinguishes those elements that are relevant to the outline and full application and is a clearer and correct description of the development proposed in the application. I have therefore used the amended description in the banner heading above and in my consideration of this appeal.
4. The application was submitted as a hybrid proposal involving components submitted for full planning permission and components submitted for outline planning permission. The 'full' aspects, as described in the banner heading, include, amongst other matters, the provision of the site access and associated infrastructure and scale of the site and operations involving the raising of ground levels. In respect of the outline aspects of the application, layout, appearance and landscaping are reserved matters for future consideration.
5. With regard to the outline component of the application, a 'Proposed Masterplan' (Y029 18 204W), 'Landscape Strategy' (10655 P18D), Proposed Storey Plan and Design Code (Y029 18 206I) and 'Infrastructure Delivery Plan' (Y029 18 205P) were submitted to demonstrate one way in which the site could be developed. I have had regard to these plans in the determination of this appeal.
6. Prior to the opening of the Inquiry, a number of Statements of Common Ground (SoCG) were submitted. The main SoCG ('main SoCG') was signed and dated by the appellant on 21 December 2021 and by the Council on 23 December 2021. A 'Highways Matters' SoCG ('Highways SoCG') was signed by the appellant and Devon County Council, in its role as Highway Authority, dated 22 December 2021. A Landscape SoCG ('Landscape SoCG') was signed by the appellant on 12 April 2022 and by the Council on 13 April 2022.
7. The Council's first reason for the refusal of the application relates to a conflict with Policy FRE01(b) of the North Devon and Torrington Local Plan 2011-2031 (2018)¹ (Local Plan). However, the main SoCG identifies that reference to this Policy was in error and that the reason for refusal should have referred to Policy FRE02(b) of the Local Plan. I have therefore determined this appeal on the basis of an alleged conflict with Policy FRE02(b) of the Local Plan.

¹ CD 5.1

8. The Council's second reason for the refusal of the application specifically relates to the A3125/B3233 (Cedars) and A3125/Old Torrington Road (ESSO Garage) road junctions. The Highways SoCG identifies that it is agreed that the Highway Authority has identified an improvement scheme for the Cedars Junction and is satisfied that this can be delivered using existing highway contributions already secured from other development schemes in the area. Consequently, the Highways SoCG identifies that it has been agreed that the sole matter of dispute relating to highways matters is limited to whether mitigation measures or the requested highway contributions towards improvements at the A3125/Old Torrington Road (ESSO Garage/Wrey Arms) junction would satisfy the tests set out in paragraph 57 of the National Planning Policy Framework (the Framework). I have therefore determined the appeal on this basis.
9. The Council's second refusal reason also identifies that the proposed development is considered to be contrary to the National Planning Policy Framework (February 2019), in particular, paragraph 108 (c) and paragraph 109, as the residual cumulative impacts upon the road network are considered to be 'severe'. The February 2019 version of the National Planning Policy Framework has been replaced by 2021 version. The guidance provided in paragraphs 108 (c) and 109 of the 2019 version is now reflected in paragraphs 110 (d) and 111 of the 2021 version. I have therefore determined the appeal on the basis of a conflict with paragraphs 110 (d) and 111 of the 2021 version of the National Planning Policy Framework.
10. The Devon Branch of the Campaign to Protect Rural England (CPRE), Braunton Parish Council, Love Braunton, Heanton Punchardon Parish Council and Heanton Punchardon Residents' Association were accorded Rule 6(6) party status and presented evidence in support of their objections to the proposals. These included matters in relation to the Council's reasons for refusal of planning permission. However, they also included a number of other matters. In particular, Rule 6 Party concerns, amongst other things, related to the effect of the development flood risk, biodiversity and sustainability aspects of the proposed development. These matters are considered later in this decision.
11. The planning application was accompanied by an Environmental Statement (ES). An addendum was also submitted in 2020 to address changes made in the design evolution. A review of the ES was undertaken by the Planning Inspectorate which culminated in a request on 20 December 2021 for further information pursuant to Regulation 25 of the Town and Country Planning (Environmental Impact Assessment) Regulations 2017 (EIA Regulations).
12. The further information requested related to the provision of an updated Construction Phasing Plan; provision of an updated Construction Environmental Management Plan; provision of an updated transport assessment; description of the design evolution; provision of anticipated quantities and types of waste likely to be generated during the construction of the proposed development; explanation whether the baseline ecological surveys remain robust; provision of an updated Flood Risk Assessment and Wave Modelling output utilising the most up to date climate change projections; an assessment of Greenhouse Gas emissions where significant effects are likely to occur and a description of any associated embedded/additional mitigation measures; provision of a reference list for

references made in the ES to supporting information/guidance; and provision of an updated non-technical summary.

13. The appellant submitted the entirety of its response to the further information request on 23 February 2022. Whilst not a statutory requirement, the applicant publicised the availability of the further information in the North Devon Gazette on 2 March 2022, with a request for any comments on the additional environmental information to be made to the Planning Inspectorate by 4 April 2022. No responses to this consultation exercise were received.
14. I am satisfied that the ES, together with the further information (February 2022) meets the requirements of Schedule 4 of the EIA Regulations.
15. A draft agreement pursuant to Section 106 of the Town and Country Planning Act 1990 (S106 Agreement), relating to the appeal development and which would take effect should planning permission be granted, was submitted at the outset of the Inquiry. A further draft² was submitted during the Inquiry and final executed agreement,³ dated 30 May 2022, was submitted shortly after the end of the oral sessions. Thereafter, the Inquiry was closed in writing on 13 June 2022.
16. A Community Infrastructure Levy (CIL) Compliance Statement was submitted by the Council⁴. I have had regard to the provisions of this in consideration of the S106 Agreement. I shall return to these matters later in this Decision.
17. The Inquiry was conducted on the basis of topic based round table sessions (RTS) involving discussions in relation to the effect on the character and appearance of the area. Matters relating to the safe and efficient operation of the highway network, planning issues, including housing mix and tenure, infrastructure provision and the planning balance were considered by the formal presentation of evidence.

Main Issues

18. Having taken into account the evidence before me and from what I heard at the Inquiry, the main issues are:
 - Whether the proposed development provides an appropriate housing mix and tenure to meet local housing needs.
 - The effect of the proposed development on the efficient operation of the highway network in the vicinity of the appeal site with particular regard to A3125/Old Torrington Road junctions (ESSO Garage/Wrey Arms junction).
 - the effect of the proposed development on the character and appearance of the surrounding area.
 - Whether the proposed development provides an appropriate level of infrastructure to meet local needs.

² ID16

³ ID29

⁴ CD8.2

Reasons

The appeal site and proposed development

19. The appeal site is located on the southern side of the River Taw estuary and comprises approximately 38.5 hectares of land that was formerly occupied by the operational area of a coal fired power station. The eastern section of the site comprises an area of capped former ash beds which have partially revegetated. The western section comprises the site of the former power station buildings. Although most of the structures were demolished sometime in the late 1980's, the flooded basement of the main boiler-house/turbine hall remain, together with the switch house and pump-house (both in a dilapidated condition).
20. The site was not subject to any significant remediation or reclamation works following the demolition of the buildings. Parts of the site have contamination associated with hydrocarbons, heavy metals and asbestos, the latter of which has been encapsulated in a buried containment cell on the site. It is clear that a substantial part of the site comprises previously developed land, although there is some dispute between the main parties as to the precise extent of this.
21. Part of the site is currently used as a concrete batching plant, waste transfer facility and a primary and recycled aggregate processing and distribution facility. The former jetty that was used to import coal is occasionally used for the importation of primary aggregate materials.
22. The site is accessed from the B3233 and is located to the north of the Estuary Business Park which comprises of commercial units and compounds. A substantial operational electricity sub-station is located immediately to the west of the site. East Yelland Marsh lies to the east and Instow Barton Marsh to the west. The footpath and cycle route comprising the Tarka Trail runs in an east-west direction along the southern boundary of the site with the northern shoreline boundary to the River Taw comprising mudflats and saltmarsh grassland, along which is the route of the South West Coast Path.
23. The site is located adjacent to the Taw-Torridge estuary Site of Special Scientific Interest (SSSI), an area of national importance for overwintering birds. The Braunton Burrows Special Area of Conservation (SAC) and Site of Special Scientific Interest (SSSI) lie approximately 800m northwest of the site. The site lies within the Braunton Burrows SAC 'Zone of Influence'. It is also within the buffer zone of the UNESCO Biosphere Reserve and is located within the setting of the North Devon Coast Area of Outstanding Natural Beauty (AONB).
24. A scheduled prehistoric stone alignment is located approximately 500 metres to the north east of the site (HER 5507) at Isley Marsh. This alignment is now submerged beneath accumulating silt and is currently on the Heritage at Risk Register as a consequence.
25. The proposed development would involve, amongst other things, the raising of site levels by up to 2.6m, modifications to the site access, provision of a car park to serve the Tarka Trail, the provision of 250 dwellings comprising 2 to 5 bedroom units up to a maximum height of 5 storeys, employment, retail, space for the sale of food and drink, service and community space and open

space as detailed in the application. Overall, the submitted evidence suggests that approximately 11.7 hectares (Ha) (30% of the site) would comprise of built development with 26.8 Ha (70% of the site) comprising open space and green and blue infrastructure.

Planning Policy Context

26. The development plan comprises the North Devon and Torridge Local Plan 2011-2031, adopted in 2018⁵ (Local Plan). The main SoCG sets out the agreed position of both main parties with regard to the most important policies in the development plan that are relevant to the determination of this appeal.
27. Policy FRE (Fremington and Yelland Spatial Vision and Development Strategy) sets out a spatial vision for these settlements which includes the appeal site. The spatial Vision identifies that new development will deliver a mix of high quality, sustainable family and affordable housing integrated with employment opportunities and key community infrastructure. It also identifies community regeneration of the former Yelland Power Station that will facilitate a mixed-use redevelopment of housing and employment opportunities with associated social, community, green and blue infrastructure through high quality design.
28. The Spatial Development Strategy component of Policy FRE states that the spatial vision for Fremington and Yelland will be delivered, amongst other things, through the provision of a minimum of 426 dwellings, including affordable homes. It specifically identifies the regeneration and redevelopment of Yelland Quay (as a contribution towards the provision of new dwellings) to deliver a high quality mixed-use development for approximately 250 dwellings and economic uses including opportunities for utilising the existing jetty and quay.
29. Policy FRE02 (Yelland Quay) allocates the appeal site for the mixed-use development. The policy identifies that development on the site will be required to deliver a number of site-specific development principles. These include, amongst others, approximately 250 dwellings the size and tenure of which will be reflective of local needs; approximately 6,000 square metres of economic development and community facilities; buildings and structures sited and designed in accordance with an agreed 'Design Code'; provision of flood alleviation and remediation measures; contributions to and enhancement of the green infrastructure network within and adjoining the site including the provision of a new football pitch and the provision of informal open space on the former ash beds; provision of a net gain to biodiversity, provision of a public car park for users of the Tarka Trail; and, improvements to the existing road junction with the B3233.
30. The supporting text to Policy FRE02⁶ identifies that the site forms part of the developed coast and estuary, although the adjacent former ash beds that have been capped form part of the underdeveloped coast and estuary. Policy ST09 (Coast and Estuary Strategy) identifies, amongst other things, that employment uses will be directed to previously developed sites around the coastline and the Taw-Torridge estuary with existing jetties and wharves. The policy also identifies that development within the undeveloped coast and

⁵ CD 5.1

⁶ CD5.1 paragraph 10.199

estuary will be supported where it does not detract from the unspoilt character, appearance and tranquillity of the area. However, the policy does not define any such restrictions upon development proposed within the developed coast.

31. Policy ST17 (A Balanced Local Housing Market) sets out the approach, amongst other things, to the consideration of housing scale and mix. It identifies that the scale and mix of dwellings, in terms of dwelling numbers, type, size and tenure provided through development proposals should reflect identified local housing needs, subject to the consideration of site character and context and development viability.
32. Policy ST18 (Affordable Housing on Development Sites) identifies, amongst other matters, that proposals for 11 or more dwellings will be expected to provide on-site delivery of affordable housing equal to 30% of the number of dwellings (gross) on site. Criterion (5) of the policy sets out that negotiation to vary the scale and nature of affordable housing provision, along with the balance of other infrastructure and planning requirements, will be considered on the basis of a robust appraisal of development viability.
33. Policy ST22 (Community Services and Facilities) sets out in criterion (1) that development of new or improvements to existing community facilities that meet the needs of local communities will be supported within or adjoining defined settlements where it does not harm the character of the area. Criterion (3) identifies that development which involves the loss of community facilities will not be supported unless there is compelling evidence to demonstrate that the existing use is no longer commercially viable or that there is alternative local provision that is accessible by walking or cycling.
34. Policy ST23 (Infrastructure) sets out three criterion relating to the provision of infrastructure. First, that developments will be expected to provide, or contribute towards the timely provision of physical, social or green infrastructure made necessary by the specific and/or cumulative impact of those developments. Second, that where on-site infrastructure is not feasible or desirable, then off-site provision or developer contributions will be sought. Thirdly, that developments that increase the demand for off-site services and infrastructure will only be allowed where sufficient capacity exists or where the extra capacity can be provided, if necessary, through developer-funded contributions.
35. Policy DMO8A (Landscape and Seascape Character) identifies, amongst other things, that development should be of an appropriate scale, mass and design that recognises and respects landscape character of both designated and undesignated landscapes and seascapes and avoid adverse impacts to these assets. The policy recognises the objective to maintain dark skies and tranquillity in areas that are relatively undisturbed. In addition, proposals affecting the setting of the AONB should be informed by, and assist in the delivery of, the North Devon Coast Area of Outstanding Natural Beauty Management Plan.
36. Although not identified within the Council's reasons for the refusal of planning permission, I consider that Policies ST15 (Conserving Heritage Assets) and Policy DM07 (Historic Environment) are also relevant considerations in the determination of this appeal. Policy ST15 sets out that great weight will be given to the desirability of preserving and enhancing northern Devon's historic

environment by, amongst other things, conserving historic and archaeological features of national and local importance and their settings.

37. Policy DM07, amongst other things, identifies that proposals which conserve and enhance heritage assets and their settings will be supported. Where there is unavoidable harm to heritage assets and their settings, proposals will only be supported where the harm is minimised as far as possible, and an acceptable balance between harm and benefit can be achieved in line with the national policy tests.
38. The site is shown on Part One of the Council's Brown Field Land Register (entry BFL/FRE/028) pursuant to the provisions of The Town and Country Planning (Brownfield Register) Regulations 2017. The Regulations provide that sites shown on Part One of the Register are suitable, available and achievable for residential development.
39. The main SoCG identifies that the Council cannot demonstrate 5 years housing land supply (HLS) and that the agreed figure is 4.23 years. As a consequence, footnote 8 of paragraph 11 of the Framework is applicable and paragraph 11(d) is engaged. The so called 'tilted balance' is therefore triggered. As such, planning permission should be granted unless the application of policies in the Framework that protect areas or assets of particular importance provides a clear reason for refusing the development proposed or 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.
40. In light of the above, it is necessary for me to consider the extent to which there may be any adverse impacts arising from the proposed development, and the weight to be given to these in the planning balance.

Housing Mix and Tenure

41. The Council's first reason for the refusal of planning permission specifically refers to affordable housing in the context of tenure. It contends that the proposed development would not deliver an appropriate housing mix and tenure (affordable housing) to meet local needs.
42. The text of Policy FRE02 of the Local Plan does not provide any reference to housing mix or to affordable housing. However, it does identify that the size and tenure of dwellings should be reflective of local needs. Policy ST17 further identifies that dwelling numbers, type size and tenure should reflect identified local housing needs, subject to the consideration of site character and context and development viability.
43. The first reason for the refusal of planning permission also refers to a conflict with Policy ST18 of the Local Plan which requires that development will be expected to provide on-site delivery of affordable housing equal to 30% of the number of dwellings (gross) on site. However, as set out above, criterion (5) of the policy provides that negotiation to vary the scale and nature of affordable housing provision, along with the balance of other infrastructure and planning requirements, will be considered on the basis of a robust appraisal of development viability.
44. I have therefore considered below the extent to which the proposed development should deliver affordable housing and whether the housing mix

is reflective of local needs. With regard to these matters I have also carefully taken into account the evidence provided in respect of the viability of the proposal.

45. The viability of the proposed development was independently assessed on behalf of the Council by Plymouth City Council.⁷ In their Viability Report, Plymouth City Council stated that "The site has considerable exceptional and abnormal costs related to the presence of the former power station as well as the proximity of the river. These conditions are not typical, are site specific and have a material impact of the delivery of the scheme". The Report recognised that viability has an impact on the scheme's ability to make contributions towards affordable housing and other Section 106 requirements. It further states that "It should be noted that these abnormal costs are specific to this development and would not have been taken in to account when North Devon District Council formulated their area wide Local Plan or assessed the viability of their policies".
46. As the Report concludes that the proposed scheme cannot support making Section 106 contributions, the advice to the Council at the time the report was prepared was to secure a review mechanism to allow for contributions should the scheme viability improve. At the time the applicant offered a contribution of £1.418m in lieu of this review mechanism and Plymouth City Council were of the opinion that it is more likely than not that this amount would exceed any amount achieved through a review mechanism.
47. Whilst the conclusions of the Viability Report were criticised in the Inquiry, I have no other alternative viability appraisal or any other compelling evidence to suggest that the independent views and conclusions of Plymouth City Council may be incorrect in this regard. Consequently, I find that the viability considerations in the case have been independently and robustly verified. As such, I attach considerable weight to the Viability Report prepared by Plymouth City Council.
48. In this case, it is clear from the conclusions of the Viability Report that the proposed development cannot financially support the provision of Section 106 contributions. I have taken into account the evidence provided in the Inquiry that clearly demonstrates a severe shortage of affordable housing in North Devon. However, I find that the independently verified viability evidence is compelling in that the proposed development cannot financially sustain the provision of affordable housing. Given the terms of Policy ST18 (5), I consider that the proposed development without affordable housing remains compliant with the policy as, in this case, such provision is clearly not viable.
49. Although not referred to in the Council's reasons for the refusal of planning permission, reference was made in the Inquiry to a potential conflict with Policy FRE of the Local Plan. Although this policy sets out that the spatial vision for Fremington and Yelland will provide a minimum of 426 dwellings, including affordable homes it is not site specific. In my view, reference to the provision of affordable housing in the policy is to provision within Fremington and Yelland as a whole. Consequently, I do not consider that the proposed development would be contrary to the provisions of Policy FRE.

