



Appeal Decision

Inquiry held on 4, 5, 6 and 7 August 2015

Site visit made on 12 August 2015

by **P W Clark MA MRTPI MCMi**

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

Decision date: 9 October 2015

Appeal Ref: APP/X1118/W/15/3003545

Land adjacent to the B3233, West Yelland, near Barnstaple, Devon

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a failure to give notice within the prescribed period of a decision on an application for outline planning permission.
 - The appeal is made by Welbeck Strategic Land LLP against North Devon District Council.
 - The application Ref 57663, is dated 3 June 2014.
 - The development proposed is residential development (up to 135 units) plus infrastructure including the creation of a vehicular access to B3233, the provision of open space, landscaping, allotments, ponds and other associated development, with all matters reserved for future consideration except access.
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Decision

1. The appeal is allowed and planning permission is granted in outline for residential development (up to 135 units) plus infrastructure including the creation of a vehicular access to B3233, the provision of open space, landscaping, allotments, ponds and other associated development, with all matters reserved for future consideration except access on Land adjacent to the B3233, West Yelland, near Barnstaple, Devon in accordance with the terms of the application, Ref 57663, dated 3 June 2014, subject to the seven conditions appended to this decision.

Procedural matters

2. The application is made in outline. Only details of the access are submitted for approval now. These were amended during the Council's consideration of the application, before the appeal was made. Details of appearance, landscaping, layout and scale would be reserved for later consideration if the appeal were allowed.
3. By the end of the Inquiry a s106 obligation had been completed. It would secure the provision of 35% of the number of dwellings as Affordable Housing. It would also secure the provision of facilities to help pedestrians cross the B3233, the relocation of bus stops, the provision of allotments, on-site public open space including a Locally Equipped Area for Play, a plan for management of the undeveloped areas of the site and adjoining woodland, a company to manage the site, a travel plan, travel vouchers and a pack of travel information for new occupants and for sums of money to be paid towards additional teaching provision at Fremington Community Primary School and at Pilton Community College and for school transport, towards improvement or

enlargement of Fremington Medical Centre, towards off-site highway improvement works at either the Cedars roundabout or Old Torrington Road junctions of the A3125 and towards the construction of the Beechfield Centre. Compliance of these provisions with the CIL regulations is dealt with later in this decision.

Main Issues

4. There is a statement of common ground between the two main parties in this appeal. Notwithstanding that, but having regard to the Council resolutions of 4 March 2015, the representations made by third parties and the material submitted by the appellant in support of the application, it appears that there are three main issues to be considered in this case of non-determination. They are;

- Whether the site would be a sustainable location for development
- The effect of the proposal on the character and appearance of the area and
- Its effect on the economy of the area in terms of tourism.

Although both main parties agree that the Council cannot demonstrate a five-year housing land supply and that the proposal offers an undisputed benefit in terms of housing provision, the size of the shortfall, and therefore the significance of the benefit is disputed.

5. Sustainable development is defined in the National Planning Policy Framework (the Framework) as having three dimensions; economic, social and environmental. The economic role is to ensure that sufficient land of the right type is available in the right places and at the right time and by coordinating development with the provision of infrastructure. The social role is concerned with housing supply, the quality of the built environment and with accessible local services. The environmental role contributes to protecting and enhancing our natural, built and historic environment.
6. The material considered in this appeal cuts across all three roles. Housing supply contributes to the social role but also the right place and time components of the economic role. To fulfil the social role of having accessible local services involves the economic role of coordinating development with the provision of infrastructure. The effect on the character and appearance of the area is a component of both the social and environmental roles of sustainable development but is also critical to the area's attraction to tourists and so has an economic role.
7. The Framework advises that the roles should not be undertaken in isolation because they are mutually dependent. So, although this decision is structured with reference to the three issues identified and conclusions are reached on each issue separately, it is the overall picture on which the decision is based.

Reasons

Location

Land of the right type

8. The site is presently in agricultural use. It would be a greenfield development. Its development would not therefore follow one of the government's twelve

core planning principles that planning should encourage the effective use of land by reusing land that has been previously developed (Framework paragraphs 17 and 111). However, the Council confirms, and nobody disputes, that it has not identified enough land to meet its housing requirements and that the release of greenfield land will be necessary in order to do so. In consequence, this consideration would be a disadvantage to be weighed in the balance rather than an absolute bar on development of the site.

9. The Framework (paragraph 112) also advises that account should be taken of the economic and other benefits of the best and most versatile agricultural land. Although published provisional Agricultural Land Classification data shows the land to comprise mostly grade 2 land (best and most versatile quality), the appellant's submitted Agricultural Land Assessment points to a more recent semi-detailed investigation of 1998 which finds no grade 2 land, only a sliver of grade 3a land and the majority of the site in grade 3b (moderate quality). As recorded in the Statement of Common Ground, the Council verified this survey by reference to the MAGIC database managed by Natural England. I have no reason to disagree with this analysis. It follows that there would be little or no loss of economic or other benefits of the best and most versatile agricultural land to be taken into account.