⁷ CD1.17

50. Turning now to the proposed housing mix, as part of the evidence base for the examination in public of the Local Plan, the Council commissioned a joint report with Torridge District Council to provide a 'Housing and Economic Development Needs Assessment'⁸ (HEDNA). This provided an assessment of housing needs in the Local Plan area over the Plan period to 2031.
51. The HEDNA identified that the provision of market housing over the Local Plan period should be more explicitly focussed on delivering smaller family housing for younger households. On that basis a mix for market housing was recommended comprising of 5-10% 1-bed properties, 30-35% 2-bed properties, 40-45% 3-bed properties and 15-20% 4 bed properties.
52. Paragraph 8.33 of the HEDNA provides a degree of caution in the prescriptive use of the above housing mix figures. It identifies that "The 'market' is to some degree a better judge of what is the most appropriate profile of homes to deliver at any point in time, and demand can change over time linked to macro-economic factors and local supply".
53. The proposed development indicates that 0% 1-bed properties, 34% 2-bed properties, 32% 3-bed properties, 26% 4-bed properties and 8% 5-bed properties would be provided. I accept that this housing mix does not prescriptively follow the mix suggested in the HEDNA and makes no provision for 1-bed properties. However, 66% would comprise of 2-bed and 3-bed properties which I consider to be commensurate with the recommendations of the HEDNA to focus delivery on smaller family housing.
54. I have also had regard to paragraphs 2.31 to 2.34 of the Officer Report to the Council's Planning Committee⁹ which states that the mix (of the proposed development) has been tested through the independent viability process and found to be acceptable based on the level of abnormal costs and confirms that mix is not so far from the range set out in the HEDNA to result in a sustainable reason for refusal. Furthermore, the report identifies that the greatest need in northern Devon is for 2 and 3 bed units.
55. Whilst I recognise the Council's concerns at the lack of 1-bed properties in the housing mix there is nonetheless a focus on smaller 2 and 3 bed units to provide family housing consistent with the Spatial Vision of Policy FRE of the Local Plan. I am also mindful of the severe viability constraints that the development of this site entails. In these circumstances, I do not consider that the proposed housing mix is so inconsistent with the indicative mix provided in the HEDNA to warrant the dismissal of this appeal on the grounds of housing mix.
56. In summary, taking the above factors into account and in particular the viability constraints, it is clear that the proposed development cannot sustain the provision of any affordable housing. Policy ST18 clearly identifies that development viability will be considered in the negotiation to vary the scale of affordable housing. The viability evidence in this case is compelling in that affordable housing cannot be provided within the constraints of the scheme's viability. Consequently, I do not consider that the proposed development would materially conflict with Policy ST18 of the Local Plan.

⁸ CD3.15

⁹ CD4.2

57. The suggested housing mix is reflective of the housing needs of North Devon in providing a focus on the delivery of 2 and 3 bed units. Consequently, I do not consider that the proposed development would materially conflict with the relevant provisions of Policies FRE02 and ST18 of the Local Plan.

Effect on the efficient operation of the local highway network

58. The Highways SoCG confirms that in transport terms the appeal site is a sustainable location for development and that there is no dispute that the proposed access to the site is suitable. In this regard, the proposal is consistent with parts (a) and (b) of paragraph 110 of the Framework. In addition, no highways safety concerns were identified in the Inquiry to any aspect of the local highway network that may be affected by the proposed development.
59. The application was accompanied by a Transport Assessment (TA). Devon County Council, acting in its role as Highway Authority, confirmed in its consultation response to the planning application on 6 February 2020 that "The proposed development is acceptable to the Local Highway Authority on the basis the highway works and contribution requirements are secured." The response also identified "the sum of £611,952.00 to be directed towards improvements at the Cedars Junction (A3125/B3233) and/or ESSO Garage/Wrey Arms Junction (Old Torrington Road/A3125)"
60. In its consultation response of 7 April 2021, the Highway Authority provided an update on its position, confirming an objection to the scheme solely on the basis of the removal of the highway contributions offer as a result of the agreed Viability Assessment.
61. The Highways SoCG sets out that the Highway Authority has identified an improvement scheme for the Cedars Junction that it is satisfied can be delivered using existing highway contributions already secured from other development schemes in the area. It also identifies that the Highway Authority is of the view that the implementation of that Cedars scheme would not be as effective in improving capacity at that location in the absence of an improvement scheme for the Wrey Arms/Esso Garage junction (Wrey Arms Junction) due to the potential operational interaction between both junctions.
62. The Highways SoCG identifies that the sole matter of dispute relating to highways matters is limited to whether mitigation measures or the requested highway contributions towards improvements at the A3125/Old Torrington Road (ESSO Garage/Wrey Arms) junction would satisfy the tests set out in paragraph 57 of the Framework.
63. The Council's second reason for the refusal of planning permission does not identify any conflict with the development plan and refers to conflict with paragraphs 108 (c) and 109 of the 2019 Framework, now paragraphs 110 (d) and 111 of the 2021 Framework. The Local Plan does not identify the need for any mitigation at the Wrey Arms junction.
64. Paragraph 104 of the Framework sets out that transport issues should be considered at the earliest stages of plan-making. The quantum of housing units proposed in this appeal is entirely consistent with the quantum proposed in the Local Plan that was adopted four years ago and which did not identify any improvements required to the junction. Furthermore, I have no

substantive evidence to suggest that there has been a fundamental and significant change in the local traffic data or highway conditions in North Devon since the Local Plan was adopted and when the traffic implications of the development proposed in the Plan for the Plan Period to 2031 were likely to have been comprehensively assessed.

65. The appellant commissioned a fresh traffic survey for the Wrey Arms junction during November 2021 in order to assess any changes in localised traffic movements at the junction since the production of the 2019 TA. The results show¹⁰ some variations in traffic flows since 2019 and with all movement combined the 2021 survey identified a 0.6% increase since 2019 in the AM peak and a 6.2% decrease on the PM peak.
66. The agreed vehicular trip assignment for the Wrey Arms junction is provided in the Highways SoCG and equates to 37 trips in the AM peak and 70 trips in the PM peak. On average, this equates to approximately one additional movement every two minutes in the AM peak hour and just over one additional movement during the PM peak hour.
67. Taking into account the agreed development trips and the 2021 traffic flow data, the appellant's highways evidence suggests that the proposed development would result in an increase in flow at the Wrey Arms junction of 1.7% in the AM peak and 3.5% in the PM peak.¹¹ The highways evidence also indicates that the agreed development traffic flows for the Wrey Arms junction are well within the estimated range in background traffic for each approach across a typical 5-day week. Consequently, the impact of development traffic on the performance of the junction would therefore be less than might ordinarily be experienced by drivers currently as a result of the natural day-to-day variation in traffic.¹²
68. The appellant's evidence considers the change in ratio of flow to capacity (RFC) as a result of the proposed development.¹³ This illustrates that the proposed development would be expected to result in a negligible impact on the capacity of the Wrey Arms junction with the RFC increasing by no more than 3% on any one approach in the AM peak, and no greater than 6% in the PM peak.
68. No contrary evidence was presented in the Inquiry by the Council to suggest that the appellant's revised traffic flow evidence and impact on the performance of the Wrey Arms junction may be incorrect. Furthermore, no substantive technical evidence was provided by the Council to demonstrate how the implementation of the proposed improvements to the Cedars junction scheme would not be as effective in improving capacity at that location in the absence of an improvement scheme for the Wrey Arms junction. The modelling in the TA suggests that the Cedars junction has no capacity issues and has capacity to accommodate the traffic arising from the proposed development.¹⁴
69. There is no national definition of what may constitute a severe impact in the context of paragraph 111 of the NPPF. No contrary evidence was provided by

¹⁰ Table 5.1 Mr Wozniczko PoE

¹¹ Table 5.2 Mr Wozniczko PoE

¹² Table 5.4 and paragraph 5.30 Mr Wozniczko PoE

¹³ Table 5.8 Mr Wozniczko PoE

¹⁴ CD1.14 Tables 7.11 and 7.12

the Council as to how a severe impact should be considered or at what point, if any, an increase in congestion at the Wrey Arms junction would amount to a severe residual impact on the road network.

70. Taking into account the foregoing, I am of the view that the effect of the development on the Wrey Arms junction cannot be considered to constitute a severe residual cumulative impact on the road network. The evidence suggests that there would be minimal change in traffic flow expected to arise from the proposed development and a relatively negligible change in the capacity at the roundabout. Consequently, the proposed development would not be contrary to the provisions of paragraph 111 of the Framework.
71. As a consequence of the above, there is no justifiable basis for a contribution to be made to improvements to the Wrey Arms junction to make the proposal acceptable in planning terms. I have found that that the proposed development would not cause any significant impact on the transport network in terms of capacity or congestion. Therefore, there would be no conflict with paragraph 110 (d) of the Framework.
72. Although the Highway Authority have produced a preliminary scheme for improvements at the Wrey Arms junction this is at a very early stage and is not substantiated by any accompanying technical modelling of the capacity benefits or detailed costing of the preliminary scheme. Furthermore, this scheme has not been approved by the Highway Authority as representing the preferred and final design. As such I have attached little weight to this preliminary scheme.
73. Notwithstanding the dispute between the main parties regarding the calculation of the level of the requested contribution to the junction improvement, my findings above demonstrate that a contribution would not be necessary to mitigate the effects of the development as no significant impact would be caused. Furthermore, there is no substantive evidence that clearly and comprehensively explains how the level of contribution sought directly relates to the cost of the junction improvement.
74. Consequently, I consider that the financial contribution identified by the Council in the context of the second reason for the refusal of the application would be contrary to the provisions of paragraph 57 of the Framework and Regulation 122(2) of the Community Infrastructure Levy Regulations 2010. I shall return to this matter in my consideration of the submitted S106 Agreement later in this Decision.
75. Taking all of the above factors into account, I find that the proposed development would not have a material severe detrimental effect on the efficient operation of the highway network in the vicinity of the appeal site and in particular the Wrey Arms junction. Consequently, there would be no conflict with paragraphs 110 (d) and 111 of the Framework.

Character and appearance

Landscape background

76. The Landscape SoCG identifies that the site is not subject to any national or local landscape designations but forms part of the setting of the North Devon Coast AONB. The main part of the appeal site comprises previously developed land and areas of regenerated ash beds. It is allocated for the type

and quantum of development set out in the application under policy FRE02, with the exception of the football pitch which was previously proposed south of the Tarka Trail.

77. The previously developed part of the site forms part of the Developed Coast, an area in which views are often characterised by development. Coastal settlement is a feature of the Estuaries Landscape Character Type (LCT 4A) and other waterside settlements occur in the surrounding area, including Instow and Appledore. Both main parties agree that site is located within an area of valued landscape.
78. Whilst the landscape character of the previously developed part of the site is degraded, this is generally apparent only in the closest range views. Although most of the appeal site is located within the Estuaries Landscape Character Type (LCT 4A), due to its previous land uses, it is not highly representative of the LCT.
79. The Landscape SoCG confirms that the development proposals would have no physical effect on the Braunton Burrows. Whilst their intrinsically wild character will remain unaffected, the development is located in their setting.
80. At the request of the Council, during its consideration of the planning application, the concept masterplans¹⁵ produced were subject to consultation with the South West Design Review Panel (SWDRP) on two occasions on 17 May 2019 and 21 August 2019. Whilst generally supportive of the extent of development, the SWDRP response on 17 May 2019 suggested there may be opportunities to incorporate some vertical elements within the proposals so as to create a sense of robustness, using height, scale and density.¹⁶ It further commented that the historic height and massing uses on the site may provide design cues.
81. A further design iteration (Concept 5) was presented to the SWDRP in August 2019 which included 5 storey elements. The SWDRP response on 21 August 2019¹⁷ raised several comments regarding further landscape consideration and functional linkages with the estuary but it was generally supportive of the revised approach. Other than comments regarding a variation of building heights and a denser cluster of development, no comments were made regarding the 5-storey elements.
82. The final version of the Proposed Masterplan (Y029 18 204W) and Proposed Storey Plan and Design Code (Y029 18 206I) that were considered by the Council were largely informed by the consultations with the SWDRP. Therefore, in this regard, I acknowledge the appellant's contention that the design has been significantly influenced by the SWDRP at the specific request of the Council.
83. A Landscape and Visual Impact Assessment (LVIA) was submitted as part of the original application and further Landscape and Visual Impact evidence was submitted as part of the appeal. I concur with the views of both main parties that the LVIA has been undertaken broadly in line with best practice guidance as set out in the Guidelines for Landscape and Visual Impact Assessment (Third Edition) 2013 (GLVIA3). Whilst there is general agreement on the

¹⁵ CD1.13`

¹⁶ Appendix TG3 Volume 2 Ms Lancaster's PoE

¹⁷ Appendix TG3 Volume 2 Ms Lancaster's PoE

approach adopted in the LVIA there is disagreement regarding aspects of some of the baseline views and the magnitude of the landscape and visual effects.

Landscape impacts

84. There is no doubt that the allocation of the site in the Local Plan envisaged a scale of development that is commensurate with that proposed in the appeal proposal. Therefore, to a large extent, there is an expectation and acceptance that significant development could occur on the site which would have some impact, with both positive and negative elements, on the local landscape. Such impacts are largely unavoidable if the allocation in the Local Plan is to be delivered.
85. From my consideration of the evidence submitted in this appeal, the key issue regarding the impact on the local landscape is whether the scale and form of development proposed in this appeal would be acceptable within the context of the local landscape. As part of this consideration, I have carefully taken into account the extent to which the proposal creates any landscape harm that is not implicit in the development plan allocation.
86. There is no dispute that the proposed development would remove an area of degraded landscape that has existed for some years, characterised by discordant and dilapidated features, material stockpiles, plant silos, derelict buildings and significant areas of hardstanding surrounded by dilapidated fencing. I consider that the current appearance of the site provides a significant adverse impact on the local landscape.
87. From the discussions in the Landscape Round Table Session, it is clear that a considerable part of the Council's concern relates to the inclusion of buildings in excess of 3 stories. However, the Proposed Storey Plan and Design Code (Y029 18 206I) shows that the majority of the proposed development would be at or below 3 stories with 97% of the developable area of 11.7ha comprising 3 stories or less and 84% of the built footprint at 3 stories or below.
88. The evidence suggest that the introduction of taller buildings was at the express suggestion of the SWDRP. The appearance of development on the valley slopes to the south of the River Taw, particularly around Instow, displays a degree of verticality which provides vertical visual articulation of development within the local landscape. In my view, given the extent of proposed built development, the inclusion of taller elements within the appeal scheme would help to break up the mass of development, provide vertical articulation and provide a degree of design character.
89. Whilst I accept that building heights would be emphasised by the ground raising this is also accepted in the Local Plan¹⁸ as part of the necessary flood risk management. In any event, I recognise that the proposed design seeks to locate the higher storey buildings where possible on the lower proposed ground levels.
90. Although largely undeveloped, the southern side of the estuary does have a number of established settlements both located on the waters edge and set further back. These form a key part of the estuary character. The biggest

¹⁸ CD5.1 paragraph 10.200

change affecting the wider landscape will be from the introduction of built settlement across parts of the site, set back between approximately 50 to 65m from the waters edge. There is no doubt that there would be significant change to the local landscape character. However, this does not necessarily imply that such change would be unacceptable.

91. Both main parties agree that the proposed development would cause some degree of harm to the landscape and visual character of the area. They differ in the degree of that harm which arises from the assessment of landscape effects, the susceptibility to change and the magnitude and significance of landscape effects.
92. Taking into account the evidence provided by the main parties, in this context I find it appropriate to concur with the findings of the LVIA provided in the ES. The Council's Landscape and Countryside Officer during consultation on the planning application considered this to be a "reasonably objective assessment of the likely landscape and visual effects of the proposed development".
93. Within the local area the magnitude of change would likely be High and the significance of the effect would be Moderate Adverse. The development would cause loss to some key elements such as some degree of tranquillity and would introduce urban elements and features which, although not entirely uncharacteristic of the wider area, will create a new focus in the landscape/seascape. Within the wider area the magnitude of change would be likely Low and the significance of effect would be Minor Adverse. However, as the proposed landscaping matures over time, the development would likely assimilate more with its surroundings and would considerably enhance the local green infrastructure network.
94. The appeal scheme will not result in the loss of locally valued features. It will result in the removal of detracting and discordant features which are at odds in the landscape. In my view, whatever form of development is undertaken on the site, within the context of the parameters set by Policy FRE02, there will undoubtedly be a significant and unavoidable impact on the local and wider landscape, primarily as a consequence of the scale of development proposed in the allocation.
95. The development proposed in this appeal has been through a number of design iterations informed by the SWDRP. This has resulted in a form of development providing for lower buildings and lower density positioned closer to the estuary; the massing of higher buildings close to the current focus of development and away from the estuary; variation of roofline to create articulation and maintaining, where possible, building heights below the canopy of mature tree planting
96. The consideration of landscape impact in this case is, to a large degree, a matter of subjective judgement informed by the submitted evidence. Given the prominence of the site within the context of its setting, in my view, the proposed masterplan design and landscape strategy provide an appropriate response to the development of the site within the sensitivity of its landscape context. In this regard, I do not consider that there would be any material conflict with the provisions of paragraph 174 (a) of the Framework.
97. In summary, the proposed development would result in some moderate adverse landscape harm. It will result in a visible change to a small area of

the estuary. However, I do not consider this would be of such an unacceptable extent to warrant the dismissal of this appeal on the basis of landscape harm.

Visual impacts

98. Turning now to my assessment of the visual effects, the LVIA includes an analysis and assessment of the sensitivity of 31 viewpoints, the locations of which were agreed by the Council and the AONB partnership.¹⁹ Further supplementary visualisations were also produced. I have taken these into account as well as basing my reasoning on my own observations from my visit to the site and the wider area.
99. The supplementary visualisations provided by the Council were prepared in order to test the submitted material and to verify the likely impact of the development from several key locations. Whilst I found the supplementary visualisations to be helpful and accurate, I do not consider that the difference between those provided by the appellant and the Council to be significantly material to my consideration of the landscape and visual effects of the proposed development.
100. The development will be most visually prominent from the South West Coast Path and edge of estuary directly north of the site; Crow Point to the west; Northam Burrows Country Park to the west; the South West Coast Path as it passes the site boundaries; and, a short section of the Tarka Trail as it passes by the southern site boundary.
101. From the Northam Burrows Country Park (viewpoints 1 – 3) I concur with the description of visual change that would occur as set out in the ES. This identifies that the development proposals would be partially seen within the view within the mid distance, just beyond Crow Point. The development would sit low down in the landscape/seascape and would not interfere with the distant ridgeline. The majority of the proposed development would be horizontal in form, with just a few taller elements providing visual interest.
102. In these views the proposals would be viewed in the context of existing development. The new development would form a self-contained settlement seen across the water, quite distinct and separate from existing development. The development proposals would not change the overall character and balance of the wide panoramic view. I consider that the development would cause limited visual intrusion in views from the Northam Burrows Country Park.
103. In views from Crow Point (viewpoints 4 – 8) the proposed development would be clearly seen within the view and would be seen in close proximity to the waters edge, in the context of the existing jetties and foreshore. The development would form the focus of the view and would form a noticeable change. Although the development would sit low down in the landscape/seascape it would partially break the distant ridgeline. The majority of the proposed development would be horizontal in form, with the taller elements providing visual interest. In my view, there would be a moderate adverse impact on views from Crow Point.