Land in the right place

10. The development would be located outside but adjacent to the existing settlement of Yelland. By itself, this has few facilities. It has within it no shops, no post office, no school, no medical facilities, no church, no pub, no meeting places, no premises for employment and limited outdoor recreation facilities. Although the development would provide a considerable quantity of seasonally grazed grassland open to the public for informal recreation, some allotments and a Locally Equipped Area for Play (LEAP) and contributions would be made to infrastructure facilities further afield, it would not contribute to making good other deficiencies in local facilities. For almost all daily needs the residents of this proposed development would need to travel.
11. The Framework advises that decisions should ensure that developments that generate significant movement are located where the need to travel will be minimised and the use of sustainable transport modes can be maximised. In cross-examination citing the Transport Assessment which shows only modest impacts of 2-3% (a car per minute) on flows at the Cedars roundabout on the B3233 a few miles east of the site, the Council's witness agreed that this proposal would not generate significant movement.
12. But in fact the modest impact cited is at a location on a road currently overloaded; nearer the site, where traffic flows are described as modest, the impact is around 10%, which is not insignificant. In any event, relative impacts are not the same as absolute figures, so I am not convinced that the movement which would be generated by this proposed development of up to 135 units, set out in table 5.2 of the Transport Assessment, should not be regarded as significant and so, I take the view that the first part of the Framework's advice would not be met.
13. The Framework defines sustainable transport modes as any efficient, safe and accessible means of transport with overall low impact on the environment including walking and cycling, low and ultra low emission vehicles, car sharing and public transport. The appellant's suggested Travel Plan measures include

provision of details of the CarShare Devon website but there is nothing inherent in the location or other features of the development to maximise its use. Nor is there anything inherent in the location or the proposal which would maximise the use of low and ultra-low emission vehicles, so I focus my attention on walking and cycling and public transport.

14. Walking distances to Instow Primary School are calculated in the Transport Assessment at 1.2km (1.3km in Mr McNeill's proof), mostly along a segregated footway but partly along a shared surface road. The Education Authority regards this as an unsuitable walking route. The Statement of Common Ground agrees walking distances, along continuous, lit, footways of 550m and 800m to employment locations in an engineering works east of the site and at Estuary Business Park to the west, 2.2km to Fremington Primary School (2.1 according to Mr McNeill) and around 2.5km to local shops and other facilities in both Fremington and Instow (Mr McNeill has 2.4km to Fremington shops and 2.7km to Instow shops and to Fremington medical centre).
15. Although the statutory maximum distance for walking to school for children below 8 years is 3.2km before the education authority must provide transport, that is not a desirable or even generally acceptable distance for a pedestrian to walk. All parties at the appeal accepted that table 3 of desirable walking distances on page 48 of the North Devon Local Plan 1995 to 2011 adopted in July 2006 (the Local Plan) was unrealistically optimistic. Instead, they recognised the authority of table 3.2 of the Chartered Institution of Highways and Transportation's 2000 publication *Providing for Journeys on Foot* (Inquiry document 14). This regards walking distances for commuting, to school and for sightseeing as a desirable 500m, an acceptable 1,000m and a maximum 2,000m and for other purposes as a desirable 400m, acceptable 800m and a maximum of 1,200m. The government's *Manual for Streets* also advises that walkable neighbourhoods are typically characterised by having a range of facilities within 10 minutes' (up to about 800m) walking distance of residential areas which residents may access comfortably on foot and refers to now withdrawn government advice to the effect that walking has the greatest potential to replace short car trips particularly those under 2km.
16. By these yardsticks, some employment locations would be within an acceptable walking distance of the site and Instow Primary school would be within the preferred maximum walking distance by a route which the Education Authority regards as unsuitable but all other facilities would be further than that. No facilities would be within the distance desirable to maximise the use of walking as a sustainable transport mode.
17. The proposal would provide a link to the nearby right of way reserved for pedestrians and cyclists known as the Tarka Trail. For cyclists, this provides a tarmac-surfaced, easily graded and well-aligned route accessible within half an hour (the target cycling distance set at paragraph 6.10 of the Local Plan) to over 30,000 employment opportunities and to the major centres of Barnstaple and Bideford providing all main facilities. Links off the route are available to Fremington and Instow. Although some third parties were sceptical of its attractions (it is not lit but neither are rural roads; bicycles, like cars, are expected to carry lights at night; panniers and trailers are accessories which can carry shopping and children on such an easily-graded route), I am satisfied that, with a high-quality connection in place (which can be secured by

- condition), the proposal would be provided with a facility which would maximise the use of cycling as a sustainable transport mode.
18. Cycling as an option does not always have universal appeal so, of perhaps greater significance is the existence of a high-frequency bus service along the B3233 road. It connects locally to Fremington or Instow, further afield to Barnstaple or Bideford and, at lesser frequencies, places beyond. This is a commercial service, so not at risk of cuts in subsidy. Although the appellant's estimates of revenue which it would attract from residents of the proposed development are not justified by reference to any analyses of its market penetration in the areas it serves, I have no doubt it would gain some revenue from the residents of the development.
 19. It runs seven days a week from early in the morning until around midnight. Although there are some priority facilities and reserved road space along its route, it is not generally protected from the effects of road congestion, so I can give credence to those who say that adherence to its timetabled frequency is not fully reliable. Nevertheless, for a rural area, it is an outstandingly good provision which, with the help of a travel plan bringing its facilities to the attention of future residents, could clearly maximise the use of public transport as a sustainable transport mode.
 20. The proposal would require the relocation of bus stops serving Lagoon View, in one direction by as much as 100m further away from residents of that estate. This would represent a considerable proportion of the distance that people are prepared to walk to a bus stop, let alone one which they would find attractive. This effect would considerably detract from the extent to which the location of the development would otherwise maximise the use of public transport as a sustainable transport mode but I note that provision is made within the definition of Highway Works in the s106 agreement for this arrangement to be varied by agreement with the County Council and so I exclude insistence on the proposed location from condition (4).
 21. For the purposes of the North Devon Local Plan adopted in July 2006 (the Local Plan), the site of the proposal is defined as countryside because it lies outside the main built up parts of those settlements specifically identified in the Plan (including Fremington and Yelland designated jointly as a Local Centre in policy STY3). Policy HSG2, referred to in the Council's putative reasons for refusal only applies to proposals within a settlement boundary so is not relevant to this appeal.
 22. Policy ENV1 would only permit development in the countryside in specified circumstances. These include; where a rural location is required and; where it provides economic or social benefits to the local community. In this case, as noted above, the Framework accepts that housing contributes to the social role of sustainable development and the local planning authority accepts that its housing supply situation requires the release of greenfield sites (though whether these would necessarily be rural was not stated).
 23. The justification to policies STY3 and ENV1 (particularly paragraphs 3.7, 3.10 and 5.2) makes it clear that they are intended to have two purposes; to direct development to locations which can promote settlement self-sufficiency and; to safeguard the countryside for its own sake. In so far as these are policies for the supply of housing, the Framework advises that they should not be considered up to date if the local planning authority cannot demonstrate a five-

- year supply of deliverable housing sites, which in this case it cannot. On the other hand, the fifth and eleventh bullets of paragraph 17 of the Framework continue to assert the principles that planning should recognise the intrinsic character and beauty of the countryside and should focus significant development in locations which are, or can be made, sustainable, both of which lend support to the continued applicability of those aspects of these policies.
24. The effects of the proposal on the intrinsic character and beauty of the countryside are considered below; in this section the relevant consideration is the direction of development to locations which are, or can be made, sustainable. The site immediately abuts the designated settlement boundaries of Yelland and shares many of its locational characteristics.
25. As noted above, Yelland is, at present, far from being self-sufficient. But it is defined, jointly with Fremington, as a Local Centre and is described, in paragraph 3.16 of the Local Plan as "reasonably self-sufficient". That may have been a recognisable description when it was served by a small local shop containing a post office and had the prospects of being provided with a primary school but it is certainly not true now. A more convincing explanation of its designation is contained in paragraph 3.11 of the Local Plan which explains that a component of settlement definition is the degree to which a community has the ability to become more self-contained. This explanation resonates with the Framework's recognition of locations which can be made sustainable.
26. The development proposed, although lying outside the settlement boundary, would add a population of perhaps 310 people to Yelland's existing two thousand or so inhabitants (an increase of about 15%). This would add to the spending power of the local population to support any services which might be established but the proposal would not, directly of itself, lead to any greater self-containment of the settlement; rather the reverse.
27. A new Local Plan is in preparation. It is not for me to comment on the need to review any existing local plan policy or to canvass any change to what is proposed, simply to consider compliance with it, subject to other material considerations. My understanding is that there is no suggestion of revisiting the settlement boundaries of Yelland, nor any representation that they should be revisited.
28. The emerging Local Plan proposes the designation of a Coastal Zone, to include the site, to which proposed policy ST09(7) would apply, containing somewhat similar provisions to existing policy ENV1, permitting development required for agriculture, or for the benefit of the community at large, to enhance opportunities for outdoor sport and recreation or because it cannot reasonably be located outside the Coastal Zone. It would also include policy FRE(d) which would seek the enhancement of the environmental green buffer and protection of the open landscape character between Fremington, Yelland and the estuary. Policy ST14(f) and (g) would seek to protect and enhance local landscape and seascape character, recognising the importance of the undeveloped coastal, estuarine and marine environments.
29. I am not made aware of any representations made to these proposed policies in respect of the site of this appeal. So, without prejudging the outcome of any Local Plan examination, a working hypothesis for the purposes of this appeal is that existing policies will, in effect, continue; Yelland will continue to be

recognised as a Local Centre but that the site will remain in an area to be protected from development.

Conclusions on location

30. In summary; as a greenfield site the proposal would not be on the right type of land; a disadvantage but not a bar to its development. The Council accepts that it cannot demonstrate a five-year supply of housing land and so its housing supply policies are out of date. Even so, policy HSG1 of the North Devon Local Plan adopted in July 2006 (the Local Plan) would have accepted the development of a greenfield site for housing where there is a need to increase the supply of land to meet strategic housing requirements.
31. The proposal would not be in the right place to minimise the need to travel. Nor would it be so located as to maximise the use of walking as a sustainable transport mode. But it would be well located to maximise the use of cycling and public transport as sustainable transport modes and so (except for walking) would largely comply with clause 1 of policy TRA1A of the North Devon Local Plan adopted in July 2006. This requires a proposal likely to generate a significant amount of travel to have good accessibility to a choice of transport modes including walking cycling and public transport. But it would have a considerable adverse effect on the attractiveness of that same public transport to existing residents of the locality.
32. The proposal would be located in the countryside, outside, but adjacent to, a settlement designated as a Local Centre with the ability to become more self-contained but the proposal would contribute little, if anything, to greater self-containment, rather the reverse. It would be contrary to the general intention of policy ENV1 and to emerging policies ST09(7) and FRE(d) but consistent with one or other of the exceptions contained in the first two to the degree that its housing provisions contribute to the social dimension of sustainability, considered further below.