¹⁹ CD1.10 Appendices 7.1 and 7.2

104. The Council's third reason for the refusal of planning permission identified adverse visual impact on those using the SWCP and the Tarka Trail. In my consideration of the visual impacts of the proposed development on the users of these footpaths I am mindful that the principle of development close to the footpaths has been accepted with the site's allocation in the Local Plan.
105. The submitted landscape evidence provided by both main parties demonstrates that there is some degree of agreement regarding the magnitude of change at the visual receptors as a consequence of the proposed development. The differences relate to the magnitude of change to the closest views from the Tarka Trail and the South West Coast Path (SWCP).²⁰
106. In close views of the site from the SWCP it is currently a visual detractor. In my view, users of the path in this location enjoy the views across the estuary rather than the views across the site. The proposed development would have minimal effect on views of the estuary.
107. The proposal would remove the detracting elements. Owing to the set back of development from the water's edge, with lower height and lower density development along the foreshore, it would reduce the perception of massing from the SWCP. This would be further reduced as the landscaping matures.
108. In the approach to the site along the SWCP from the east (viewpoints 22 - 24), the majority of the existing detracting elements are screened behind the intervening higher ground of the ash beds. The appeal scheme would not block views of the estuary but will obscure views towards Appledore. The lower part and less dense aspects of the development would be predominantly seen, albeit set back from the foreshore resulting in less development in proximity to the SWCP than is the current case with the materials storage on the site. Whilst the panoramic views of the estuary would be retained, the proposed development would have a localised urbanising effect over a relatively short section of the route which would likely cause some partial obstruction of longer distance views towards the hills to the south of the site.
109. The proposed development would have a beneficial effect on views around the location of viewpoint 23 as a consequence of the removal of the detracting elements. However, overall, I consider that the appeal scheme would have a moderate adverse impact in views from the eastern side of the SWCP as it approaches the site.
110. The effect on views approaching the site from the west (viewpoint 24) along the SWCP would be similar. In my view, the taller built elements would make little difference to the appearance of the massing of development in these close proximity views due to their set back within the proposed development, but nonetheless there would be a moderate adverse impact.
111. Overall, the proposed development would cause a noticeable change in view for users of the SWCP. However, the worse effects would likely be limited to approximately 500m either side of the site. Owing to the proposed set back from the foreshore, I do not consider that the proposed development would appear as unacceptably overbearing. Nonetheless, it would cause a moderate adverse visual effect.

²⁰ Table 8.1 Mr Radmall PoE

112. With regard to the impact on the Tarka Trail, views of the appeal site are largely screened by intervening vegetation. Where filtered views are attainable these are characterised by chain-link fencing, degraded buildings, concrete batching plant and silos and materials storage and processing plant. Views of the estuary are not readily attainable from the stretch of the Tarka Trail that adjoins the southern boundary of the site.
113. Longer distance views towards the site are possible from the combined SWCP and Tarka Trail to the east of the site, viewpoints 19 - 21. The proposed development will result in buildings appearing in views which would likely be mitigated over time as the proposed landscaping matures. Such views are only readily attainable from the stretches of the Tarka Trail where there is no vegetation alongside the path. Such views would be limited in extent.
114. In any event, the visibility of development, albeit filtered by vegetation, would be inevitable given the allocated nature of the site. I consider that the impact of development on these views from the Tarka Trail is of minor significance and localised in extent. I do not consider that the appeal scheme would result in any significant visual harm to the users of the Tarka Trail beyond that which was established as a consequence of the allocation of the site in the Local Plan.

Effect on the setting of the AONB

115. Although not forming part of the reasons for the refusal of planning permission, the evidence presented by the Council in the Inquiry refers to a detrimental impact on the AONB.
116. The appeal site is situated outside of the AONB and the proposed development would not directly affect it. However, the proposal would result in the creation of a new coastal settlement within its setting and having a strong relationship to the waterfront, as is the case with other settlements, such as Appledore, within its setting.
117. The proposal will result in the introduction of development closer to the AONB in the location of Crow Point from where it is possible to see the site most, and other coastal settlements, in views from the northern side of the estuary. This is also the area from which the current detracting elements within the site are most apparent.
118. The AONB Partnership, in their letter dated 25 February 2019²¹ in response to consultation on the planning application, identified that they agreed with the LVIA assessment of effects on the Landscape Character Type relevant to the AONB as being minor adverse significance with a lesser effect i.e. less than minor adverse significance, on the setting of the AONB. The Partnership also confirmed that it agreed with the assessment of visual impacts on viewpoints within the AONB, these being of minor adverse significance in views from Northam and of moderate adverse effect to visual receptors at Crow Point.
119. Whilst the Partnership had residual concerns, they concluded that "Overall the development would result in minor alteration to the qualities of tranquillity and panoramic views in the setting of the AONB. Change would be permanent and would be limited in extent".

²¹ Volume 2 Appendix TG6 Ms Lancaster PoE

120. I concur with the views of the Partnership, informed by the LVIA, that the effect on the setting of the AONB would be less than minor adverse significance. In considering the effects on the Special Qualities of the AONB and relevant policies, as set out in the Management Plan,²² I do not consider that the proposed development would appear as being overly dominant or overbearing within the setting, although it will be seen. It would not harm the purpose of the AONB designation and would not cause unacceptable harm to the Special Qualities of the AONB.
121. In my view, the effect on the setting of the AONB would largely be the same from any development that is undertaken in accordance with the Development Plan. Furthermore, I attach little weight to the concerns regarding a loss of tranquillity as the site is already allocated for the same level of development as provided in the appeal proposal. Any alternative development undertaken in accordance with Policy FRE02 would also have a similar impact on tranquillity.
122. As a consequence of the above, I do not consider that the less than minor adverse effect on the setting of the AONB would be contrary to the provisions of paragraph 176 of the Framework.

Character and appearance - Conclusion

123. The appeal scheme would undoubtedly result in changes to the local landscape and views. It would remove an area of degraded and visually detracting landscape and introduce a new urban form setback from the foreshore and with strategically designed landscaping.
124. I do not consider that it would introduce a typical form of coastal village into the area as the appeal scheme would comprise of buildings of similar age in a defined location as opposed to a settlement form that has evolved over centuries. That is not to say that the proposed form of development is unacceptable.
125. Settlements, irrespective of age, are features of the surrounding landscape and appear in views of the estuary and extend vertically up the higher ground. It has to be recognised that any development within the context of Policy FRE02 would have similar landscape and visually impacts. That is an accepted and inevitable consequence of the site's allocation in which it has to be recognised that landscape and visual change would occur.
126. As such, the key issue is whether the form of the proposed development, primarily as a consequence of the taller elements, would be unacceptably contrary to that which was envisaged and considered within the parameters of Policy FRE02 when the site was allocated.
127. Other than requiring an agreed design code, Policy FRE02 provides no guidance on the form of development that should occur on the site beyond identifying the quantum. The appeal proposal has been subject to several iterations of design informed by the SWDRP. To some extent this informed the design form to specifically introduce vertical elements within the proposals so as to create a sense of robustness.

²² CD3.14

128. Whilst I recognise the subjectivity of landscape and visual considerations, I am of the view that the proposed development form of the appeal scheme would add visual interest as consequence of the higher elements and as such would positively contrast with a blander development of consistent heights in roofscape. Whilst I have found that there would be moderate adverse landscape impacts, I am firmly of the opinion that such magnitude of impact would occur with any development that provides the quantum identified in Policy FRE02.
129. The appeal scheme is situated within the developed coast. Policy ST09 specifically directs employment uses to be sited on previously developed sites around coastline and the Taw-Torridge estuary with existing jetties and wharves and, in particular, identifies the appeal site for such development. As such, I do not consider that there would be any conflict with the provisions of Policy ST09.
130. I consider that the development is of an appropriate scale, mass and design that recognises and respects landscape character within the context of the allocation. Whilst the policy recognises the objective to maintain dark skies and tranquillity in areas that are relatively undisturbed, in my view, any development of the quantum proposed in the development plan would have a similar impact on dark skies and tranquillity. I have also found that there would be less than minor effect on the AONB and that the development has been informed by the AONB Management Plan.
131. Taking the above factors into account, I do not consider that the proposed development would cause any material harm to the character and appearance of the area beyond that which would likely occur as a consequence of the allocation in the Local Plan. The current site is a visual detractor in the context of the local landscape. The appeal proposal would remove those detracting elements.
132. Any development of the allocated quantum would cause a degree of landscape and visual harm. I have not found any aspect of the appeal proposals which would unacceptably cause any harm beyond that which could reasonably be expected as a consequence of the site allocation. Consequently, I do not consider that there would be any material conflict with the provisions of Policies FRE02(d) or DM08A of the Local Plan.

Infrastructure provision

133. The Council's fourth reason for the refusal of planning permission states that "inadequate infrastructure is being delivered (football pitch, education) to meet the needs of the community contrary to Policy FRE02(h), ST22 and ST23...." However, paragraph 6.2 of the Council's Statement of Case states that the issue of a shortfall in the education requirement is no longer being pursued.²³
134. The proposed development does provide on-site open space but does not make provision for a football pitch. The Section 106 Agreement, which is discussed later in this decision, makes provision for the submission of a Public Open Space Masterplan to provide for a locally equipped area for play (LEAP),

²³ Paragraph 9.2 Mr Harris PoE.

- a neighbourhood equipped area for play (NEAP) and an area of informal open space.
135. Other than the provision of the football pitch, no evidence was presented in the Inquiry to suggest that any of the above other open space provision may be inadequate. Therefore, I have determined this appeal on the basis that the Council's concern is limited to the failure to provide a new football pitch and associated facilities which are set out in criterion (h) of Policy FRE02.
136. There is some dispute between the main parties whether there is need for a new football pitch. There was a football pitch and social club on the site during the operational period of the power station. As part of the evidence base for preparation of the Local Plan, the Fremington and Yelland Area Study (October 2011) identified a shortfall in sports pitches in the area. The North Devon and Torridge Playing Pitch Strategy 2017-2031²⁴ identified that more football pitches are required in a number of areas in North Devon including Fremington, albeit the appeal site is not specifically identified as a preferred location for such provision.
137. The 'First Review Northern Devon Playing Pitch Strategy 2017-2031'²⁵ identified that a full-size grass pitch with changing rooms and social space, a separate storage building and a floodlit Astro turf MUGA have been constructed on the new Riverside Park (former Fremington Army Camp) housing development. This was funded by the developer, with top up funding from an associated Section 106 Agreement.
138. The review also identified that in September 2019 a new community hall and changing rooms were provided on the Beechfields Playing Fields at Fremington. Priority Projects for 2020-2022 were also set out in the review. Whilst this identified that Fremington Parish Council had aspirations to adopt the facilities comprising the new football site at Riverside Park, no other deficiency in football pitch provision was identified in the Fremington and Yelland area.
139. The Second Review of the Northern Devon Playing Pitch Strategy 2017-2031,²⁶ undertaken in January 2021,²⁷ identified that the Riverside Park Football Pitch has been adopted by the Parish Council and is being used by the football club through formal arrangement. However, the accompanying Action Plan also did not identify any other deficiency in football pitch provision in the Fremington and Yelland area.
140. Notwithstanding the provisions of criterion (h) of Policy FRE02, there is a lack of clarity whether there is a need for a new football pitch on the appeal site and the submitted evidence does not clearly demonstrate whether the demand has been satisfied by the new pitch at Riverside Park. The Council suggest that the proposed development would create additional demand for a new football pitch. However, taking into account the submitted evidence provided in the Playing Pitch Strategy and the subsequent reviews, there is uncertainty whether demand has been/can be satisfied by the provision made at Riverside Park and the Beechfields Playing Fields.

²⁴ CD3.16

²⁵ Cd3.19

²⁶ CD3.20

²⁷ Paragraph 9.21 Mr Harris PoE

141. Even if I were to be persuaded that there remained a clear and unfulfilled need for a football pitch on the appeal site this would likely have to be sited on land identified for proposed development and therefore further impact on the viability of the scheme. Moreover, I have no contrary evidence to suggest that the proposed development is capable of providing a football pitch within the constraints of the viability evidence provided in this appeal. This is particularly relevant as the evidence suggests that the viability assessment did not take into account the provision of a new football pitch.
142. In conclusion on this matter, the proposed development would be contrary to the provisions of criterion (h) of Policy FRE02 but only in respect of the failure to make provision for a new football pitch and associated facilities. The weight to be attached to this conflict, taking into account the viability of the scheme and the provisions of the development plan as a whole, is further considered in the Planning Balance section of this Decision below.

Other Matters

Effect on the special interest of nearby heritage assets

143. The effect of the proposed development on the special interest of nearby heritage assets was not identified as a reason for the refusal of planning permission. However, in response to the consultation by the Council on the planning application, Historic England expressed concerns regarding the potential hydrographic impacts of the intensification of use and flood defences on the nationally important Scheduled Monument comprising the 'double stone alignment on Isley Marsh 535m north of Yelland Farm (NHLE 10003847, OCN DV173)'. In particular, Historic England expressed concern that the Scheduled Monument may be at risk from increased sediment accretion following the proposed raising of the defences on the western side of the site.
144. Further hydrological assessments were undertaken by the appellant pursuant to the Regulation 25 request. This included the submission of a further assessment of the hydrological effect of the development on the Scheduled Monument.²⁸
145. The assessment concluded that "The development proposal will not increase sediment in Isley Marsh. If the Monument was uncovered, sediment would continue to accrete via natural processes via the wider estuary of which the site is a part, meaning that regular sediment removal would be required. The biggest risk to the Monument into the future is posed by rising sea levels, which would likely lead to the Monument being submerged daily".
146. Although the Council has raised no concerns regarding the impact of the proposed development on any designated heritage assets, I am nevertheless required to have regard to the statutory duty to consider the effect of the proposal on such assets. In applying the statutory test as set out in Section 72 (1) of the Planning (Listed Buildings and Conservation Areas) Act 1990, I have had regard to the effect of the proposed development on the Scheduled Ancient Monument.
147. I recognise the appellant's concern at the difficulty in engaging with Historic England during the appeal process and the inability to gain any formal response regarding the additional hydrological assessment. However, based

²⁸ Appendix EP1 Mr Harris PoE

on the evidence before me, I have no substantive reasons to suggest that the proposed development would lead to any harm to the significance of the Scheduled Ancient Monument.

148. In arriving at this conclusion, I have had full regard to the great weight that should be given to the assets conservation. In particular, I have taken into account the provisions of Section 66(1) of the Planning (Listed Buildings and Conservation Areas) Act 1990 and paragraphs 199, 200 and 202 of the Framework.
149. I note that the appellant identifies that "it is common ground between the Council and the appellant that any impact on heritage assets is less than substantial and that the public benefits of the proposal that arise from the development of the site accord with Policy DM07".²⁹ Other than the appellant, no other parties provided any evidence in the Inquiry regarding the effect of the proposed development on heritage assets. In my view, there is no substantive evidence to suggest that any harm would be caused to the Scheduled Monument as a consequence of the proposed development.
150. Even if I were to be persuaded that the proposed development would cause less than substantial harm to the significance of the Scheduled Ancient Monument, I conclude that the benefits identified later in this decision outweigh any less than substantial harm that would be caused. Consequently, the proposed development would not be in conflict with the relevant provisions of Policies DM07 and ST15, nor with the relevant provisions of the Framework.

Biodiversity

151. Paragraphs 174(d) and 179(b) of the Framework seek to ensure that development delivers a net gain in biodiversity, although no specific percentage of gain is identified. The Council has not raised the issue of biodiversity net gain as a reason for the refusal of planning permission.
152. Paragraph 6.5 of the Local Plan states that "All development will be expected to provide a net gain in biodiversity where feasible. Where biodiversity assets cannot be retained or enhanced on site, the Councils will support 'biodiversity offsetting' to deliver a net gain in biodiversity off-site in accordance with the offsetting strategy(39)." Criterion (i) of Policy FRE02 also identifies that biodiversity net gain should be delivered.
153. The application was accompanied by a biodiversity metric which was assessed by North Devon Biosphere Reserve who agreed the development would result in the loss of 112 units from a baseline of 360 units. Applying a recommended £10k per unit suggests that a minimum £1,120,000 would be required to ensure that there would be no net loss.
154. The Environment Act 2021 sets that biodiversity net gain should be 10% of the baseline. The evidence of Mr Bell on behalf of the North Devon Biosphere Reserve sets out that the application of a 10% net gain would require an additional 36 more units on the baseline giving a total requirement for £1,480,000.

²⁹ Paragraph 10.15 Mr Harris PoE

155. However, although the Environment Act 2021 has now passed, secondary legislation is required for it to be implemented. Therefore, the 10% biodiversity net gain requirement set out in the Act is not yet law and is not applicable to this appeal.
156. The S106 Agreement, which is considered in more detail later in this Decision, provides for a financial contribution of £1,120,000 which suggests that this would ensure that there is no net loss of biodiversity as a consequence of off-setting. However, the submitted evidence does not clearly demonstrate that this figure would provide a net gain.
157. I have considered the viability aspects of the proposed development as confirmed by Plymouth City Council and I recognise that within the limits of the viability of the scheme there is little prospect, if any, of the total value of the financial contributions set out in the S106 Agreement being increased.
158. Although the scheme would not necessarily deliver a net gain in biodiversity, it would not deliver a loss. In this regard the advice in the Framework is not necessarily prescriptive and needs to be balanced in the context of other material considerations, which include viability. Furthermore, paragraph 6.5 of the Local Plan identifies that a net gain should be provided 'where feasible'. I shall return to this later in the Planning Balance section of this Decision.
159. Paragraph 6.7 of the S106 Agreement provides that the Inspector, may, if considered appropriate, determine that the money provided for a contribution that is deemed incompatible with any of the tests set out in Regulation 122 of the CIL Regulations, should be re-allocated. This section provides an order in which the "Reallocated Contributions" should be made which is firstly on the basis of an increased Ecology Mitigation Contribution.
160. For the reasons set out earlier in this Decision and further considered later, I am of the view that the Highways Contribution of £335,500 towards the provision of mitigation works at the A3125/Old Torrington Road (Wrey Arms) junction would not be necessary to make the development acceptable in planning terms. As such, it would be contrary to the provisions of paragraph 57 of the Framework and Regulation 122(2) of the CIL Regulations.
161. Taking into account the provisions of Paragraph 6.7 of the S106 Agreement, the unnecessary Highways Contribution should first be reallocated to the Ecology Mitigation Contribution. If the full value of that contribution were to be reallocated then the revised value of the Ecological Contribution would be £1,455,500 which would equate to approximately a 9% net gain.
162. However, as set out below, it is a matter for the parties to the S106 Agreement to determine the amount of the reallocated contribution that should be applied to the Ecology Mitigation Contribution. Providing additional contributions to achieve only a 1% net gain would fully meet the relevant policy requirements in the Framework and the Local Plan.

Other Matters raised by Rule 6 Parties and Interested Parties

Flood risk

163. As part of the request for additional information pursuant to Regulation 25 of the EIA Regulations, the appellant submitted an update to the Flood Risk Assessment (FRA) and Wave and Overtopping Assessment utilising the most

up to date climate change projections. These documents supersede the former ES documents found at Volume 2 Technical Appendix 9.1 and 9.2.