Character and appearance

33. There is no shortage of published material against which to judge the effects of the proposal. These include the North Devon Landscape Assessment 1997 (part of the evidence base for the adopted North Devon District Local Plan), The Devon Landscape, published in 2002, the North Devon and Torridge Landscape Character Assessment (prepared by Land Use Consultants and adopted by the local Councils in 2011 as part of the evidence base for the Council's new Local Plan) and the Devon Landscape Character Assessment (current Devon CC website).
34. From these, it can be deduced that the key landscape characteristics which are manifest on and around the site include the overgrown hedges, the small blocks of woodland, the grazing marsh, arable fields and rough grassland and the streams and drainage ditches said to be typical of the Estuary Landscape Type 4A in the 2011 study, some of which also feature in Landscape Type 3A.
35. The site is not within any landscape designated area but, as part of an Estuary landscape, it has a rarity value, as The Devon Landscape publication notes. The special qualities of the wider landscape within which the site sits identified in both Landscape Types 3A and 4A in the 2011 study and which can be experienced on and around the site include its open feeling and extensive views

- and (for landscape type 4A) its unique flora and fauna important for overwintering birds. Few settlements but open views towards surrounding settlements are among the characteristics noted in the Devon Landscape Character Assessment.
36. The Devon Landscape publication puts it in a different way, noting that the importance of the estuary in terms of landscape, ecology and archaeology cannot be overestimated but that it also provides a home to the largest human population concentration in northern Devon. It claims that it is the combination of ecological habitat and human settlement, dominated by the presence of the estuary which gives the zone its character. It warns against the human settlement becoming over-dominant.
37. The much earlier North Devon Landscape Assessment makes the same points but when it comes to analyse the part of the Estuary landscape including the site, it is quite disparaging, noting that the flat estuary floor south of the Taw, and the gently undulating slopes behind Yelland, Fremington and Bickington, fail to enhance either the settlements or the estuary setting as a whole. It notes that the physical environment provides creeks, saltmarshes, interesting geological sites, marshy grassland and panoramic views across the whole estuary, but that the man-made environment fails to complement these assets. It cites the merging of the settlements to form a continuous strip of bungalow development with an urban fringe character of street lighting, bus shelters, footways, telegraph poles and an absence of tree planting, compounded by overhead power lines and the legacy of past military and industrial use.
38. Yet, despite it all, the landscape is valued. It hardly needed the Council's witness Mr Leaver to demonstrate that the landscape ought to be valued or for the Council to carry out its online consultation of July 2015 to demonstrate that the Estuary is valued; the draft results of the 2015 North Devon tourism survey show that walking and cycling were the second and fifth most popular reasons for visiting North Devon and that unspoilt landscape was the second of eight priorities when choosing a holiday in the area. The Tarka Trail, which runs to the north of the site, is one of the most well known and well used tourist attractions around Devon; the section of the trail between Fremington and Instow, which passes the site generally has good user numbers compared to other parts of the trail. All of this, somewhat circumstantial, evidence suggests that the estuary landscape in the vicinity of the site is valued, whether designated or not.
39. There are, as the Council's advocate explained in his opening submissions, two elements to the Council's concerns about the proposal's effect on character and appearance. One is the visual impact of its effect on the valued estuarine character of the landscape. The second is its effect on the existing pattern of scattered ribbon development along the B3233 road.
40. There are also two physical elements to the proposal. The boundary of the site would take the shape of an hourglass. To the north it would include parts of low-lying fields abutting the Tarka Trail close to the estuary. To the south the site would include more elevated fields and parts of fields, some abutting the B3233 road, others abutting the rear of existing development fronting the road. The two areas would be linked by a narrow corridor of land to one side of a field. Illustrative drawings suggest that built development would be confined to

the southern element and that the northern element would remain undeveloped but open to the public.

41. The illustrative drawings originally submitted suggested that the northern element would be laid out as parkland. This was seen by the Council as having a somewhat municipal flavour which would harm the character of the landscape. Immediately prior to the Inquiry, the parties reached an understanding, now enshrined in the s106 agreement, that this element of the site would not be laid out as formal parkland or sports pitches but would be retained as grazed pasture and opened to the public with improved ecological management.
42. On this basis there is effectively agreement between the parties that this element of the proposal would have no adverse, and possibly even a mild beneficial effect on the character and appearance of the landscape. In consequence, attention is focussed on the effects of built development on the southern part of the site.
43. I have no reason to disagree, except in so far as the boundaries of all parts of the site cut across existing field boundaries in a somewhat arbitrary way with little satisfactory explanation of the effects of the proposal on the utility and character of the residual parcels of land. Since the overgrown hedgerows feature as a landscape characteristic in almost all analyses of the landscape of the area, it is somewhat damaging that greater use was not made of them in selecting the boundaries of the development. However, landscaping, which is a reserved matter to be considered at a later stage, could be relied upon to secure the provision of new boundary hedges which would redress any harm within a reasonable period of time.
44. When all is said and done, little separates either party's evaluation of the effects of developing the southern part of the site. Even if I adopt the slightly more pessimistic evaluation of the Council's expert, there are expected to be effects on only one-third of the itemised characteristics of the combined Landscape Character Types 3A and 4A of the 2011 assessment, some of which duplicate each other. Of these one is accepted as moderately beneficial, four are neutral or have no impact, fifteen would be slightly or negligibly adverse. Only two would be moderately adverse and they are in fact a single impact applied successively to each Landscape Character Type. That would be a loss of open and expansive views from a very local area to the south of the site. Even this adverse impact would be limited in its effect on local residents by imposition of the height limit recommended in the appellant's Environmental Statement and submitted illustrative plans.
45. I do not accept that the inclusion of the development within the view from higher land to the south would be even slightly adverse because, as the various published landscape appraisals show, it is a feature of the estuarine landscape that settlements are present in views. And, although I accept that the illustrative drawings submitted with the application do show the field pattern (and more particularly the hedgerow pattern) disrupted, which would be an adverse impact; layout and landscaping are both reserved matters and, as the appellant's witness accepted, there is scope for these impacts to be reduced or removed when details are submitted. But these are mere quibbles; by and large I agree with this assessment.

46. Most significantly, I am satisfied that, with the development limited by condition to the southern areas suggested, development would approach no closer to the Tarka Trail than existing development (approximately numbers 74 to 92) on the north side of Yelland Road to the east of the approach to Lower Yelland Farm. In consequence, the view from the Trail would still be one of pasture on the low ground with a settlement in the distance on higher land and undeveloped land rising up to the skyline beyond.
47. Most of the developed area of Yelland lies in depth to the south of the B3233 road and so, is not ribbon development. Adjoining this consolidated block of development, there are two rows of existing development on the north side of the road. These cannot be said to extend Yelland either to east or west in a ribbon fashion. But to the west of Lagoon View there is intermittent development on both sides of the road as far as Estuary View, which can be described as ribbon development.
48. The proposal would infill between numbers 16 and 18 West Yelland and between 22 and 24. It is from these two breaks in the existing ribbon development along West Yelland that the views would be lost which are taken into account in the experts' landscape assessments as being a moderately adverse effect. Infilling between existing ribbon development in this way would not extend it any further in either direction but would add development in depth to the north behind numbers 2 to 22 West Yelland. It follows that the criticism that this proposal would extend the ribbon development of Yelland is misconceived.
49. I conclude that the harm to the character and appearance of the countryside as a result of this development would be limited. The proposal would be contrary to Local Plan policy ENV1(C) in that it would be development in the countryside and so, by definition, would not protect its beauty but, without being as disparaging as the North Devon Landscape Assessment, the landscape in this part of the estuary is not pristine. Its most valued element, the view from the Tarka Trail, would not be harmed in its essentials. By infilling between two existing stretches of ribbon development, the development offers the opportunity to create a properly landscaped boundary to the settlement, so reducing its current adverse impact described in that Assessment.

Tourism

50. There is common agreement that tourism is important to the economy of North Devon, contributing about 25% to the Gross Domestic Product of the District. Concern about the effect of any development on tourism is therefore a significant consideration. But Yelland itself contributes little to the tourism industry, as the Council's response to my questions indicates. It provides little or no tourist accommodation or facilities for tourists. A walking guide, "Instow Town and Old Yelland", makes no remark about anything of interest which would be affected by the development. In consequence, I do not place any additional significance, in terms of the effect on the tourist trade, of the loss of the local views identified in the landscape assessments.
51. As the responses of both parties to my questions demonstrate, the major contribution to the tourist trade in the vicinity of the site is the Tarka Trail. It is one of the most well known and well used tourist attractions around Devon. The evidence previously discussed suggests that views from the Trail of unspoiled landscape are a significant element in its enjoyment. My earlier

finding, in the consideration of character and appearance, that the view from the Tarka Trail would be changed but not harmed in its essentials, therefore has added economic significance.

52. The Trail is provided with significant facilities to pause and to take rest at Fremington and, on a much smaller scale, in an off-trail picnic area sited towards Instow but the public access to the northern fields to be provided as part of this appeal proposal would be an additional facility. In a minor way, it would add to the appeal of the Trail and so would count as a positive contribution to tourism in the area.

Housing

53. Both parties agree that the Council has not identified sufficient land to provide five years worth of housing supply. Their difference concerns the size of the shortfall.
54. There is little point in determining this issue to a fine degree of accuracy because the situation is constantly changing, so any figure can only be a snapshot in time, invalidated as soon as the next event occurs, be it the completion of a development which takes a number out of the end of the housing pipeline, or the granting of a permission which adds a number at the start of the process. An example relevant to the current appeal is that the parties agree that the annual requirement has changed from 418 per annum (accepted in the Mead Park Inquiry, reference APP/X1118/A/14/2224465) in March 2015 to 438 at this Inquiry in August 2015, five months' later, a difference which is as significant as any of the points over which the parties disagree.
55. Once an annual assessment has been published, advice (in the National Planning Practice Guidance) is that assessments should normally not need to be updated for a full twelve months unless significant new evidence comes to light. For that reason, the five year Housing Land Supply statement should not be adjusted for permissions subsequently granted; only a completely new assessment would be valid, taking equal account of completions subsequently achieved and of any other variation in factors.
56. I am not aware of any change in circumstances since March 2015 which would lead me to come to a conclusion on the question of persistent underdelivery different from that reached in the Mead Park decision previously referred to. That conclusion appears to be based on a record dating back to before the recession and so, is robust.
57. For these reasons, I prefer the thrust of the appellant's argument that the Council's Five-Year Housing Land Supply shortfall is nearer to 20% (one year of supply) rather than the 10% or so (half a year's supply or less) implied by the Council's figures. In either case, the current appeal proposal would only represent about one-fifth of one-year's supply so, whichever view of the shortfall is taken, both this and other sites are needed to make it good.