164. The revised FRA indicates a need for a very minor increase in property floor levels for the inland residential properties of 80mm from 7.10 to 7.18mAOD. It also advises an increased set back at the sites western edge (from 20m to 25m). However, the proposed plans already identify a setback in excess of this so no change to the proposed development would be required.
165. The changes addressed within the updated FRA are not considered of such a significance so as to necessitate an update to the ES Flood Risk Main Text.³⁰ This is because the scope of the assessment includes an assessment of potential impacts on hydrology and drainage, with consideration towards the risks and effects of contamination of surface and groundwater, increased stormwater runoff, reduced groundwater recharge, increased water usage demand and increased foul drainage. None of these risks or effects are identified in the updated FRA as being influenced by the additional sea level rise allowances. The sea level rise allowances were adjusted to reflect the latest uplift in climate change projections. However, the equivalent allowances for rainfall have not changed since the original FRA in Chapter 9 of the ES was prepared and therefore the assessment of effects, proposed mitigation and residual effects all remain unchanged.
166. During consultations on the planning application, the Environment Agency considered that the development would be acceptable, provided that certain conditions are included on any permission granted. These include further consideration of drainage and flood risk as part of the consideration of the reserved matters. Interested parties have expressed concern that the proposed development does not meet the 'sequential test' as set out in Section 14 of the Framework which aims to steer development to area with the lowest risk of flooding from any source.
167. The Environment Agency stated in their response to the consultation of the planning application that "Given that all the sites allocated in the joint Local Plan were sequentially tested with the aid of a Strategic Flood Risk Assessment, we anticipate that the Sequential Test has been already satisfied".
168. In my view, the development would provide wider benefits to the community, as considered below, not least those associated with the remediation and re-use of this contaminated site in accordance with the objectives set out in the Local Plan. Furthermore, taking into account the updated FRA, I have no other contrary technical evidence to suggest that the development would not be safe, taking into account the vulnerability of its users, nor would it demonstrably and unacceptably increase the risk of flooding elsewhere. Consequently, I do not consider that the proposed development would conflict with paragraph 164 to 166 of the Framework.

Health implications of potential asbestos disturbance

169. Concerns were raised in the Inquiry regarding the health risk of operations on the site encountering and disturbing buried asbestos. Whilst I understand the degree of concern, the extent to which the site is contaminated by asbestos

³⁰ CD1.8

was considered as part of the ES. In addition, planning conditions are proposed below requiring the details of remediation works, measures to deal with unexpected contamination, measures to ensure that the integrity of the encapsulated buried asbestos cell in the former pumphouse is not compromised and measures to ensure that the risks posed by asbestos during the site operations are managed.

170. In addition, there are other legislative controls beyond the planning regime that are applicable to development on sites which contain asbestos. Whilst I recognise the local concerns, I have no compelling evidence before me to suggest that the proposed development would demonstrably compromise public health or that it cannot be undertaken in a safe manner.

Sustainability

171. It is argued that the proposal does not constitute sustainable development. This is on the basis, amongst other things, that the traffic effect during construction and degree of landscape change would detrimentally affect the tourist economy which would be inconsistent with the economic objective of sustainable development; that the development does not deliver homes to meet the future needs of the area nor foster well-designed places to promote health, social and cultural well being contrary to the social objective; that the proposed development does not protect the natural or historic environment and is based on an outdated flood risk analysis contrary to the environmental objective of sustainable development.
172. The Highways SoCG identifies that the site is sustainably located in terms of access to transportation modes serving local facilities. No contrary technical evidence was presented in the Inquiry to dispute this aspect of the Highways SoCG and I have no other reason to dispute its agreed content.
173. I have considered above the matters relating to highway capacity and landscape change. No conclusive evidence was provided in the Inquiry to make any reasonable judgement of the effect of the proposed development on the local tourist economy. The construction works may discourage some visitors from using the SWCP in the short term. However, the development would affect only a very small part of the route. Taking into account the iconic nature and length of the route overall, I do not consider that the development would deter users to any significant extent.
174. In the absence of any conclusive evidence, I consider that the impacts of the proposal upon the local tourism industry would not be of an extent to justify the dismissal of this appeal on those grounds alone. In the overall planning balance, I consider that the impact on tourism should be afforded little weight.
175. I have identified above that the proposal is broadly consistent with the HEDNA mix and cannot viably sustain the provision of affordable housing. However, I consider that the provision of 250 market housing units in an appropriately designed development with community, employment and recreational facilities is not at odds with the social objective of sustainable development.
176. The submitted Flood Risk Assessment has recently been updated to take into account the latest climate change projections. I have no technical evidence to suggest that any aspects of the Flood Risk Assessment may be outdated or

that its findings and recommendations made be incorrect. I have considered above the effect of the proposed development on biodiversity and the historic environment. Taking these findings into account, I have not found any substantive reason to suggest that the proposal, when considered overall, would materially conflict with the environmental objective of sustainable development of an extent to warrant the dismissal of this appeal.

Other matters

177. I recognise that some sections of the community may wish to see the site undeveloped and regenerate naturally or secure funding for its use as a nature conservation site. However, such matters are not before me. It was clear from the evidence heard in the Inquiry that there is a real risk that, without any remediation, sea level rise could cause contaminants to be leached into the estuary. Furthermore, no evidence was provided to suggest that there may be alternative sources of funding available to secure any 'non-development' led remediation and reclamation nor any demonstrable desire from the Council for any conservation led reclamation scheme. Consequently, these matters have not been given any weight in my consideration of this appeal.
178. Many other matters were raised by interested parties in the Inquiry. Although these matters have been carefully considered, they do not alter the main issues which have been identified as the basis for the determination of this appeal, particularly in circumstances where the Council has not objected to the appeal scheme for these other reasons.
179. The parties in this appeal have referred to many appeal decisions which have been provided to support their respective case. It is rarely the case that appeal decisions on other sites will bring to light parallel situations and material considerations which are so similar as to provide justification for a decision one way or another, particularly as none relate to a brownfield site, on an estuary location, having significant contamination and associated finely balanced viability issues. My decision is based squarely on the evidence before me. For that reason, I do not consider that the appeal decisions brought to my attention have a determinative influence on my consideration of the appeal case.

Planning Obligation

180. A completed agreement pursuant to Section 106 of the Town and Country Planning Act 1990 (S106 Agreement) has been provided.³¹ In considering whether the agreement is appropriate I have taken into account the provisions of the Section 106 Compliance Statement, pursuant to Regulation 122(2) of the Community Infrastructure Levy Regulations 2010 (as amended) (CIL Regulations), provided by the Council.³²
181. The S106 Agreement would secure a number of financial contributions. With regard to education, these include a Primary Education Contribution towards the provision of additional primary school places at primary schools within 10 miles of the development; a Secondary School Transport Contribution towards the provision of transport between the development and Bideford College; and a Special Educational Needs (SEN) Contribution. These provisions are

³¹ ID29

³² CD8.2

- necessary to mitigate the impacts of the proposed development on education services.
182. With regard to ecology, the S106 Agreement also provides for a number of financial contributions. These include an Ecology Mitigation Contribution to deliver habitat creation measures to compensate for predicted habitat loss within the development; an Ecology Warden Contribution to be used to employ an ecology warden to monitor the high tide roost on the River Taw for a 25-year period; and, a Braunton Burrows SAC Contribution to be used to mitigate the impacts of the development on the Braunton Burrows SAC. These provisions are necessary to mitigate the impacts of the proposed development on ecology.
183. Provision is also made for highway works comprising improvements at the junction of the site access with the B3233 to include a signalised pedestrian crossing, bus lay-by, bus shelter upgrading and extensions to footways. These are necessary to provide safe access to the site and assist in mitigating travel demand.
184. The S106 Agreement also provides for the submission of a Public Open Space Masterplan to provide for a minimum of 750 square metres of NEAP, 420 square metres of LEAP and 12,000 square metres of informal open space. It also provides for the management and maintenance arrangements for the public open space, flood defence works and surface water drainage system, and the provision of the Tarka Trail Car Park.
185. A number of financial contributions towards highway and transport infrastructure are also provided. These include a Pedestrian Crossing Maintenance Contribution to cover the costs of the proposed pedestrian crossing facility; a Traffic Regulation Order Contribution towards traffic regulation orders required in connection with the development; and a Bus Shelter Contribution towards the maintenance of the bus shelter.
186. A Medical Contribution is also provided towards the cost of an extension to the Fremington Medical Centre. This is necessary to mitigate the effect of the development on health care provision in the locality.
187. The S106 Agreement also provides for a Highways Contribution of £335,500 towards the provision of mitigation works at the A3125/Old Torrington Road (Wrey Arms) junction. However, in light of my findings above, I do not consider that such contribution is necessary to make the development acceptable in planning terms. As such, it would be contrary to the provisions of paragraph 57 of the Framework and Regulation 122(2) of the CIL Regulations. Consequently, I attach no weight to the obligation provided in Schedule 4, Section 2 of the S106 Agreement.
188. As set out earlier, paragraph 6.7 of the S106 Agreement provides that the Inspector, may, if considered appropriate, determine that the money provided for a contribution that is deemed incompatible with any of the tests set out in Regulation 122 of the CIL Regulations, should be re-allocated. Section 6.7 provides an order in which the "Reallocated Contributions" should be made. These are firstly an increased Ecology Mitigation Contribution, then if unallocated funds remain, a contribution to the provision of Affordable Housing directly related to the development, then if unallocated funds remain

a contribution towards pitches and built recreation within the Parish of Fremington.

189. In my view, any increase to the Ecology Mitigation Contribution and a contribution to the provision of Affordable Housing directly related to the development would meet the tests prescribed under Regulation 122 of the CIL Regulations. However, given my findings above, I am not convinced that there is now a demonstrable need for a playing pitch and associated facilities in the Fremington area. Consequently, I am not convinced that a contribution towards pitches and built recreation within the Parish of Fremington would be necessary to make the development acceptable in planning terms. Consequently, I do not consider that such contribution would meet the tests prescribed under Regulation 122 of the CIL Regulations.
190. As paragraph 6.7 forms part of the S106 Agreement which is duly 'agreed' by the signatory parties I have no evidence to suggest that the "Reallocated Contributions" should not be re-allocated other than in the order prescribed in that paragraph, save for the contribution (c) towards pitches and built recreation within the Parish of Fremington.
191. Section 4 of Schedule 1 of the Section 106 Agreement sets out the trigger points when the contribution towards ecological mitigation should be paid and I see no reason to suggest that any re-allocated contribution should be paid other than in accordance with those provisions.
192. I have no clear evidence to demonstrate the appropriate trigger points for any re-allocated contribution to affordable housing, in the event that any funds remain. Therefore, the identification of such trigger points and the amount to be paid are matters that would require consideration and agreement of the parties to the S106 Agreement.
193. Other than confirming that the S106 Agreement makes sensible provision for paragraph 6.7 of the S106 Agreement to be applied, I do not consider that it is appropriate for me to prescribe the distribution amount of the Highways Contribution that should be allocated to the Ecology Mitigation Contribution and therefore the extent to which any remaining amount should be applied towards the provision of Affordable Housing. These are matters for discussion between the parties to the S106 Agreement and require consideration of local circumstances and priorities to determine the extent to which the reallocation amount(s) should be made. This may likely necessitate a deed of variation to the Section 106 Agreement.
194. I have found that the reallocation contributions to Ecological Mitigation and Affordable Housing are matters that would make the development acceptable in planning terms and would meet the tests set out within paragraph 57 of the Framework and CIL Regulation 122. However, although the S106 Agreement sensibly provides for the reallocation of the Highways Contribution, taking into account the viability issues, the reallocation of the funds is not determinative in my consideration of the planning issues. Therefore, I have attached no weight to the provisions of paragraph 6.7 of the S106 Agreement in my consideration of the planning issues in this appeal.
195. Having regard to the above, and based on the evidence before me, I am satisfied that all of the provisions set out in the S106 Agreement, except for the Highways Contribution as set out above, are necessary to make the

development acceptable in planning terms, are directly related to the development and fairly and reasonably related in scale to the development. Therefore, other than the Highways Contribution, the remaining obligations all meet the tests as set out within paragraph 57 of the Framework and CIL Regulation 122.

196. Other than my views regarding the Highways Contribution and the weight to be attached to paragraph 6.7 in my determination of this appeal, I am satisfied with the form, drafting and content of the agreement and therefore I have attached weight to the obligations contained therein.

Benefits of the development

197. The proposal would deliver a number of benefits. The Framework emphasises the importance of delivery of housing and the provision of up to 250 new homes will contribute to meeting the current shortfall that I have identified above. This requires me to attach substantial weight to the provision of market housing to be weighed in the planning balance.
198. The Council recognises that the site cannot remain in its current condition given the risk arising from erosion and flooding and the impact of these on the contaminated nature of the site. The evidence presented in the inquiry clearly demonstrates that there currently is no realistic proposition of redevelopment of the site in the absence of the appeal proposal. This is as a consequence of the viability issues that are primarily associated with its required remediation.
199. The proposal would provide for reclamation and regeneration of the site and would secure a beneficial and development plan compliant end use for the site. In the absence of any other alternative scheme likely to come forward in the plan period I attach significant weight to this benefit.
200. Notwithstanding the employment opportunities that would be created as a consequence of the proposed employment, tourism and retail uses, economic benefits would arise from expenditure on construction in the local supply chain. There would be employment benefits in terms of the provision of jobs during the construction phase. In the longer term there would be an increase in local household spending in local shops and facilities. These benefits would be of moderate weight.
201. The proposal would provide a car park for users of the Tarka Trail, to be provided as one of the first stages of development. I attached moderate weight to this benefit.
202. The proposal would provide for informal open space, a LEAP and a NEAP. However, in my view, the open space and recreational facilities would primarily serve the residents of the proposed new houses and would be of limited benefit to the wider existing community. Consequently, such benefits are afforded limited weight.
203. There would be proposed enhancements to biodiversity but, as set out above, these would primarily ensure there is no net loss. As a consequence of the reallocation of S106 contributions, there is opportunity to provide a biodiversity net gain. This would accord with paragraphs 174(d) and 179(b) of the Framework and criterion (i) of Policy FRE02. However, such biodiversity net gain would be required to meet these policy requirements to

mitigate the environmental impact of the development. Consequently, I consider that such enhancements should be afforded limited weight.

Planning Balance

204. The appeal site forms part of a number of sites that were allocated for housing development in a recently adopted Local Plan. Section 38(6) of the Planning and Compulsory Purchase Act 2004 requires that applications must be determined in accordance with the Development Plan unless material considerations indicate otherwise. The Framework at paragraph 11(c) advises that for decision making development proposals that accord with an up-to-date development plan should be approved without delay.
205. However, it is a matter of common ground that the Council is currently unable to demonstrate a five-year supply of deliverable housing sites. Consequently, the relevant policies for the supply of housing should be considered as out-of-date according to paragraph 11(d) of the Framework. The so called 'tilted balance' is therefore triggered, and planning permission should be granted unless any adverse impacts of doing so would significantly and demonstrably outweigh the benefits, when assessed against the policies in the Framework taken as a whole.
206. The proposal would deliver a number of benefits. The Framework emphasises the importance of delivery of housing. The provision of 250 new homes will contribute to meeting the current shortfall. This requires me to attach significant weight to the proposed provision of market housing. Whilst the housing mix is not entirely consistent with the HEDNA mix, the focus is on the delivery of smaller family housing. As such, the variation from the HEDNA mix is not so significant to warrant the appeal to be dismissed on those grounds and I have attached significant weight to the provision of market housing.
207. The viability considerations in this case have been independently and robustly verified. I recognise that there is a severe shortage of affordable housing in North Devon. However, I find that the independently verified viability evidence is compelling. The proposed development cannot financially sustain the provision of affordable housing. Given the terms of Policy ST18 (5), I consider that the proposed development without affordable housing remains compliant with the policy.
208. I have found that the proposed development would not have a material severe detrimental effect on the efficient operation of the highway network in the vicinity of the appeal site and in particular the Wrey Arms junction. Consequently, there would be no conflict with paragraphs 110 (d) and 111 of the Framework.
209. Whilst there remains some doubt whether there is now a demonstrable need for a football pitch to be provided, nonetheless the proposed development would be contrary to the provisions of criterion (h) of Policy FRE02 but only in respect of the failure to make provision for a new football pitch and associated facilities. It is clear that the viability of the proposal could not sustain the provision of a football pitch, notwithstanding that such provisions would potentially have a further detrimental effect on viability due to the likely need for this to occupy land earmarked for development. Taking these factors into

account, I have attached limited weight to the conflict with criterion (h) of Policy FRE02.

210. I have found that there would be no net loss of biodiversity as a consequence of the provisions in the S106 Agreement. Furthermore, given that I have found that the Highways Contribution provided in the S106 Agreement would be contrary to the provisions of paragraph 57 of the Framework and Regulation 122(2) of the CIL Regulations, the reallocation clause would enable some, or all, of the contribution to be reallocated towards Ecological Mitigation. This would provide for a net-gain in biodiversity.
211. The proposal would deliver the reclamation and regeneration of the site which would secure a beneficial and development plan compliant end use for the site which I afford significant weight. As set out above, I have attached moderate weight to the economic benefits that would arise from the proposed development.
212. On the other hand, there would be some negative effects. I have found that there would be moderate adverse landscape impacts. However, I am firmly of the opinion that such magnitude of impact would occur with any development that provides the quantum of housing identified in Policy FRE02. The principle of major development on the site is established as a consequence of its allocation under Policy FRE02 of the Local Plan and a degree of landscape and visual harm are inevitable consequences of the prior allocation.
213. I have not found any aspect of the appeal proposals which would unacceptably cause any harm beyond that which could reasonably be expected as a consequence of the site allocation. Consequently, I do not consider that there would be any material conflict with the provisions of Policies FRE02(d) or DM08A of the Local Plan.
214. I have not found any harm to the significance of the Scheduled Ancient Monument. Even if I were to be persuaded that harm exists, this would be less than substantial harm. In accordance with the provisions of the Framework, I consider that any less than substantial harm would be clearly outweighed by the public benefits that I have identified above. In addition, for the reasons identified above, I have attached little weight to the contention that the proposed development would have a materially detrimental effect on local tourism.
215. Drawing the above together, in particular applying the significant weight to the provision of housing in this circumstance where the Council cannot demonstrate a five-year supply, I consider that the adverse impacts of granting permission would not significantly and demonstrably outweigh the benefits, when assessed against the policies in the Framework taken as a whole.
216. On balance, the appeal proposal does comprise sustainable development and there are no adverse impacts that would significantly and demonstrably outweigh the benefits of the development. Taking into account the tilted balance set out in paragraph 11(d) of the Framework, I conclude overall that the appeal should be allowed because the adverse impacts identified do not significantly and demonstrably outweigh the benefits comprising the supply of up to 250 new homes, when assessed against the policies in the Framework taken as a whole.

217. In reaching the above view I have taken account of all other matters that have been raised, including letters from local residents and other appeal decisions, but I have found nothing that alters my conclusion that the appeal should succeed.

Conditions

218. I have considered the proposed planning conditions, including a number of pre-commencement conditions, that were provided and agreed between the Council and the appellant and discussed at the Inquiry. I have considered these against the advice given in paragraph 56 of the Framework and the guidance contained in the section on 'Use of Planning Conditions' in the PPG. Where necessary I have amended them in the interests of clarity, precision, conciseness or enforceability.

Full (Annex D)

219. In addition to the standard time limit, I have imposed a condition (No. 2) relating to the approved plans in the interests of certainty. However, I have added additional plans to those suggested by the main parties in recognition that the 'scale' of the development is no longer a reserved matter.

220. A condition requiring an investigation and the recording of the potential archaeological interest on the site is also necessary in order to ensure that any archaeological interest is recorded or safeguarded (condition No 3). However, in the interests of precision, I have amended the suggested condition.

221. Conditions are necessary requiring site contamination investigation, remediation and measures to ensure that any unexpected ground contamination encountered is adequately and safely dealt with (conditions Nos. 4 and 5). These are necessary in order to ensure that the site is satisfactorily remediated and to protect the future users and occupiers of the site, controlled waters and ecological systems from risks associated with contamination.