Other matters

58. Both main parties agree that subject to conditions and agreements securing the mitigations recommended in the submitted Environmental Statement (as amended during the Council's consideration of the application), the ecological interests of the site, which include its contribution to the international

significance of the estuary for overwintering migratory birds, would not be a matter of concern. I have no reason to disagree.

59. The Braunton Burrows Special Area of Conservation (SAC) is situated on the opposite side of the Taw estuary approximately 1.4 km as the crow flies to the west of the appeal site at its closest point. Natural England, in their comments dated 9 July 2014 on the application and confirmed in subsequent correspondence make no objection to the application but advise that the requirements of regulations 61 and 62 of the Habitats Regulations should be followed in respect of this and the Culm Grassland Special Area of Conservation because there would be potential for significant effects in combination with other development proposals contained within the Council's emerging Local Plan.
60. The Council's Committee Report advises that the impact on both SACs through increased visitor numbers and increased traffic would not be material because of the relatively small nature of the development. There is no information to contradict this assessment. It is reinforced by the following considerations; the appeal proposal would not be providing tourist accommodation; the travel distance along available routes from the appeal site would be far greater than the distance as the crow flies and; the rapid dispersion of traffic impacts with distance from the site is confirmed in the Transport Assessment. Having regard to the Conservation Objectives for these two sites I conclude that the proposal is not likely to have a significant effect on the interest features of either of them.
61. A number of matters raised by third parties would be for consideration during the submission of reserved matters in the event of the appeal being allowed. They are not conclusive in the determination of the principle of development. These include the distance separating dwellings on the site from the rear of properties fronting West Yelland which have short rear gardens and the existence of septic tanks and foul drainage connections to the public sewer which runs across the site. All the matters raised by third parties have been given consideration even though only those which might materially influence the decision are specifically reported.
62. A considerable number of other matters are also the subject of agreement between the main parties and not challenged by others during the Inquiry; flood risk and surface water drainage; foul drainage; ground investigations; lighting; archaeology and water resources. I have no reason to question these points of agreement. Some give rise to suggestions for conditions, to which I now turn.

Conditions

63. In the event of the appeal being allowed, the Council suggested that 26 conditions would be necessary. These have been considered in the light of advice contained in National Planning Practice Guidance (Guidance) and the model conditions contained in the otherwise cancelled Circular 11/95, *the Use of Conditions in Planning Permissions*, preferring the wording of the latter where appropriate.
64. Many of the suggested conditions are, in effect, informatives setting out the level of detail or range of information which the Council would seek to have submitted as part of the reserved matters. Useful though this information

- about these process requirements would be to the developer, they do not represent matters necessary to the approval of this outline application and so they are omitted unless they specify a substantive characteristic with which the development must comply in order to be acceptable. For this reason, suggested conditions numbers (4) and (9) in Inquiry Document 26 are not imposed.
65. Suggested condition (5) in Inquiry Document 26 would duplicate provisions in the s106 agreement and so, need not be imposed. Others duplicate the requirement for the submission of reserved matters or would only be applicable when detailed matters are approved and so, are not imposed now. These include suggested conditions (15), (16), (17), (18), (22), (23), (25) and (26).
66. The appellant's submitted Combined Phase 1 Geo-environmental Assessment and Ground Conditions Assessment identifies no significant contamination sources on site. Although noting that off-site risks remain and it recommends further intrusive investigations of the suitability of the ground for construction design purposes (necessary for Building Control approval), it does not do so for contamination purposes. There is no evidence to contradict this assessment and so I do not impose suggested condition (11).
67. As noted earlier, the access arrangements were amended during the Council's consideration of the proposals, so a condition makes it clear which drawing is approved. As also noted earlier, the position of the bus stops shown would have a detrimental effect on the attractiveness of public transport and there is provision within the s106 agreement for this to be reviewed by agreement with Devon County Council, so I specifically exclude this element from the condition.
68. Although the layout of the proposal would be a reserved matter, it is necessary to require, by way of condition, that proposals be put forward to secure the mitigation measures proposed in the appellant's Environmental Statement, the provision of the cycle path connection with the Tarka Trail (reflecting paragraph 13.27 of the Local Plan, and to maximise the use of cycling as a sustainable transport mode), of external refuse and recycling storage facilities, parking and bicycle parking facilities (to accord with Local Plan policies TRA1A(4) and TRA8), surface water and soil drainage (to accord with Local Plan policy DVS7), renewable energy (to accord with Local Plan policy ECN15), and that the height of development be limited in the way indicated on the illustrative drawings so that local views over the development to the estuary beyond can be retained from existing dwellings to the south of the development.
69. Because the site is accessed from a main road, used by a frequent bus service, a construction method statement is necessary to ensure that disruption to the highway would be minimised during construction and a condition is necessary to ensure that the access to the site is constructed before any other development takes place.

Planning obligations

70. The provision for affordable housing is necessary to secure compliance with Local Plan policy HSG7 and paragraph 50 of the Framework. The provision of pedestrian facilities, relocated bus stops, a travel plan, travel vouchers, travel information packs and for money to improve junctions on the A3125 are all necessary to accommodate the impact of the development on the local highway network both by reducing demand, encouraging walking and enlarging

capacity, so complying with CIL regulation 122. The Highways Authority confirms that the number of developments contributing to these improvements is less than the number limited by regulation 123 which is thus complied with.