222. In order to ensure that the integrity of the encapsulated asbestos on the site of the former pump house is maintained during the construction phase of the development and in the interests of health and safety, a condition (No. 6) is necessary to secure and appropriate scheme of working. However, I have amended the suggested condition in the interests of precision.

223. Conditions are necessary to ensure that the development is not at risk from flooding and does not cause either increased flood risk on site or to adjacent land (conditions Nos. 7, 8 and 9). However, I have slightly amended the suggested conditions in the interests of precision and to remove superfluous reference to the S106 Agreement.

224. A condition requiring the submission, approval and implementation of a Construction Environmental Management Plan is necessary to safeguard the living conditions of local residents, ensure that there is no harm to human health, protect the environment and ecological systems and in the interests of highway safety (condition No. 10). A condition specifying construction hours is also necessary (No. 11) to protect the living conditions of local residents.

225. In the interests of protecting the ecology of the area, conditions are necessary requiring the submission and implementation of a site-wide Construction Ecological Management Plan, the provision of acoustic barriers and the protection of sensitive water features (conditions Nos. 12, 13 and 15). However, I have amended suggested conditions numbers 13 and 15 in the interests of precision.
226. In the interests of protecting the character and appearance of the area, conditions are necessary to protect trees and hedgerows that are to be retained and planted on the site, ensure the replacement of protected trees and ensure the management of landscaping during and after the construction period (conditions Nos. 14, 19 and 20). I have slightly amended some of the suggested conditions in the interests of precision. A condition (No. 16) is also necessary requiring other surveys to be undertaken and any necessary mitigation measures identified in order to minimise the effect of the development on the species and their habitat.
227. In the interests of highway safety and to facilitate parking for the Tarka Trail, conditions are necessary requiring the implementation of the site access road, site car park, site compound and car parking for the Trail (conditions Nos 17 and 18). I have amended the suggested conditions in the interests of precision.

Outline (Annex E)

228. I have attached conditions limiting the life of the planning permission and setting out the requirements for the submission of reserved matters (condition Nos. 1 and 2). I have imposed a condition (No. 3) relating to the approved plans in the interests of certainty.
229. In order to ensure that development is not at risk from flooding, a condition is necessary requiring the submission of details of site levels and floor levels (condition No. 4). As part of the submission of reserved matters a condition is necessary to set out the design parameters to ensure that buildings adopt the principles of Building for a Healthy Life, that adequate refuse and recycling facilities, car parking and electric vehicle charging points are provided. In addition, that details of foul and surface water drainage, walls, fencing and other means of enclosure are provided (condition No. 5). However, I have amended the suggested condition in the interests of precision.
230. In order to provide adequate control over the implementation of the development and in the interests of protecting the character and appearance of the area, a condition is necessary requiring the submission of a phasing plan (condition No. 6).
231. In order to ensure that the surface water arising from the proposed development can be appropriately drained and does not either cause off-site or on-site flood risk or any resultant risk to controlled waters, a condition is necessary requiring the submission of details of the proposed drainage scheme. This is also required to ensure that the construction of the development accords with the submitted Yelland Quay Regeneration Flood Risk Assessment (December 2019) (condition No.7).
232. A condition requiring the submission, approval and implementation of a Construction Environmental Management Plan is necessary to safeguard the

- living conditions of local residents, ensure that material imported into the site does not pose a contamination risk and in the interests of highway safety (condition No. 8).
233. In the interests of protecting the ecology of the area, and in the interests of protecting the character and appearance of the area, conditions are necessary requiring the submission and implementation of a site-wide Construction Ecological Management Plan, boundary details, lighting design and Landscape and Ecological Management Plan, details of hard and soft landscaping, the provision of bat and bird boxes/roosts and measures to ensure that the existing jetty is not used for recreational pleasure craft (condition Nos. 9-14 and 21). However, in the interests of enforceability I have amended suggested condition No. 21.
234. In order to ensure that appropriate provision is made for recreational facilities, a condition is necessary requiring the submission of details and subsequent implementation of on-site public open space (condition 15). In order to ensure the provision of adequate internal access arrangements and in the interests of highway safety, conditions are necessary requiring details of highway construction, layout, drainage and to ensure that surface water from individual dwellings does not discharge onto the highway (condition Nos. 16-18).
235. Conditions are necessary to protect the living conditions of the occupants of the proposed development from being unacceptably affected by noise from the existing electricity sub-station and from the use of the commercial units. However, I have amended the suggested conditions in the interests of precision and to ensure that the development is undertaken in accordance with the approved assessment and details (conditions Nos. 19 and 20).
236. In order to minimise the amount of waste produced as a consequence of the occupation of the development and to promote sustainable waste management, a condition requiring the submission and implementation of a waste audit statement is necessary (condition No. 22).
237. To promote sustainable modes of transport and reduce the need for travel by car, a condition is necessary to secure the submission and implementation of a Framework Travel Plan (condition No. 23). However, I have amended the suggested condition in the interests of precision and enforceability. Conditions are also necessary to ensure that any soil to be used for planting purposes is not contaminated and that soil is spread at appropriate depths for the planting that they will be required to sustain (conditions Nos. 24 and 25).

Conclusion

238. There are no other considerations of such weight as to warrant a decision other than in accordance with the aforementioned development plan policies and the Framework. Consequently, for the above reasons, based on the evidence before me and all other matters raised, I conclude that the appeal should be allowed.

Stephen Normington

INSPECTOR

ANNEX A: APPEARANCES

FOR THE LOCAL PLANNING AUTHORITY

Peter Wadsley

of Counsel instructed by North Devon District Council

He called

Paul Young Dip TP, MRTPI

Principal Development Management Officer (Highways), Devon County Council

Michael Muston BA(Hons), MPhil, MRTPI

Director Muston Planning

For the Council
(Round Table Sessions)

Peter Radmall MA, BPhil CMLI

Peter Radmall Associates Ltd

Michael Spence BA (Hons)
MLD CMLI REIA FRGS

MS Environmental

FOR THE APPELLANT

Vincent Fraser QC

instructed by Emery Planning

He called

Alexander Wozniczko CEng, MICE, MCIHT

Awcock Ward Partnership (AWP)

Stephen Harris BSc(Hons), MRTPI

Emery Planning

For the Appellant
(Round Table Sessions)

Wendy Lancaster BA(Hons), PG Dip LA,
PG Dip UD, CMLI, FRSA

Director and Landscape Planning Lead, Tyler Grange Group Ltd

RULE 6 PARTIES

Stephen Crowther

Devon CPRE, Braunton Parish Council, Love Braunton, Heanton Punchardon Parish Council and Heanton Punchardon Residents' Association

INTERESTED PARTIES

Councillor Jayne Mackie	North Devon District Councillor
Joanne Bell	Save our Estuary Campaign
Dr Stan Coates	Coastwise North Devon
Councillor Shooley Maccall	Instow Parish Council
Hilary Beecroft	Local Resident
Philip Parker	Local Resident
Tim Smith	Local Resident
Sarah Ladyman	Former Local Resident
Councillor Frank Beiderman	North Devon District Councillor
Jim Bell	Local Resident
Councillor Susan Kingdom	Chair Fremington Parish Council
R Hawley	Local Resident
Patricia Millner	Local Resident
Mr Crawford	Local Resident
Mr Gill	Local Resident

ANNEX B: LIST OF DOCUMENTS SUBMITTED DURING THE INQUIRY

Inquiry Document (ID)	Description of Document	Date Submitted
ID1	Appellant's opening statement	19.04.2022
ID2	Council's opening statement	19.04.2022
ID3	Rule 6 Party opening statement	19.04.2022
ID4	Highways Statement of Common Ground	19.04.2022
ID5	Transcript of Statement read by Joanne Bell	19.04.2022
ID6	Documents provided by Dr Coates regarding Bristol Channel Floods	19.04.2022
ID7	Transcript of Statement read by Tim Smith and Bird Track evidence	19.04.2022
ID8	Landscape Statement of Common Ground	19.04.2022
ID9	Comparison of Assessment of Landscape Effects	20.04.2022
ID10	Comparison of Assessment of Visual Effects	20.04.2022
ID11	Character and Appearance RTS Agenda	20.04.2022
ID12	Site Visit Itinerary	20.04.2022
ID13	Officer Report Planning Application 73875	21.04.2022
ID14	Artists impressions of possible development of site dated March 2015 submitted to Local Plan Examination	22.04.2022
ID15	Updated Schedule of Proposed Planning Conditions	22.04.2022
ID16	Updated draft version of S106 Agreement	22.04.2022
ID17	Agreed Plans List	22.04.2022
ID18	Transcript of Statement read by Jim Bell	22.04.2022
ID19	Transcript of Statement read by Councillor Biederman	22.04.2022
ID20	Transcript of Statement read by Susan Kingdom	22.04.2022
ID21	Appellant's application for award of costs	25.04.2022
ID22	Transcript of Statement read by Sarah Ladyman	25.04.2022
ID23	Transcript of Statement read by Philip Parker	25.04.2022
ID24	Elevations and Site Plan of approved proposed Wharf Storage Building (02/42289/2006)	26.04.2022

ID25	Council's closing submissions and costs response	26.04.2022
ID26	Rule 6 Party closing submissions	26.04.2022
ID27	Appellant's closing submissions	26.04.2022

ANNEX C: LIST OF DOCUMENTS REQUESTED BY THE INSPECTOR AND SUBMITTED AFTER THE CLOSE OF THE ORAL SESSIONS OF THE INQUIRY

Inquiry Document (ID)	Description of Document	Date Submitted
ID28	Final agreed Schedule of Planning Conditions	20.05.2022
ID29	Final executed S106 Agreement dated 30 May 2022	6.06.2022

ANNEX D: SCHEDULE OF CONDITIONS

FULL PLANNING PERMISSION

1) *Time*

The development hereby permitted shall begin not later than 3 years from the date of this decision.

2) *Plans*

The development hereby permitted shall be carried out in accordance with the plans and documents:

Y029 18 201C Location Plan received on the 15/01/20

Y029 18 210 Section to Buried Asbestos Chamber received on the 06/01/20

Y029 18 211B Location of Asbestos Site Plan received on the 06/01/20

Y029 18 215 Initial Infrastructure Works received on the 26/03/21

Y029 18 217 Access Arrangements received on the 26/03/21

Y029 18 301C Bat Box House received on the 06/01/20

ATR-01C Site-HGV Tracks received on the 05/02/20

ATR-02B Site-Bus Stop Tracking received on the 05/02/20

0146 PHL 01E Site Access Proposed received on the 05/02/20

0146 PHL 02D Highway Cycleway Alignment Plan received on the 30/03/16

0146 PHL 03D Access Road Alignment Plan received on the 09/03/20

0146 PHL 04C Preliminary Highway Profile received on the 09/03/20

PHL 05A Highway Profile 2 Proposed received on the 30/03/16

Y029 18 206I Storey Plan and Design Code Proposed received on 07/04/21

Y029 18 204W Proposed Masterplan received on the 20/05/21

Y029 18 216 Land and Scale Analysis received on the 26/03/21

Email from Chris Yalden AWP to Devon County Council LLFA dated 4 March 2020

Environmental Statement including Appendices (as updated)

3) *Archaeology*

No development shall take place until a Written Scheme of Archaeological Investigation has been submitted to and approved in writing by the Local Planning Authority. The scheme shall include:

- i) the programme and methodology of site investigation and recording;
- ii) the programme for post investigation assessment;
- iii) the provision to be made for analysis of the site investigation and recording;
- iv) the provision to be made for publication and dissemination of the analysis and records of the site investigation;

- v) the provision to be made for archive deposition of the analysis and records of the site investigation;
- vi) the nomination of a competent person or persons/organisation to undertake the works set out within the Written Scheme of Archaeological Investigation.

The development shall be carried out at all times in strict accordance with the approved scheme, or such other details as may be subsequently agreed in writing with the Local Planning Authority.

4) *Site contamination investigation and remediation*

Prior to the commencement of the development, a contamination investigation Phasing Plan shall be submitted to and approved in writing by the Local Planning Authority. The Phasing Plan shall set out a phased area-based approach to the further contamination investigation of the site. The phasing plan shall be prepared by a suitably qualified and experienced competent person and have regard to the findings and recommendations of previously submitted contamination assessment reports including those presented in the Phase 2: Additional Exploratory Contamination Investigation and Environmental Assessment Report dated 10 December 2019 as well as relevant standards and guidance.

Prior to the commencement of development for each Phase as set out in the agreed Phasing Plan:

- (a) an area report prepared by a suitably qualified and experienced competent person shall be submitted for the written prior approval of the Local Planning Authority. Each area report shall include details of all investigative works and sampling on site together with the results of analysis and a risk assessment for all potentially affected receptors. Where unacceptable risks are identified, the area report shall include recommendations for any further investigation and assessment works required prior to preparing a remediation strategy for the area.
- (b) Where contamination remediation is required for a phased area, a remediation strategy prepared by a suitably qualified and experienced competent person shall be submitted for the written prior approval of the Local Planning Authority. The remediation strategy shall include an options appraisal and give full details of the remediation measures required in the relevant area and how they are to be undertaken along with a verification plan providing details of the data that will be collected in order to demonstrate that the approved remediation works have been satisfactorily completed and identifying any requirements for longer-term monitoring of pollutant linkages, maintenance and arrangements for contingency action.

Prior to occupation of the development hereby permitted:

- (c) Approved remediation works shall be carried out in full on site under a Quality Assurance scheme to demonstrate compliance with the approved methodology and best practice guidance.
- (d) A verification report prepared by a suitably qualified and experienced competent person shall be submitted to and approved in writing by the Local Planning Authority. The verification report shall

include details of the proposed remediation works and Quality Assurance certificates to show that the works have been carried out in full in accordance with the approved methodology. Details of any post remedial sampling and analysis or other verification works or monitoring to show the site has reached the required clean-up criteria shall be included in the verification report together with the necessary waste transfer documentation detailing what waste materials have been removed from the site.

- (e) A certificate signed by the developer shall be submitted to the Local Planning Authority confirming that the agreed works have been undertaken as detailed in the verification report.

5) *Unexpected Ground Contamination*

Contamination not previously identified by the site investigation, but subsequently found to be present at the site shall be reported to the Local Planning Authority as soon as is reasonably practicable, or no more than 48 hours after any such identification is made, whichever is the sooner. If deemed necessary development shall cease on site until an addendum to the remediation method statement, detailing how the unsuspected contamination is to be dealt with, has been submitted to and approved in writing to the Local Planning Authority (including any additional requirements that it may specify). The development shall then be undertaken in accordance with the approved details. Should no further contamination be identified then a certification to this effect shall be required to be submitted to and approved in writing by the Local Planning Authority prior to the first occupation of the development hereby approved.

6) *Pump House*

Prior to the commencement of the development on the phase on which the site of the former pump house is located, a method statement prepared by a suitably qualified and experienced competent person shall be submitted to and approved by the Local Planning Authority to ensure the integrity of the pump house is not prejudiced during construction works. Such statement shall include:

- a) Details of any fencing and signage necessary to identify the location of the former pump house on site.
- b) Measures to be employed to ensure that any works undertaken in the vicinity of the former pump house are supervised by a suitably qualified and experienced competent person and do not compromise its integrity.
- c) Details of any necessary investigation and subsequent necessary remedial works to ensure that the current integrity of the pump house is suitable to ensure the safe development and future use and occupancy of the site.
- d) Measures to ensure that the area is appropriately capped as part of the remediation works required pursuant to condition No. 4.
- e) Details of an ongoing monitoring and reporting scheme to ensure that the future integrity of the former pump house is not compromised

and that the asbestos contained therein does not pose any future risk to health or the environment.

The development shall be undertaken in accordance with the approved method statement.

7) *Details of works of site raising*

Prior to the commencement of the development a detailed scheme showing final site levels and road levels (including the access/egress route) and phasing and timings of their implementation shall be submitted to and approved in writing by the Local Planning Authority. Such scheme shall accord with the Flood Risk Assessment dated 10th February 2022. The site raising works shall be undertaken in accordance with the approved scheme and the phasing and timings approved therein and shall be implemented prior to the occupation of the development within any identified phase. The approved site levels shall be retained and maintained thereafter.

8) *Detailed Design of Flood Defences*

The development hereby permitted shall not be commenced until the detailed design of the flood defences and a scheme for their maintenance in perpetuity has been submitted to and approved in writing by the Local Planning Authority. The detailed design shall be in accordance with the Defence Design Assessment set out in section 6.1.3 of Flood Risk Assessment dated 10th February 2022, which incorporates the latest guidance on climate change. The flood defences shall be completed in accordance with the approved details and shall be installed prior to any occupation of the development. The approved flood defences shall thereafter be maintained in accordance with the approved details unless otherwise approved in writing by the Local Planning Authority.

9) *Drainage Design – Site wide and construction*

No development shall commence until the following information has been submitted to and approved in writing by the Local Planning Authority:

- (a) A detailed drainage design, network model outputs, based upon the approved Yelland Quay Regeneration Flood Risk Assessment (FRA) 0146 dated February 2022 Rev H. This should include confirmation of the tidal level used as the downstream boundary condition within the model.
- (b) Detailed proposals for the management of surface water and silt runoff from the site during construction of the development hereby permitted.
- (c) Proposals for the adoption and maintenance of the permanent surface water drainage system.
- (d) A plan indicating how exceedance flows will be safely managed at the site.

The development shall be undertaken in accordance with the information approved pursuant to the requirements of this condition and the proposed main access road shall not be operational until the above information has been approved and implemented in accordance with the details under (a) - (d) above.

10) *Construction Environment Management Plan (CEMP)*

Prior to the commencement of development on any Phase of the development, including any site clearance, groundworks or construction (save such preliminary or minor works that the Local Planning Authority may agree in writing), a Construction Environment Management Plan (CEMP) for that Phase to manage the impacts of construction during the life of the works, shall be submitted to and approved in writing by the Local Planning Authority. The approved Plan shall be adhered to throughout the construction period. The Plan shall provide for:

- a) the parking of vehicles of site operatives and visitors;
- b) loading and unloading of plant and materials;
- c) storage of plant and materials used in constructing the development;
- d) the erection and maintenance of security hoarding including decorative displays and facilities for public viewing, where appropriate;
- e) wheel washing facilities;
- f) a management plan to control the emission of dust and dirt during construction identifying suitable mitigation measures;
- g) a scheme for recycling/disposing of waste resulting from construction work (there shall be no burning on site);
- h) a Management Plan to identify potential ground and water contaminants; details for their storage and how water courses will be protected against spillage incidents and pollution during the course of construction;
- i) a scheme to control noise during the construction phase;
- j) the timing and routing of construction vehicles and deliveries to site;
- k) measures to control dust, lighting and noise during construction;
- l) a management plan for ensuring that recommendations contained within specialist land contamination reports relating to protecting human health, controlled waters, ecological systems and neighbouring land are fully complied with;
- m) a management plan for ensuring that risks posed by asbestos containing materials present at the site are suitably controlled and managed;
- n) a point of contact (such as a Construction Liaison Officer/site manager) and details of how complaints will be addressed; and
- o) measures to identify contaminants in imported soils whether subsoils or topsoils prior to importation to the site.

11) *Construction Hours Condition*

Unless agreed as part of the CEMP, during the construction phase no machinery shall be operated, no process shall be carried out and no deliveries taken at or dispatched from the site outside the following times:

- a) Monday - Friday 07.30 - 19.00,

b) Saturday 08.00 - 13.00

c) not at any time on Sunday, Bank or Public Holidays.

12) *Construction Ecological Management Plan (CECoMP)*

No development shall take place (including demolition, ground works and vegetation clearance) until a construction ecological management plan (CECoMP) has been submitted to and approved in writing by the Local Planning Authority. The CECoMP shall include the following:

(a) Risk assessment of potentially damaging construction activities;

(b) Identification of 'biodiversity protection zones';

(c) Practical measures (both physical measures and sensitive working practices such as lighting and noise controls) to avoid or reduce impacts during construction;

(d) The location and timing of sensitive works to avoid harm to biodiversity features including bird breeding sites/nests during operations to manage or remove trees and other vegetation;

(e) The times during construction when specialist ecologists need to be present on site to oversee works;

(f) Responsible persons and lines of communication;

(g) The role and responsibilities on site of an ecological clerk of works (ECoW) or similarly competent person; and

(h) Use of protective fences, exclusion barriers and warning signs.

Noise contour maps of background noise levels and predicted construction noise levels shall be provided to indicate more clearly where the significant impacts are likely to be and when. A noise management plan shall be produced to ensure that construction and operational noise levels are within background levels and where any significant increases are predicted at ecological receptors, with the 2.5m high acoustic screen in place. Any additional measures required shall be submitted to and approved in writing by the Local Planning Authority.

The most sensitive period for the overwintering birds is September to March inclusive. Drawing YO29 18 205P Infrastructure Delivery Plan details April to August inclusive for timing of works for the lagoon, land raising, screen and rock armour. The Construction period for the ground raising, rock armour and lagoon and relevant building phases are likely to require additional mitigation to that proposed if carried out September to March inclusive. This should include use of the jetty to bring in materials during construction. Should such construction works be proposed for September to March inclusive, then details, including proposed additional mitigation, shall be submitted for the written approval of the Local Planning Authority prior to the commencement of such works.

The approved CECoMP shall be adhered to and implemented throughout the construction period strictly in accordance with the approved details, unless otherwise agreed in writing by the Local Planning Authority.

13) *Acoustic Barriers*

Prior to the commencement of development on any Phase, details of the design (height, massing and sound reduction properties), location and implementation programme of an acoustic construction barrier/site hoarding on the estuary boundary shall be submitted to and approved in writing by the Local Planning Authority. Such acoustic barrier shall be designed to mitigate the noise effects from construction operations at the estuary by 5 to 10 dB(A) based on the guidance contained within BS5228. The acoustic barrier approved pursuant to the requirements of this condition shall be erected in accordance with the approved details and shall thereafter be maintained and retained on site until construction has been completed on that phase or subsequent phases if required unless otherwise approved in writing by the Local Planning Authority.

14) *Tree Protection, Hedges, Vegetation*

Prior to the commencement of development a scheme for the protection of retained trees and hedges, and future planting areas consisting of a Tree Protection Plan (TPP) and Arboricultural Method Statement (AMS) in accordance with British Standard - BS 5837:2012 'Trees in relation to design, demolition and construction – Recommendations' shall be submitted and shall have been approved in writing by the Local Planning Authority. The TPP and AMS shall be prepared by a qualified Arborist and current member of the Arboricultural Association. The scheme shall include:

- (a) a tree protection plan (TPP) that shows the precise location of protective barriers and the extent and type of any ground protection or additional measures to be installed;
- (b) an arboricultural method statement (AMS) that identifies inspection of trees to be removed from the site and how a precautionary approach to tree protection will be adopted during the course of development including the subsequent reserved matters and how operations will be undertaken and monitored to ensure that there are minimal risks of adverse impacts on trees, hedges and future planting areas and that appropriate mitigation or compensation is provided by the developer should the tree protection plan and arboricultural method statement fail to ensure adequate protection of retained tree and hedges during the course of construction.
- (c) Proposals for regular monitoring and management of the specified protection measures throughout the lifetime of the scheme

The development shall be carried out in accordance with the approved scheme. All specified operations identified in the approved scheme shall be carried out prior to commencement of development and shall be retained in place and maintained in good order throughout the lifetime of the development.

15) *Protection of Sensitive Water Features*

The areas marked as 'wet ditch' and 'swamp' on the Phase 1 Habitat Plan (dated 15/01/2018, by ead ecology) shall be protected and retained in perpetuity. Prior to the commencement of development a scheme providing detailed designs of all crossings over the wet ditch and swamp area, measures to ensure the maintenance of their integrity and

protection and details of a scheme of maintenance and monitoring shall have been submitted to and approved in writing by the Local Planning Authority. The crossings shall be fully implemented and subsequently maintained and retained in accordance with the approved details.

16) *Otter Surveys*

Prior to the development hereby approved commencing, otter surveys shall have been undertaken by a suitably qualified and competent ecologist, and a report, setting out the results of the survey and any necessary mitigation measures in accordance with Natural England good practice guidance, shall be submitted to and approved in writing by the Local Planning Authority. All mitigation measures identified in the approved report shall be fully implemented and subsequently maintained in accordance with the approved details.

17) *Highway Delivery*

Prior to the occupation of the first dwelling, the access road shall be laid out, kerbed, drained and constructed up to base course level for the first 20 metres back from its junction with the public highway with the ironwork set to base course level, the visibility splays required by this permission laid out, the footway on the public highway frontage constructed up to base course level and the site compound and car park shall have been constructed in accordance with Plan Y029 18 217 Access Arrangements.

18) *Tarka Trail Car Park*

Prior to the commencement of the development a detailed scheme for the layout, access, landscaping and implementation programme of the approved car park, as set out on Drawing YO19 18 204W, to the south of the Tarka Trail shall be submitted to and approved in writing by the Local Planning Authority. The car park shall be provided and made available for use in accordance with the approved scheme as part of the first phase of development. Access to the car park shall be initially from the private road to the west. Once the permanent site access is constructed access to this car parking area shall be provided from the main adopted highway leading to the site. Thereafter the car park shall be retained and maintained in accordance with the approved scheme.

19) *Removal of TPO Trees*

Prior to the removal of any Trees Protected by a Tree Preservation Order whether as individuals or groups, a Tree Replacement scheme shall have been submitted to and received the written approval of the Local Planning Authority. Such scheme shall include details of the species, planting heights, locations and planting programme of all trees identified in the scheme to be planted. The development shall be undertaken in accordance with the approved scheme.

20) *Construction Landscape Management Plan (CLMP)*

No construction development shall commence on the site, until a Construction Landscape Management Plan (CLMP) detailing maintenance and management strategies for all tree planting, including street trees, and communal soft landscape areas during the construction period, and the lifetime of the development has been submitted to and approved in

writing by the Local Planning Authority. The Management Plan shall include management responsibilities and proposals for the replacement and maintenance of planting and other soft landscape treatments, other than in privately owned domestic gardens, in perpetuity. The management and maintenance operations shall thereafter be implemented throughout the period of construction in accordance with the approved details. The CLMP shall also include provisions for handover(s) of responsibility for management and maintenance of open space and landscape areas to the new Management Company.

ANNEX E: SCHEDULE OF CONDITIONS

OUTLINE PLANNING PERMISSION

1) *Time*

Application for approval of the first reserved matters shall be made to the Local Planning Authority not later than 3 years from the date of this permission. All other reserved matters must be made not later than 8 years from the date of this permission. The development hereby permitted shall take place not later than 2 years from the date of approval of the last of the reserved matters to be approved.

2) *Reserved Matters*

Details of the appearance, landscaping and layout (hereinafter called "the reserved matters") shall be submitted to and approved in writing by the Local Planning Authority before any development takes place and the development shall be carried out as approved.

3) *Plans*

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

Y029 18 201C Location Plan received on the 15/01/20

Y029 18 202D Block Plan received on the 22/04/21

Y029 18 203A Site Plan received on the 11/01/19

Y029 18 204W Proposed Masterplan received on the 20/05/21

Y029 18 205P Infrastructure Delivery Plan received on the 07/04/21

Y029 18 206I Proposed Storey Plan and Design Code received on the 07/04/21

Y029 18 207F Proposed Lighting Plan received on the 26/03/21

Y029 18 216 Land and Scale Analysis received on the 26/03/21

Y029 18 501Q Development Edge Sections received on the 07/04/21

Y029 18 510B Development Edge Sections received on the 05/06/20

10655 P18D Landscape Strategy received on the 08/04/2021

4012-ID-DR-1001P03 Lighting Plan received on the 06/01/20

4012-ID-DR-1002P03 Lighting Plan received on the 06/01/20

4012-ID-DR-1003P03 Lighting Plan received on the 06/01/20

PDL-100H Preliminary Drainage Layout received on the 06/01/20

Building for Healthy Life Assessment & Design Code March 2021 Rev B
Supporting Statement

Environmental Statement including Appendices (as updated)

4) *Levels*

No development shall take place until full details of the finished levels of all parts of the site, including the floor levels of all buildings, which accord with the Flood Risk Assessment dated February 2022 have been submitted to and approved in writing by the Local Planning Authority.

The development shall be implemented in accordance with the approved details.

5) *Design*

The reserved matters details submitted pursuant to condition 1 shall provide the following for the written approval of the Local Planning Authority:

- a Sustainability Statement and Building for a Healthy Life Assessment which shall set out precisely how the reserved matters are complying with the aspirations for the site in respect of sustainable construction and the use of renewable energy.
- a) Details for provision of external refuse and recycling storage facilities to serve each dwelling and commercial/service use.
- b) Details for the provision of car parking, electric vehicle charging point(s) and cycle parking for each dwelling and to serve the commercial units, community space and other facilities.
- c) A scheme for the provision of surface water drainage.
- d) A scheme for the provision of foul drainage.
- e) The siting, design and external appearance, including materials of construction of all walls, fences and other means of enclosure to be used in the development and shall be carried out as approved.

The development shall be undertaken in accordance with the approved details and no building shall be occupied or use commenced until the approved details installed.

6) *Phasing*

No development shall take place until a Phasing Scheme has been submitted and approved in writing by the Local Planning Authority. The Phasing Scheme shall detail the timetable for the overall development, including the implementation and completion of the public open space, public realm, services and the delivery of the internal estate road. No work other than the provision of roads and infrastructure shall be undertaken on any subsequent phase of development unless the services and open space and public realm within the previous phase have been completed. Development shall be carried out in accordance with the approved Phasing Scheme.

7) *Drainage*

Prior to or as part of the Reserved Matters relating to layout, the following information shall be submitted to and approved in writing by the Local Planning Authority:

- (a) A detailed drainage design, network model outputs, based upon the approved Yelland Quay Regeneration Flood Risk Assessment (FRA) 0146 dated December 2019 Rev G, as amended by the Yelland Quay Regeneration Flood Risk Assessment (FRA) 0146 dated February 2022 Rev H. This should include confirmation of the tidal level, used as the downstream boundary condition within the model.

- (b) Detailed proposals for the management of surface water and silt run-off from the site during construction of the development hereby permitted.
- (c) Proposals for the adoption and maintenance of the permanent surface water drainage system.
- (d) A plan indicating how exceedance flows will be safely managed at the site.

No building hereby permitted shall be occupied until the works have been approved and implemented in accordance with the details under (a) to (d) above and shall be maintained and retained thereafter.

8) *Construction Environmental Management Plan (CEMP)*

Prior to the commencement of development on any Phase of the development, including any site clearance, groundworks or construction (save such preliminary or minor works that the Local Planning Authority may agree in writing), a Construction Environment Management Plan (CEMP) for that Phase to manage the impacts of construction during the life of the works, shall be submitted to and approved in writing by the Local Planning Authority. The approved Plan shall be implemented and adhered to throughout the construction period. The Plan shall provide for:

- a) the parking of vehicles of site operatives and visitors;
- b) loading and unloading of plant and materials;
- c) storage of plant and materials used in constructing the development;
- d) the erection and maintenance of security hoarding including decorative displays and facilities for public viewing, where appropriate;
- e) wheel washing facilities;
- f) a management plan to control the emission of dust and dirt during construction identifying suitable mitigation measures;
- g) a scheme for recycling/disposing of waste resulting from construction work (there shall be no burning on site);
- h) a Management Plan to identify potential ground and water contaminants; details for their storage and how water courses will be protected against spillage incidents and pollution during the course of construction;
- i) a scheme to control noise during the construction phase;
- j) the timings and routing of construction vehicles and deliveries to site;
- k) measures to control dust, lighting and noise during construction.
- l) a management plan for ensuring that recommendations contained within specialist land contamination reports relating to protecting human health, controlled waters, ecological systems and neighbouring land are fully complied with;
- m) a management plan for ensuring that risks posed by asbestos containing materials present at the site are suitably controlled and managed;

- n) a point of contact (such as a Construction Liaison Officer/site manager) and details of how complaints will be addressed.
- o) measures to identify contaminants in imported soils whether subsoils or topsoils prior to importation to the site.

9) *Construction Ecological Management Plan (CECoMP)*

No development shall take place (including demolition, ground works and vegetation clearance) until a Construction Ecological Management Plan (CECoMP) has been submitted to and approved in writing by the Local Planning Authority. The CECoMP shall include the following:

- (a) Risk assessment of potentially damaging construction activities.
- (b) Identification of 'biodiversity protection zones'.
- (c) Practical measures (both physical measures and sensitive working practices such as lighting and noise controls) to avoid or reduce impacts during construction.
- (d) The location and timing of sensitive works to avoid harm to biodiversity features including bird breeding sites/nests during operations to manage or remove trees and other vegetation.
- (e) The times during construction when specialist ecologists need to be present on site to oversee works.
- (f) Responsible persons and lines of communication.
- (g) The role and responsibilities on site of an ecological clerk of works (ECoW) or similarly competent person.
- (h) Use of protective fences, exclusion barriers and warning signs.

Noise contour maps of background noise levels and predicted construction noise levels shall be provided to indicate more clearly where the significant impacts are likely to be and when. A noise management plan shall be submitted to and approved in writing by the Local Planning Authority to demonstrate that construction and operational noise levels are within background levels and where any significant increases are predicted at ecological receptors, with the 2.5m high acoustic screen in place. Any additional measures that may be required shall be identified and shall have been submitted to and approved in writing by the Local Planning Authority prior to their installation/implementation.

The most sensitive period for the overwintering birds is September to March inclusive. Drawing YO29 18 205P Infrastructure delivery plan details April to August inclusive for timing of works for the lagoon, land raising, screen and rock armour. The Construction period for the ground raising, rock armour and lagoon and relevant building phases are likely to require additional mitigation to that proposed if carried out September to March inclusive. This should include use of the jetty to bring in materials during construction. Should such construction works be proposed for September to March inclusive, then details, including proposed additional mitigation shall have been submitted to and approved in writing by the Local Planning Authority.

The approved CEcoMP shall be adhered to and implemented throughout the construction period strictly in accordance with the approved details, unless otherwise agreed in writing by the Local Planning Authority.

10) *Boundary Details*

No development pursuant to this outline consent shall take place until a detailed Fencing Plan (FP) along with details of its long term maintenance and management has been submitted to and approved in writing by the Local Planning Authority and these works shall be carried out as approved. The FP shall provide details of the implementation and management of all fencing to protect biodiversity and shall include:

- (a) boundary fencing along the foreshore in front of the proposed development between the proposed development and the western and southern boundaries of RSPB Isley Marsh nature reserve as set out on Drawing YO29 18 501Q (Development Edge Sections)
- (b) measures to ensure that the post and wire fence is in place prior to construction works (to ensure no storage of machinery or materials off the development site and to prevent people and dogs accessing the foreshore or RSPB Isley Marsh via the approved site).
- (c) provision of a pedestrian gate 1.2 metres wide and height to match the fence, to be provided in the fence on the western boundary of the RSPB nature reserve to provide RSPB staff only with secure (locked) access to Isley Marsh nature reserve from the west for essential works on the reserve, such as scrub management and asbestos removal. The gate should be installed at the same time as the fence (see (b) above) and should be signed with the RSPB logo and 'no entry'.

The fencing of the site and footpath from the estuary and foreshore as detailed on the Fencing Plan shall be undertaken as part of the first phase of development (or as agreed by the phasing condition) and shall be maintained and retained thereafter in accordance with the agreed details.

11) *Lighting Design*

As part of all reserved matters applications, a scheme(s) providing full details of all external lighting sources shall be submitted to and approved in writing by the Local Planning Authority. The external lighting design shall be based on the following agreed documents and shall be required to demonstrate that unacceptable levels of lightspill would not occur on protected areas:

- a) Details of Bollard Luminaires with Low Upward Light Output.
- b) Indicative Lighting Strategy 4012-ID-DR-1001 P03/1002 P03/1003/P03.
- c) Lighting Strategy Access Road BB 4012.
- d) Proposed Lighting Plan Y029 18 207F.

The lighting strategy should also be informed by industry best practice and the external lighting shall be installed at the relevant times to be identified in the approved scheme and shall be maintained and retained thereafter.

12) *Landscape and Ecological Management Plan (LEMP)*

No construction shall take place within any phase until a Landscape and Ecological Management Plan (LEMP) applicable to that phase has been submitted to and approved in writing by the Local Planning Authority. The LEMP shall include the following elements:

- a) A description and evaluation of landscape and ecological features to be created managed and ecological trends and constraints on site that might influence management.
- b) Aims and objectives of ecological and landscape management including: Full details of the scope of the monitoring and wardening measures secured as part of the Section 106 Agreement, definitions of disturbance events and what level of disturbance (eg, number of birds, number of occasions and locations) would trigger contingency measures and what those contingency measures would be and how they would be implemented.
- c) Appropriate management options for achieving aims and objectives for both the built and natural landscape environments.
- d) Identification of risks and proposals for management and contingency measures/actions.
- e) Preparation of a work schedule (including an annual work plan capable of being rolled forward over a 10-year period).
- f) Details of the body/bodies or organisation(s) responsible for implementation of the plan throughout its lifetime.
- g) Appointment of ongoing landscape and ecological monitoring and implementation of any necessary remedial measures.
- h) Means of reporting of landscape and ecological monitoring results to Natural England and the Local Planning Authority and provisions for seeking written agreement to any changes to the management actions and prescriptions that may be necessary to ensure effective delivery of the aims and objectives of the LEMP over time in perpetuity.
- i) the number, location and wording of signage setting out the ecological aspirations for the site.
- j) Details of handover arrangements for landscape and ecological maintenance and management responsibilities to the new Management Committee or other body/bodies.

The agreed Landscape and Ecological Management Plan shall be implemented in full, in accordance with timescales indicated in the approved scheme and shall thereafter be maintained in perpetuity following handover to the Management Committee or other body.

13) *Provision, implementation and maintenance of detailed landscape proposals*

No development shall take place within any phase until a hard and soft landscaping scheme applicable to that phase has been submitted to and approved in writing by the Local Planning Authority. The landscaping scheme shall show:

- a) Location of all hard and soft landscape areas.