71. Evidence from both local residents and the relevant authorities confirm that education and health facilities have little or no spare capacity and that payments for their enlargement are necessary to accommodate the demand arising and so make the development acceptable. The payments have been calculated by reference to published formulae which, correcting the figure for the Health payment to £28,943, establish that the payments would be fairly and reasonably related in scale to the development, so complying with CIL regulation 122. The relevant authorities also confirm that regulation 123 would be met.
72. The Council's committee report confirms that the on-site provision of public open space, in the form of grazed pasture open to the public, allotments, and amenity open space including a Locally Equipped Area for Play would be far in excess of the open space requirements of Local Plan policy REC5. But the provision is an integral part of the development proposed, justified by the Environmental Statement and its amendments. Arrangements would be necessary for its management and maintenance so inclusion in the planning obligation is necessary, directly related to what is proposed, so I consider that CIL regulation 122 is met. Despite the quantitative provision of open space, the amended intentions for its layout preclude sports pitch provision and so a contribution to the new Beechfield Community Centre with sports changing provision in Fremington is necessary, related to the development and fairly and reasonably related in scale, so meets CIL regulation 122. The local authority confirms that it would also meet the requirements of regulation 123.

Overall conclusions

73. Housing applications should be considered in the context of the presumption in favour of sustainable development. In this case, the Council cannot demonstrate a five-year supply of deliverable housing sites, so its relevant policies for the supply of housing cannot be considered up to date. Where relevant policies are out of date, the presumption in favour of sustainable development means granting permission unless any adverse impacts of doing so would significantly and demonstrably outweigh the benefits when assessed against the policies in the Framework taken as a whole or where specific policies indicate development should be restricted. A core principle of the Framework is that planning should recognise the intrinsic character and beauty of the countryside but the harm which would be caused by this proposal would be limited.
74. The economic role of sustainable development is to ensure that sufficient land of the right type is available in the right places and at the right time to support growth. This proposal, being greenfield, would not be of the right type. Nor would it be in the right place, adjacent to but outside a Local Centre and exacerbating its lack of self-containment.
75. Even so, the Council's own policies would permit development of a greenfield site for housing where there is a need to increase the supply of land to meet strategic housing requirements, so the conflict with these elements of the economic role of sustainable development need not be fatal to the proposal. It would be available at the right time, when the Council has a housing land

- supply shortfall and, through the s106 obligation, would be coordinated with development requirements including the provision of infrastructure. The proposal would therefore fulfil the economic role of sustainable development.
76. There would be no doubt about the ability of the proposal to fulfil the social role of sustainable development; it would contribute to the supply of housing required to meet the needs of present and future generations. Nothing in this outline proposal suggests that it would not create a high quality built environment. Despite the need to travel, local services that reflect the community's needs would be easily accessible by a variety of transport modes.
77. Great care has been taken, through the Environment Statement and its amendments, to protecting and even enhancing the natural environment. Inevitably, there would be some loss of countryside to a built environment but the limited harm which would be caused suggests that it would be a prudent use of natural resource.
78. Since the proposal fulfils the economic, social and environmental roles of sustainable development, I conclude that it would be a sustainable development.
79. The overall planning balance is therefore as follows. As a greenfield site, the land would not be of the preferred type for development but Council policies would countenance its loss for the benefit of strategic housing land supply. Although the residents of the development would need to travel for almost all daily needs and Yelland's lack of self sufficiency would be exacerbated, there would be access to a choice of sustainable means of travel, so the harm would not be great. Harm to the character and appearance of the countryside would be limited. Tourism would not be harmed; in a very minor way it would even be supported.
80. On the other hand, the benefits of housing in general and of affordable housing in particular would be substantial, representing about 20% of the Council's housing supply needs for a year. I therefore conclude that the adverse impacts of granting permission would not significantly or demonstrably outweigh the benefits when assessed against the policies of the Framework and of the Development Plan when taken as a whole; indeed, rather the reverse and so, the appeal should be allowed.

P. W. Clark

Inspector

Conditions

- 1) Details of the appearance, landscaping, layout, and scale, (hereinafter called "the reserved matters") shall be submitted to and approved in writing by the local planning authority before any development begins and the development shall be carried out as approved.
- 2) Application for approval of the reserved matters shall be made to the local planning authority not later than three years from the date of this permission.
- 3) The development hereby permitted shall begin not later than two years from the date of approval of the last of the reserved matters to be approved.
- 4) The access to the development hereby permitted shall be carried out in accordance with the following approved plan N^o 0692-PHL-01 revision E except in respect of the location of the two bus stops and shelters shown.
- 5) The details to be submitted in accordance with condition (1) shall limit the extent and height of residential development to the area and height shown for residential on submitted drawing number 6525-00-022 and to single storey development in the areas shown on submitted drawings 6525-00-019 revision g and 6525-00-028 revision g and shall include
 - a) Provision of a footpath/cyclepath connection between the B3233 road and the Tarka Trail.
 - b) The recommended mitigation measures specified at paragraphs 6.5.10 to 6.5.15, 6.5.20, 6.5.24 to 6.5.26, 6.5.32 to 6.5.37, 6.5.41 to 6.5.43, 6.5.48 to 6.5.50, 6.5.56 to 6.5.58, 6.5.61, 6.5.64 to 6.5.66, 6.5.71, 6.5.78, 7.5.12 to 7.5.14, 9.5.4, 9.5.12 to 9.5.17, 9.5.34 and 9.5.41 to 9.5.43 and tables 6.5, 9.7 (wrongly labelled table 1.1) and 10.1 of the submitted Environmental Statement as amended by the additional mitigation measures for herons identified on pages 6, 10 and 11 of the Addendum to the Environmental Statement dated 12 September 2014.
 - c) Provision of external refuse and recycling storage facilities to serve each dwelling. No dwelling shall be occupied until its facilities have been provided in accordance with the approved details.
 - d) Provision of car parking and cycle parking for each dwelling and to serve the allotments. No dwelling shall be occupied until its facilities have been provided in accordance with the approved details.
 - e) A scheme for the provision of surface water drainage. No dwelling shall be occupied until its facilities have been provided in accordance with the approved details.
 - f) A scheme for the provision of foul drainage. No dwelling shall be occupied until its facilities have been provided in accordance with the approved details.
 - g) A scheme (including a timetable for implementation) to secure at least 15% of the energy supply of the development from decentralised and renewable or low carbon energy sources. The approved scheme shall be implemented and retained as operational thereafter.