- b) design of culverts to facilitate wildlife connectivity, swales and embankments.
- c) Proposed schedule of all hard landscape materials including safety surfaces in play areas.
- d) Detailed schedules of all trees and other planting including
 - Identification of species by name including latin and (where relevant) common names'
 - Quantities of each species,
 - Height, spread and girth measurements of trees including whether to be supplied bare-root or container grown,
 - Heights, spreads and planting densities of all shrubs, perennials and other plant material at time of supply and planting including whether to be supplied bare root or container grown. Container sizes to be shown for all container grown plant material,
 - Identification of grass areas including whether an area is to be turfed or seeded,
 - Seeding rates for amenity lawn and meadow areas.
- e) A detailed Landscape Specification, to include: programming for the works, ground preparations including tree pits, topsoil depths and topsoil management, plant handling and establishment methodologies, tree support methods and protection, meadow planting and establishment, water marginal planting and establishment plus long-term management and maintenance schedules for all areas including protection for soft landscape areas planted while construction operations are still in progress.
- f) The appointment, role and on-site supervision, monitoring, reporting responsibilities of a landscape clerk of works (LCW) or similarly competent person.

All trees shall be supplied at sufficient maturity to provide an instant visual impact throughout the site. Trees, particularly those that form part of the boundary visual mitigation proposals may not be located in any private residential garden. Trees shall in all cases be planted in areas subject to regular maintenance and management by the developer or other body that may become responsible for management and maintenance of planted areas in perpetuity during the construction period and/or following handover.

Trees and shrubs generally shall comply with BS.3936 (Specification of Nursery Stock) and shall be planted in accordance with BS.4428 (General Landscaped Operations). The approved scheme shall be carried out in full accordance with the approved details and retained and maintained thereafter. All planting shall be maintained and dead or dying material shall be replaced for a period of five years from the agreed date of planting.

14) *Bat and Birds boxes/roosts*

A scheme providing full details of bat and bird boxes and roosts, along with their maintenance and management in perpetuity shall be

submitted as part of the reserved matters applications. The Bat Roost building and heron platforms shall be provided as the first phase of development or as otherwise agreed in the Phasing Scheme. The scheme to be approved should include:

- Integral bird boxes ('swift bricks') built into the construction of buildings to achieve an overall ratio of one per dwelling or 250, whichever is the higher number.
- Suitable sites are at least 5 metres above ground, located under the eaves or adjacent to verges of gable ends of houses/apartment blocks.
- Boxes shall be installed in loose clusters of 2-3 boxes each at least one metre apart across the whole development, avoiding close proximity to doors and windows.
- Integral boxes may be sited across all four aspects but mainly east facing locations should be given precedence.

The approved scheme shall be implemented prior to the occupation of that phase and retained and maintained thereafter. The area surrounding the bat roost shall be managed specifically for the bats and fenced off to prevent paths and other activities developing in this area. Details of these measures shall be set out within the LEMP.

15) *On site public open space*

Prior to the laying out/construction of the areas of public open space within any phase of the development precise details shall be submitted to and approved in writing by the Local Planning Authority, along with details of maintenance and management arrangements. This shall include where applicable to that phase:

- a) the precise design, position and layout of the LAP/LEAP(S) including surface treatment, 5 pieces of play equipment, seating, signage and means of enclosure;
- b) the precise design, position and layout of the NEAP including surface treatment, 9 pieces of play equipment/play experience, seating, signage and if appropriate means of enclosure;
- c) the precise planting schedule, means of enclosure of the areas of informal open space;
- d) the position of seats, dog bins and signage within the informal public open space;
- e) the provision of a geotextile membrane; and
- f) implementation programme(s).

The works shall thereafter be carried out as approved and completed on site alongside the phase of development to which they relate unless otherwise agreed in writing by the Local Planning Authority.

16) *Highway Construction*

Prior to first occupation of any part of the development hereby permitted, details of a programme for the provision of streets within the development and arrangements for their management and maintenance shall be submitted to, and approved in writing by, the Local Planning

Authority. The streets shall thereafter be provided, managed, and maintained in accordance with the approved details until such time as an agreement has been entered into under Section 38 of the Highways Act 1980 or a private management and maintenance company has been established.

17) *Occupation*

The occupation of any dwelling in an agreed phase of the development shall not take place until the following works have been carried out and certified as such by Local Planning Authority:

- i) the spine road and/or cul-de-sac carriageway including the vehicle turning head within that phase shall have been laid out, kerbed, drained and constructed up to and including base course level with the ironwork set to base course level and the sewers, manholes and service crossings completed;
- ii) the spine road and/or cul-de-sac footways and footpaths which provide that dwelling with direct pedestrian routes to an existing highway maintained at public expense have been constructed up to and including base course level;
- iii) all visibility splays have been laid out to their final level;
- iv) the street lighting for the spine road and/or cul-de-sac and/or footpaths has been erected and commissioned;
- v) the car parking and any other vehicular access facility required for the dwelling by this permission have been completed;
- vi) the verge, service margin and vehicle crossing on the road frontage of the dwelling have been completed with the highway boundary properly defined;
- vii) the street nameplates for the spine road and/or cul-de-sac have been provided and erected.

18) *Highway Drainage*

Provision shall be made within the curtilage of each dwelling for the disposal of surface water so that none discharges onto the highway.

19) *Noise Assessment*

No construction shall take place within any phase of the development until a Noise Impact Assessment has been submitted to and approved in writing by the Local Planning Authority. The assessment shall clearly identify those dwellings and parts of the development that will be potentially affected by noise from the existing electricity sub-station located to the southwest of the site. The assessment shall be prepared by a suitably qualified and experienced person (Member of the Institute of Acoustics or equivalent) and have regard to relevant standards and guidance including BS4142:2014 +A1:2019 Methods for Rating and Assessing Industrial and Commercial Sound. The assessment shall consider the potential effects of low frequency and tonal noise from the electricity sub-station on the proposed residential properties and outside amenity spaces. It shall identify measures to be incorporated into the design of the development to achieve a good acoustic design approach in accordance with guidance contained within Professional Practice Guidance (ProPG): Planning & Noise 2017 and ensure that the living

conditions of the occupants of the proposed development are not unacceptably affected by the potential effects of low frequency and tonal noise from the electricity sub-station. The assessment report shall include recommendations for any mitigation or site constraints as necessary, including measures to be incorporated into the design and proposed layout of the site where appropriate. The development shall thereafter be undertaken in accordance with the approved Noise Impact Assessment.

20) *Commercial Units – controls over mechanical ventilation*

Prior to occupation of any of the commercial units, details of any noise generating external plant, machinery or equipment proposed to be used in connection with the occupation and use of the commercial units at the site shall be submitted to and approved in writing by the Local Planning Authority. The details provided shall include predicted noise emission levels of the proposed equipment and an assessment of whether noise emissions have the potential to impact any residential receptors in the vicinity. The noise assessment shall be prepared by a suitably qualified and experienced person (Member of the Institute of Acoustics or equivalent) and have regard to relevant standards and guidance including BS4142:2014 +A1:2019 Methods for Rating and Assessing Industrial and Commercial Sound. The noise assessment shall demonstrate that noise from the proposed external plant, when operating under full load conditions, does not exceed a BS4142 rating noise level of 5dB(A) below the representative LA90 background noise level at any residential receptor locations in the vicinity. The above levels refer to the combined noise emitted from all external plant operating at a given time. Rating levels are to be measured and assessed in accordance with BS4142: 2014 (+A1 2019). The development shall thereafter be undertaken in accordance with the approved details.

21) *Use of Jetty*

The existing jetty shall not be used for the purposes of mooring or launching pleasure craft at anytime. Before any part of the development is occupied a scheme shall be submitted to and approved in writing by the Local Planning Authority that provides details of how physical restrictions (bollards/gates etc.) will be installed to prevent the use of the jetty for any use not associated with the existing operational use for the importation of minerals. The scheme shall also provide details of how the restrictions in the use of the jetty will be communicated to the occupants of the proposed development and shall include details of the position, content and design of any proposed signage and the timescale for the installation/undertaking of the measures identified in the scheme. The development shall thereafter be undertaken in accordance with the approved scheme.

22) *Waste Audit*

A waste audit statement shall be submitted as part of the reserved matters application for each strategic phase of the development. This statement shall include all information outlined in the waste audit template provided in Devon County Council's Waste Management and Infrastructure Supplementary Planning Document. The development shall be carried out in accordance with the approved statement.

23) *Travel Planning*

The development shall not be occupied until a Review and Update Assessment of the Framework Travel Plan submitted in support of the outline application has been reviewed and updated for each specific phase of development and has been submitted to and approved in writing by the Local Planning Authority. The updated Framework Travel Plan shall include a timetable for the implementation of the measures identified therein. Thereafter, the approved updated Framework Travel Plan shall be implemented in full in accordance with the timetable within it unless otherwise agreed in writing with the Local Planning Authority. All elements contained within the updated Framework Travel Plan shall continue to be implemented at all times thereafter for as long as any part of the development is occupied or used/for a minimum of at least 5 years.

24) *Soil Quality*

All topsoil used on the site shall comply with the requirements of British Standard 3882 'Topsoil' 2015 as may be amended during the life of the construction period. No development, including preparatory groundworks may commence on the site until details of soil specifications and testing, including for planted water bodies, have been submitted to and approved in writing by the Local Planning Authority. Each source of in situ or imported soil, whether subsoil or topsoil shall be analysed by a recognised soil science laboratory. Each analysis shall be accompanied by a report to confirm that the soil is suitable for the purpose for which it is due to be used. Soil that such a laboratory deems to be unsuitable for the purpose for which it is to be used may not be used on the site whether it be from an in-situ or imported source.

25) *Soil Depths and Management during construction*

No construction development shall commence on site until details of soil spreading depths have been submitted to and approved in writing by the Local Planning Authority. Subsoil and Topsoil depths shall in all cases be appropriate to the type of planting they will be required to sustain. The development shall thereafter be implemented in accordance with the approved details. Once spread, topsoil areas shall be protected from site traffic whether vehicular or pedestrian until planting has taken place.



Costs Decision

Inquiry Held on 19 - 22 April 2022 and 26 April 2022

Site visit made on 25 April 2022

by Stephen Normington BSc DipTP MRICS MRTPI FIQ FIHE

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

Decision date: 30th June 2022

Costs application in relation to Appeal Ref: APP/X1118/W/21/3283943 Former Yelland Power Station, Lower Yelland, Yelland, Barnstaple, Devon EX31 3EZ

- The application is made under the Town and Country Planning Act 1990, sections 78, 320 and Schedule 6, and the Local Government Act 1972, section 250(5).
- The application is made by Yelland Quay Limited for a full award of costs against North Devon District Council.
- The inquiry was in connection with an appeal against the refusal of planning permission for a hybrid application comprising:

(A) full application for access and scale of site including raising of ground levels, removal of any contamination, demolition of buildings, flood defence works, site access works and highway infrastructure, together with purpose built bat building and vehicle parking for Tarka Trail.

(B) outline application for 250 dwellings (Use Class C3(a)), up to 3000sqm employment space (Use Class E(g)(i) and E(g)(ii) was Use Class B1). Retail Space of up to 250sqm gross floorspace (Use Class E(a) was Use Class A1); Space for the Sale of food and drink of up to 2000sqm Gross floorspace (Use Class E(b) was Use Class A3); Service and Community Space of up to 500sqm Gross floorspace (Use Class E(d) E(e), E(f) and F1(a), F1(b), F1(e), and F2(b) was Use Class D1 and D2); layout including all associated infrastructure, roads, footpaths, cycleway, drainage (including attenuation works), landscaping and appearance, public open space and utilities.

Decision

1. The application for an award of costs is partially allowed, in the terms set out below.

Procedural matters

2. The Planning Practice Guidance (PPG) advises that all parties are expected to behave reasonably to support an efficient and timely appeal process. Where a party has behaved unreasonably and this has directly caused another party to incur unnecessary or wasted expense in the appeal process, they may be subject to an award of costs irrespective of the outcome of the appeal. Further, local planning authorities are at risk of an award of costs if they behave unreasonably with relation to:
 - preventing or delaying development which should clearly be permitted, having regard to its accordance with the development plan, national policy and any other material considerations;

- failing to produce evidence to substantiate each reason for refusal on appeal;
- making vague, generalised or inaccurate assertions about a proposal's impact, which are unsupported by any objective analysis;
- requiring that the appellant enter into a planning obligation which does not accord with the law or relevant national policy in the National Planning Policy Framework (the Framework), on planning conditions and obligations.

Submissions for Yelland Quay Limited

This section is based largely on the Costs Application by Yelland Quay Limited.¹

3. The appellant contends that the appeal site is allocated for development of the type and scale set out in the appeal proposal and that there are no material considerations which indicate that planning permission should be refused. Consequently, the refusal is contrary to clear statutory provision (section 38(6) Planning and Compulsory Purchase Act 2004) and national policy (Paragraph 11(c) of the Framework).
4. Furthermore, as it is common ground that the Council cannot demonstrate a 5-year housing land supply (HLS) the "tilted balance" applies under paragraph 11(d) of the Framework which requires that planning permission should be granted unless any adverse impacts of doing so would significantly and demonstrably outweigh the benefits of the proposal. The appellant contends that the Council were unable to show that this proposal for the type and form allocated in the development plan creates adverse impacts which would significantly and demonstrably outweigh the benefits of the proposal. The refusal of planning permission was contrary to the advice from the Council's officers and is contrary to policy and unreasonable.
5. Consequently, the refusal has resulted in the unnecessary need for the appeal and all of the costs of the appeal have been unreasonably incurred. The appellant has set out the basis for unreasonable behaviour with regard to each of the Council's reasons for the refusal of planning permission.
6. The first reason for refusal contends that "the scheme is not delivering an appropriate housing mix and tenure (affordable housing) to meet local housing needs contrary to policy FRE01(b), ST17 and ST18 of the Local Plan". The parties accept that Policy FRE01 was cited in error and the policy which is relevant is policy FRE02.
7. Policy FRE02(b) identifies that the allocation of the site will be expected to deliver "approximately 250 dwellings the size and tenure of which will be reflective of local needs". There is no mention of housing mix in the policy.
8. Paragraphs 7.12 and 7.13 of the Local Plan advise that housing mix is to be provided on an individual basis having regard to up-to-date and robust evidence which should include development viability. Policy ST17 identifies that development proposals should reflect local housing needs subject to consideration of "development viability".
9. The officer's report identified that the proposed housing mix "is comparable with the HEDNA mix" and had "been tested through the independent viability

¹ ID21

- process and found to be acceptable based on the level of abnormalities". The Council accept the viability evidence and as such the Council's refusal on this ground is contrary to the provisions of the development plan.
10. Policy FRE02(b) does not require the provision of affordable housing. Policy FRE02 does not refer to affordable housing or provide any requirement which is in contrast to policies relating to a number of other site allocations. Policy ST18 makes a general requirement for 30% affordable housing but provides a variation of this requirement "on the basis of a robust appraisal of development viability".
 11. The agreed viability appraisal establishes that the proposal cannot support Section 106 contributions. Although the appellant offered a contribution in excess of £1.4M, the Council did not propose any of this should be put towards the provision of affordable housing.
 12. The first reason for refusal is contrary to the evidence, the development plan and the officer's advice. The Council were unable to produce any evidence to substantiate the reason for refusal.
 13. The second reason for refusal is concerned with the absence of a contribution towards highway improvements. It was clear during the course of the appeal that the only issue is the impact of the proposal on the capacity of the ESSO Garage/Wrey Arms junction. There are no highway safety concerns.
 14. There is no development plan requirement for any mitigation at this junction. If there had been a real issue with this junction it would have been addressed during the preparation of the Local Plan. The relevant test is that in paragraph 111 of the Framework which states that "Development should only be...refused on highway grounds if...the residual cumulative impact on the road network would be severe".
 15. It is also clear from paragraphs 110(d) and 57 of the Framework that any requirement for contributions can only relate to any issue created by the development. They cannot be sought to address existing issues. The agreed traffic flow figures show that the appeal proposal would only provide an increase in flow at this junction of 1.7% in the AM peak and 3.5% in the PM peak which is much less than the recorded daily variation in traffic flows at the junction. The projected increase in flow is also an over-calculation as it does not take account of the existing traffic flows associated with the current use of the site which will cease as a result of the proposal. Modelling shows that the proposal will make a very limited impact upon the performance of the junction.
 16. The impact of the proposal upon the junction cannot be suggested to be severe and cannot provide a reason for refusal. Refusal on this ground is contrary to both policy and the evidence and is unreasonable. The Council failed to produce any evidence to demonstrate that the impact of the proposal on the junction would be severe. It remains unclear what, if any, highway improvement will be implemented at this junction and what the ultimate cost of such an improvement might be.
 17. It was clear that the plan showing a junction proposal was produced simply for the purposes of this appeal in an attempt to provide some justification for the claimed contribution. The Council was unable to explain how the contribution had been calculated in advance of the production of this plan.

18. In addition, the Council was unable to produce evidence to substantiate its position and relied upon vague assertions. As such, it is unable to demonstrate that the level of contribution sought by the highway authority is either policy or CIL compliant.
19. The third reason for refusal alleges that the scheme benefits do not outweigh landscape harm and the adverse visual impact on those using the South West Coast Path and Tarka Trail. The limited nature of this reason is to be noted as the Council appear to have sought to widen the reason in its evidence to the inquiry.
20. The site is a previously developed site and it has been a long-standing planning objective that it should be reclaimed and redeveloped. The redevelopment of the site will remove an area of degraded landscape, characterised by discordant and dilapidated features, large scale materials storage, plant storage silos and derelict buildings, surrounded by a degraded concrete and wire fence.
21. The starting point for consideration of this reason for refusal must be the site's allocation for this type and scale of development and its location which is situated within the "Developed Coast" under policy ST09, which is an area of the estuary with a predominantly developed character. The design of the proposal is the outcome of a careful iterative process informed and guided by the input from the South West Design Review Panel (SWDRP) which is a body of experienced professionals and the Council's own professional officers.
22. The principle of development of this type and scale is set out in the development plan. This will inevitably result in change to the landscape and views. Any development will require land raising of the type proposed and changes to vegetation and ground cover. The principle of development close to the two footpaths has been accepted with the site's allocation. The development of the site will not block views across the estuary and will improve the views of the site from the footpaths.
23. Fundamentally there is no evidence that the proposal creates any landscape or visual impact which is not implicit in the development plan allocation. The refusal on these grounds is contrary to the evidence, the development plan and the officer's advice.
24. The final reason for refusal contends that inadequate infrastructure is being delivered in the form of a football pitch. The proposed development provides on-site open space but does not make provision for a football pitch which is referred to in the policy.
25. The up-to-date evidence does not establish any need for a new pitch in Yelland. Furthermore, a pitch is to be provided on a different site, and the Council accepts that this would meet any need. The viability assessment reveals that the development as proposed cannot sustain any financial contributions. This was undertaken on the basis that the football pitch is not provided. Were such a pitch to be provided this would result in the loss of developable land which would impact still further on the viability of the redevelopment of the site. The refusal on these grounds is contrary to the evidence, the development plan and the officer's advice.

26. Overall, the proposal is in accord with the development plan. In addition, there is a pressing need for the residential development provided by the proposal given the absence of a 5-years supply of housing land. In the circumstances, it is difficult to conceive of a clearer example of unreasonable behaviour. If the Council had behaved reasonably there would have been no need for an appeal and no need for this inquiry. The appellant seeks a full award of costs. Alternatively, if the application for a full award were not granted the appellant seeks a partial award of costs in addressing the different grounds of refusal as set out above.

The response by North Devon District Council

This section is based largely on the response to the appellant's Costs Application by North Devon Council.²

27. The Council's position is a perfectly straightforward one. It produced proper reasons for refusal and has supported them with proper evidence. There is no basis for this application for costs.
28. The development is demonstrably contrary to a number of local and national policies. Thus FRE02(d) dealing with buildings and structures seeks to deal with their visual impact on the open landscape setting of the estuary. This approach betrays the fundamental misunderstanding of the appellant. The Local Plan dealt with development here by setting out a number of criteria with which development had to comply. It is the development's failure to comply with those criteria (and other Local Plan and national policies) that has been the Council's focus throughout this appeal.
29. It is accepted that the Council cannot demonstrate a 5-year HLS and the tilted balance applies. The Council has no hesitation in asserting, and has led evidence to that effect, that the harms significantly and demonstrably outweigh the benefits.
30. With regard to the Council's first reason for the refusal of planning permission, size and tenure can include 'mix' and affordable housing. Mr. Harris accepted in cross examination that that 'tenure' could include affordable housing. There is no dispute that viability is a material consideration.
31. Members clearly disagreed with the officers as they were entitled to do. The appellant did not comply with the HEDNA mix for more affordable homes when there is a particular need. There is a need for more affordable and less expensive homes which this development does not provide in sufficient quantity.
32. Policy ST18 deals with viability. The policy allows the Council to reduce or waive the requirement for affordable housing if there was a proper viability assessment (as here) but equally it would allow the Council to say that the absence of affordable housing was a serious failure and therefore a reason for refusal. Even if the Council could have used the Section 106 monies for affordable housing, that would have been at the expense of other obligations. That does not make the development any more acceptable.
33. Turning to the second reason for refusal, the issue with that is simply the level of the contribution in the offer of a partial contribution proposed by the

² ID25

- appellant. Proper evidence has been supplied on behalf of the highway authority to support the reason for refusal. There is no basis for an award of costs.
34. It is clear the Wrey Arms junction is the one towards which the contribution is sought and this is addressed in some detail in the Local Highway Authority Proof of Evidence (POE) (pages 18 and 19) with a breakdown as to how the contribution has been arrived at. The offer by the appellant of £335,500 has not been assessed on any recognised recent formula but merely considering the residential element of 250 dwellings only, which disregards all permanent vehicle movements associated with commercial activities. It still remains the authority's view that, whilst existing contributions can mitigate improvements at the Cedars junction, the efficiency of this junction continues to be compromised until such time as an improvement is carried out at the Wrey Arms junction.
35. The appellant confirms 3980 commercial vehicles were generated at the site during the whole of March 2021. It is not clear if this is only related to the Concrete Batching Plant which is displaced by the appeal proposal, but unknown as to where it may be relocated to, and whether it includes existing commercial uses which are to remain. Furthermore, the Local Highway Authority's POE (page 14) sets out how 1679 daily commercial vehicle movements and 1091 daily residential vehicle movements, all totalling 2770, may be generated via the appeal site. This includes 250 daily vehicle movements associated with the proposed Retail Use not considered by the highway consultants. It is clear the 3980 vehicle movements, referred to above, gives rise to approximately 131 daily movements.
36. With regard to an improvement scheme at the Wrey Arms junction, discussions have taken place between Members and Officers for some considerable period of time and it was considered necessary to provide a degree of certainty for the type of scheme now formally considered and based on minimum values of similar proposals executed elsewhere within the County. Such improvement was considered by the Highways and Traffic Orders Committee meeting in November 2021.
37. The appellant's highway consultants did not provide a reasonable alternative methodology to calculate the level of contribution but still 'offered' a contribution of £335,500.00 which appears in the Section 106 agreement. Their calculations for this, based only upon peak impacts, disregards the traffic generation from the development and traffic travelling eastwards towards Barnstaple.
38. It is the view of the Local Highway Authority that the contribution sought is necessary to make the development acceptable by reducing capacity issues, at peak times, otherwise exacerbated by the proposed development. The contribution is directly related to the 'ESSO Garage' junction in order to improve its operation and the inter-related junction at 'The Cedars'. In addition, it is directly related to the development as 43% of all development traffic is predicated to utilise 'The Cedars' junction which suffers capacity issues as a consequence of the 'ESSO Garage' junction. Finally, it is fairly and reasonably related in scale and kind as contributions have been assessed taking into account residential and commercial vehicle trip impact on 'The Cedars' and 'ESSO Garage' junctions. Such contribution is potentially one of

- four contributory developments, reasonably apportioned, to take into account their predicted impact.
39. Turning to landscape and visual harm, the issue of the AONB was dealt with in the Officer Report only because there was an objection – maintained throughout – by the AONB Partnership. By referring to ‘landscape harm’ in the third reason for refusal is, in context, certainly enough to encompass the impact on the AONB. The issue was dealt with in the Council’s Statement of Case when it was made clear that the impact on the AONB was part of this reason.
40. There is no dispute that the site is Previous Developed Land but it is equally clear that, in principle, a less harmful development could achieve the remediation, reclamation and redevelopment benefits. There is no dispute that the principle of development on this site is acceptable. The issue is simply that the scale, height and typology is unacceptable (see Mr. Radmall’s evidence section 7). To reiterate, the site was not allocated for this ‘type and scale’ of development.
41. While it is true that the layout and design were considered by the SWDRP, it does not mean that the conclusions they arrived at were correct – particularly as they do not appear to have fully considered the impact on a sensitive landscape and the AONB.
42. The appellant asserts that the precise development before this appeal is sanctioned by the Local Plan allocation and that the Council’s attempt to show that the development is not policy compliant is a challenge to the allocation. This is simply wrong. The Council has been careful to show that the development is not policy compliant strictly in accordance with the reason for refusal. It has done so by producing proper evidence. Mr Radmall’s evidence, on the issue of landscape and visual impact (for example, the height of the buildings when the PEP material shows they could have been low rise and also the urbanising layout), shows exactly why the development plan and national policies are not complied with.
43. The football pitch is required by FRE02(h). Mr Muston explained why the site will generate the need for another pitch. There is no guarantee that an alternative pitch will come forward and the evidence about this, in any event, has only emerged very late in the day. If there is a need for a pitch and it is not provided on site then a contribution would be appropriate. If the contribution cannot be provided because of viability, this is simply evidence of further harm caused by the development and an additional reason why it could properly have been refused.
44. Finally, the Council’s evidence is clear in that the scheme does not comply with the development plan. It has provided proper evidence by properly qualified witnesses to support its reasons for refusal. While there is always a need for residential development it is not development of this scale and size and in this place that should be provided - particularly and importantly when it is contrary to a number of development plan and national policies. Neither a full nor a partial award of costs is justified.

Reasons

45. While the Council is not duty bound to follow the advice of its professional officers, if a different decision is reached the Council has to clearly demonstrate on planning grounds why a proposal is unacceptable and provide clear evidence to substantiate that reasoning.
46. In considering the appellant's grounds for an award of costs in respect of the Council's first reason for the refusal of planning permission, it is clear that the text of Policy FRE02 of the Local Plan does not provide any reference to housing mix or to affordable housing. However, it does identify that the size and tenure of dwellings should be reflective of local needs. Policy ST17 further identifies that dwelling numbers, type size and tenure should reflect identified local housing needs, subject to the consideration of site character and context and development viability.
47. Policy ST18 of the Local Plan requires that development will be expected to provide on-site delivery of affordable housing equal to 30% of the number of dwellings (gross) on site. However, criterion (5) of the policy provides that negotiation to vary the scale and nature of affordable housing provision, along with the balance of other infrastructure and planning requirements, will be considered on the basis of a robust appraisal of development viability.
48. In the absence of any other verified viability evidence, I have found the independently verified Viability Appraisal to be robust and this was accepted as such during the Council's consideration of the planning application. It is clear from the conclusions of the Viability Report that the proposed development cannot financially support the provision of Section 106 contributions.
49. Given the terms of Policy ST18 (5), I have found that the proposed development without affordable housing remains compliant with the policy as, in this case, such provision is clearly not viable.
50. The HEDNA identified that the provision of market housing over the Local Plan period should be more explicitly focussed on delivering smaller family housing for younger households. Paragraph 8.33 of the HEDNA provides a degree of caution in the prescriptive use of the housing mix figures contained therein. It identifies that "The 'market' is to some degree a better judge of what is the most appropriate profile of homes to deliver at any point in time, and demand can change over time linked to macro-economic factors and local supply".
51. Approximately 66% of the proposed development would comprise of 2-bed and 3-bed properties which I found to be commensurate with the recommendations of the HEDNA to focus delivery on smaller family housing and thereby having consistency with the Spatial Vision of Policy FRE.
52. I accept that there is a need for affordable housing in North Devon. However, the site-specific policy (FRE02) in the development plan does not identify that provision should be made for affordable housing on the appeal site. The Council were entitled to rely on Policy ST17 but the viability evidence available during the determination of the planning application was compelling in that the development cannot financially sustain the provision of affordable housing.
53. Against the viability background, no other technical evidence was provided by the Council to suggest how affordable housing could be provided. Furthermore, it did not seek to allocate any of the £1.4M financial contributions

- offered by the appellant to be used as a contribution towards affordable housing. Other than broad assertions, I consider that the Council failed to provide any substantive evidence in the appeal to demonstrate how, in the context of the scheme's viability, there was a material conflict with the development plan policies with regard to affordable housing.
54. Turning to housing mix, it is common ground that the HENDA provides an appropriate basis for the consideration of housing mix. However, this document is clear in that it cautions against the prescriptive use of the housing mix figures contained therein. No evidence was presented to the Inquiry to suggest that the Council were concerned regarding the proposed housing mix during the consideration of the planning application. I have found that the provision of approximately 66% of the proposed development comprising of 2-bed and 3-bed properties would be commensurate with the recommendations of the HEDNA to focus delivery on smaller family housing. This is also consistent with the Spatial Vision of Policy FRE.
55. In the consideration of the first reason for the refusal of planning permission in this appeal, I find that the Council failed to conclusively substantiate any conflict with Policies FRE02(b), ST17 and ST18 of the Local Plan. It was not substantiated by contrary technical viability evidence or objective analysis, particularly as the site was allocated for the quantum of development proposed.
56. In the planning judgement, it appears to me that having regard to the provisions of the development plan, national planning policy and other material considerations, the proposal should have reasonably been permitted with regard to the first reason for refusal. The refusal of planning permission based on the Council's first reason for refusal therefore constitutes unreasonable behaviour contrary to the guidance in the Framework and the PPG. The appellant has been faced with the unnecessary expense of lodging the appeal in this regard. I therefore find that unreasonable behaviour resulting in unnecessary or wasted expense, as described in the PPG, has been demonstrated and that an award of costs is justified in respect of the first reason for refusal.
57. Turning now to the second reason for the refusal of planning permission, no conflict with any policies in the development plan were identified. The Local Plan does not identify the need for any mitigation at the Wrey Arms junction. The Council primarily relies on conflict with paragraphs 110 (d) and 111 of the 2021 Framework.
58. The agreed traffic flow figures show that the appeal proposal would only provide an increase in flow at this junction of 1.7% in the AM peak and 3.5% in the PM peak which is much less than the recorded daily variation in traffic flows at the junction. I have found that the modelling shows that the proposal will make a very limited impact upon the performance of the junction.
59. I consider that the impact of the proposal upon the junction cannot be suggested to be severe within the context of paragraph 111 of the Framework. Other than generalised criticism of some of the evidence provided in the submitted Transport Assessments and modelling data, the Council failed to produce any technical evidence to demonstrate that the impact of the proposal on the junction would be severe. Furthermore, no technical evidence was

- provided to demonstrate how the impact of development on the Wrey Arms junction would detrimentally impact on the performance of the Cedars Junction.
60. Throughout the Inquiry it remained unclear what, if any, highway improvement will be implemented at the Wrey Arms junction and what the ultimate cost of such an improvement might be. It was clear that the plan showing a junction proposal was produced simply for the purposes of this appeal only and shows 'one option' to provide some degree of improvement. However, this was not supported by any technical evidence of necessity based on anticipated traffic flows. Moreover, it was clear that the Plan had no formal approval of the relevant Committee of the highway authority as constituting the approved scheme which would be desired to be implemented.
61. The financial contribution sought towards this 'un-costed' scheme was based on an historical contribution methodology applied to other schemes recently granted planning permission. However, in this case, I found that there was no justifiable basis, supported by any technical evidence, to justify any contention that the proposed development would result in a severe residual cumulative impact on the road network. In short, I found no basis whatsoever for any improvement to the junction, not least any contribution to an improvement that had no technical justification, no approved design and no costing.
62. Consequently, I found that the financial contribution identified by the Council in the context of the second reason for the refusal of the application would be contrary to the provisions of paragraph 57 of the Framework and Regulation 122(2) of the Community Infrastructure Levy Regulations 2010.
63. With regard to the second reason for the refusal of planning permission, I have found that the Council failed to produce any meaningful evidence to substantiate this reason for refusal and the evidence that was provided made vague and generalised assertions regarding the proposal's impact on the junction which were unsupported by any objective analysis. Furthermore, the requested financial contribution towards the alleged junction improvement does not accord with law or relevant national policy.
64. The refusal of planning permission based on the Council's second reason for refusal therefore constitutes unreasonable behaviour contrary to the guidance in the Framework and the PPG. The appellant has been faced with the unnecessary expense of lodging the appeal in this regard. I therefore find that unreasonable behaviour resulting in unnecessary or wasted expense, as described in the PPG, has been demonstrated and that an award of costs is justified in respect of the second reason for refusal.
65. Turning to the third reason for refusal, there is no dispute that the proposal accords with the quantum of development set out in the development plan. However, the extent to which the proposed form, scale and massing of development causes landscape and visual harm is a matter of subjective judgement. I also accept that to some extent alternative forms of development may cause less of an impact. However, such alternatives are not before me.
66. I found that the scale and form of the development would cause a degree of landscape and visual harm. However, this was not of an extent to suggest material conflict with Policies FRE02(d) or DM08A of the Local Plan as it has to be recognised that any development within the context of Policy FRE02 would

- have similar landscape and visually impacts. That is an accepted and inevitable consequence of the site's allocation.
67. Notwithstanding the view of the SWDRP, I consider that the Members of the Council's Planning Committee were quite entitled to exercise their subjective judgement that the form of development proposed, particularly the taller elements, would cause landscape and visual harm. Although I found that the extent of such harm would not cause material conflict with policies in the development plan, that is not to say that the Council's concerns had no basis.
68. However, the Council's third reason for the refusal of planning permission is ambiguous. It can be read as being quite specific in that such harm is limited to the users of the South West Coastal Path and the Tarka Trail only. Alternatively, it could be read that landscape harm applies over a wider basis and the visual harm is limited to these rights of way.
69. Irrespective of the above ambiguity, I consider that the Council were justified to conclude that the form, scale and massing of the development proposed would cause landscape and visual harm and that this view was adequately supported by the evidence presented in the appeal.
70. I accept that the impact on the setting of the AONB was not specifically identified as a reason for the refusal of planning permission. However, by referring to 'landscape harm' in the third reason for refusal, this can reasonably be construed to encompass the impact on the AONB, particularly as the development is within its setting. The issue was dealt with in the Council's Statement of Case when it was made clear that the impact on the AONB was part of this reason.
71. Against the above background, I find that the third reason for the refusal of the planning application was specific, relevant to the application and relevant to the development plan. I have found that the Council had reasonable concerns about the landscape and visual impact of the proposed development to justify its decision. Accordingly, with regard to the Council's third reason for refusal, I do not find that the Council failed to properly consider the merits of the scheme and therefore the appeal could not have been avoided.
72. Turning now to the fourth reason for the refusal of planning permission, criterion (h) of Policy FRE02 is quite clear in that development should provide for a new football pitch and associated facilities. However, irrespective of whether the evidence now suggests that there may be no compelling need for the provision of a football pitch, the viability assessment reveals that the development as proposed cannot sustain any financial contributions. This was undertaken on the basis that the football pitch is not provided. I accept that were such a pitch to be provided this would result in the loss of developable land which would impact still further on the viability of the redevelopment of the site.
73. I consider that the Council were fully aware that the proposed development could not sustain a football pitch or associated facilities at the time it made the decision on the planning application. No alternative evidence was provided in the appeal to demonstrate, within the context of the accepted scheme viability, how such pitch could be delivered or how any form of additional financial contribution could be made.

74. Whilst there may have been emerging evidence that questioned the need for a football pitch, the fact remains that at the time the decision was made, the Council were quite aware that such pitch provision could not be made within the constraints of the viability envelope. Therefore, in considering the fourth reason for the refusal of planning permission the Council unreasonably determined conflict with criteria (h) when it was absolutely clear that the development could not deliver such pitch.
75. Although evidence has emerged that questions the need for a pitch, it is clear that some of this information from the Council's own sources was available at the time the Council made its decision and therefore could have assisted in enabling it to come to a more informed view regarding the need for a pitch. In particular there were several reviews of the Northern Devon Playing Pitch Strategy 2017–2031 and Action Plans which did not identify deficiency in football pitch provision in the Fremington and Yelland area. Notwithstanding this, based on the evidence presented in this appeal, any development on this site that seeks to accord with the quantum of development proposed in the Local Plan and achieve the remediation of the site will be financially unable to sustain the provision of a football pitch.
76. In conclusion, I find that the Council did not adequately take the accepted viability evidence into account in reaching its conclusions that there would be a conflict with Policy FRE02(h). Furthermore, it failed to consider this within the context of the development plan as a whole and the internal evidence provided in the Northern Devon Playing Pitch Strategy 2017–2031 and Action Plans regarding the need, or otherwise, for a pitch.
77. With regard to the fourth reason for the refusal of planning permission, I have found that the Council failed to properly consider the available evidence regarding the need and ability of the proposed development to provide a football pitch and associated facilities. Furthermore, no alternative and meaningful evidence was provided in the appeal to support any contention that a pitch can be provided within the constraints of the accepted viability envelope.
78. The refusal of planning permission based on the Council's fourth reason for refusal therefore constitutes unreasonable behaviour contrary to the guidance in the Framework and the PPG. The appellant has been faced with the unnecessary expense of lodging the appeal in this regard. I therefore find that unreasonable behaviour resulting in unnecessary or wasted expense, as described in the PPG, has been demonstrated and that an award of costs is justified in respect of the fourth reason for refusal.

Conclusion

79. I have found that the Council behaved unreasonably in reaching its decision on the first, second and fourth reasons for the refusal of planning permission, but not the third. I therefore conclude that a partial award of costs, to cover the expense incurred by the appellant in contesting the first, second and fourth of the Council's reasons for refusal is justified.

Costs Order

80. In exercise of the powers under section 250(5) of the Local Government Act 1972 and Schedule 6 of the Town and Country Planning Act 1990 as amended,

and all other enabling powers in that behalf, IT IS HEREBY ORDERED that North Devon District Council shall pay Yelland Quay Limited the costs of the appeal proceedings described in the heading of this decision. This is limited to those costs incurred in contesting the Council's first, second and fourth reasons for the refusal of planning permission.

81. The applicant is now invited to submit to the Council, to whom a copy of this decision has been sent, details of those costs with a view to reaching agreement as to the amount. In the event that parties cannot agree on the amount, a copy of the guidance note on how to apply for a detailed assessment by the Senior Courts Costs Office is enclosed.

Stephen Normington

INSPECTOR