- 6) No development shall take place, including any works of demolition, until a Construction Method Statement has been submitted to, and approved in writing by, the local planning authority. The approved Statement shall be adhered to throughout the construction period. The Statement shall provide for:
 - i) The hours of operation
 - ii) the parking of vehicles of site operatives and visitors
 - iii) loading and unloading of plant and materials
 - iv) storage of plant and materials used in constructing the development
 - v) the erection and maintenance of security hoarding including decorative displays and facilities for public viewing, where appropriate
 - vi) wheel washing facilities
 - vii) measures to control the emission of dust and dirt during construction
 - viii) a scheme for recycling/disposing of waste resulting from demolition and construction works
- 7) No other development shall take place until the access to the site has been constructed in accordance with condition (4) and a site compound and car park has been constructed in accordance with details approved through condition (6).

APPEARANCES

FOR THE LOCAL PLANNING AUTHORITY:

Peter Wadsley, of Counsel	Instructed by the Solicitor to North Devon District Council
He called	
Peter Leaver BA DipLA CMLI	Director, David Wilson Partnership Ltd
Graham Townsend MA DipTCP	Planning Delivery Team Leader, North Devon District Council

FOR THE APPELLANT:

John Steel QC	Assisted by Victoria Hutton, of Counsel and instructed by John Baird of Osborne Clarke
He called	
Timothy Goodwin BSc (Hons) MSc MEnvSc MCIEEM	Director, Ecology Solutions
Julian Cooper BSc (Hons) DipLD FLI AILA	Director of Landscape Architecture, SLR Consulting
Iain McNeill BSc (Hons) CEng MICE	Technical Director, WSP
Edward Heynes MA MRTPI PGCM	Director, Heynes Planning Ltd

INTERESTED PERSONS (in order of speaking):

Councillor Rodney Cann	Fremington Parish Councillor and North Devon District Councillor
Stuart Prideaux	Local resident
Julia Searle	Local resident
John Wilson	Local resident
Councillor Frank Biederman	Fremington Parish Councillor, North Devon District Councillor and Devon County Councillor
Joan Gristwood	Local resident

Additional DOCUMENTS submitted at Inquiry

- 1 Addendum to Mr Heynes's proof of evidence
- 2 North Devon Council advice on Appropriate Assessment
- 3 Ecology Solutions Briefing Note – Reptile and Dormouse Surveys
- 4 Additional Site photos by SLR
- 5 Hedgerow Layout; drawing 6525-00-027 revision g
- 6 Aerial overlay
- 7 Landscape and Ecology Management Plan, Fourth Revision
- 8 Appellant's response to Inspector's e-mailed questions
- 9 Corrected figure 4 to Mr Leaver's evidence
- 10 Location Plan of photomontages
- 11 Planning Permission 56762; Holiday lodges at Lower Yelland Farm
- 12 Screen dump of Home Farm Marsh @ The Gaia Trust website

- 13 Council's response to Inspector's e-mailed questions
- 14 E-mail 3.8.2015 from Devon CC advising on walking distances
- 15 Devon County Council Education s106 infrastructure approach
- 16 Signed Statement of Common Ground
- 17 [2013]EWHC 1138 (Admin); Anita Colman v SofS for CLG, NDDC and RWE NPower Renewables
- 18 Fremington Camp section 106 agreement
- 19 Fremington Camp appeal decision APP/X1118/A/12/2188898
- 20 Appellant's list of sustainability benefits
- 21 Photographs supplied by Mr Wilson
- 22 Estimates of bus revenue arising from residents of the appeal site
- 23 Summary of parties' positions on Housing Land Supply
- 24 Copy of Deed of Grant of drainage rights to number 6 West Yelland
- 25 Signed, sealed and dated s106 agreement
- 26 Suggested conditions in the event of the appeal being allowed
- 27 Technical Note on Foul drainage capacity
- 28 Conservation Objectives for Braunton Burrows SAC
- 29 Conservation Objectives for Culm Grasslands SAC

Additional DOCUMENTS submitted by agreement following Inquiry

- 1 Letter from Devon County Council certifying compliance of Highways contribution to CIL Regulation 123.
- 2 Note from Devon County Council certifying compliance of Education contributions with CIL regulations 122 and 123.
- 3 Note from North Devon District Council certifying compliance of public open space contribution with CIL regulation 123.
- 4 Notes from Ian Turnbull, Regional Contract Manager for Premises, NHS England certifying Health contribution's compliance with CIL regulations 122 and 123.