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## Appeal Decisions

Inquiry held on 7-10 and 14-17 January 2014 and 4-5 February 2014

Site visit made on 22 January 2014

**by Jessica Graham BA(Hons) PgDipL**

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

**Decision date: 7 April 2014**

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### **The Feniton Park Ltd Appeal Ref: APP/U1105/A/13/2191905**

#### **Land to the north of Acland Park, Feniton, Devon**

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant planning permission.
  - The appeal is made by Feniton Park Ltd against the decision of East Devon District Council.
  - The application Ref 11/1021/MFUL, dated 9 May 2011, was refused by notice dated 27 November 2012.
  - The development proposed is demolition of the existing buildings and redevelopment of the site to provide residential development of 32 houses.
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### **The SLP 120-home Appeal Ref: APP/U1105/A/13/2197001**

#### **Land to the west of Ottery Road, Feniton, Devon**

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant outline planning permission.
  - The appeal is made by Strategic Land Partnerships against the decision of East Devon District Council.
  - The application Ref 12/2648/MOUT, dated 3 December 2012, was refused by notice dated 25 April 2013.
  - The development proposed is up to 120 residential dwellings (C3) including associated employment floorspace (A1/A3/B1) and community floorspace (D1/D2) along with associated public open space, play space, allotments and infrastructure.
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### **The SLP 59-home Appeal Ref: APP/U1105/A/13/2197002**

#### **Land to the west of Ottery Road, Feniton, Devon**

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant outline planning permission.
  - The appeal is made by Strategic Land Partnerships against the decision of East Devon District Council.
  - The application Ref 12/2649/MOUT, dated 3 December 2012, was refused by notice dated 18 April 2013.
  - The development proposed is up to 59 residential dwellings (C3) including associated employment floorspace (A1/A3/B1) and community floorspace (D1/D2) along with associated public open space, play space, allotments and infrastructure.
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## The Wainhomes Appeal

Ref: APP/U1105/A/13/2200204

### Land to the south of Station Road, Feniton, Devon

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant planning permission.
  - The appeal is made by Wainhomes (South West) Holdings Ltd against the decision of East Devon District Council.
  - The application Ref 13/0591/MFUL, dated 8 March 2013, was refused by notice dated 20 June 2013.
  - The development proposed is the erection of 83 residential dwellings and their associated roads, sewers, landscaping, open space, parking and garages.
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<b>Contents</b>	<b>Page</b>
Decisions	3
Procedural matters	3
Main issues	4
The district's housing supply position, and its policy implications	4
Housing supply	4
Relevant policies for the supply of housing	5
The implications for the decision-making process	6
The weight that attaches to the housing shortfall	8
The effect on the character and appearance of the area	8
The Feniton Park Ltd appeal	8
The SLP 120-home and 59-home appeals	9
The Wainhomes appeal	11
Whether Feniton is an appropriate location for the proposed development	13
Flooding	13
Highways	14
Services and facilities	15
Accessibility	16
The question of "sustainable development"	18
The benefits and adverse impacts of the individual proposals	21
The Feniton Park Ltd appeal	21
The SLP 120-home appeal	23
The SLP 59-home appeal	27
The Wainhomes appeal	28
Conclusions	29
Conditions	29
Appendices	
A: Appearances	31
B: Documents	33
C: Conditions	36

## **Decisions**

1. The Feniton Park Ltd appeal is allowed and planning permission is granted for demolition of the existing buildings and redevelopment of the site to provide 32 houses on land to the north of Acland Park, Feniton, Devon in accordance with the terms of the application, Ref 11/1021/MFUL, dated 9 May 2011, subject to the 12 conditions set out in the schedule attached as Appendix C to this decision letter.
2. The SLP 120-home appeal is dismissed.
3. The SLP 59-home appeal is dismissed.
4. The Wainhomes appeal is dismissed.

## **Procedural matters**

5. The planning applications which became the subject of the SLP 120-home appeal and the SLP 59-home appeal were both made in outline, in each case with details of access provided, but details of appearance, landscaping, layout and scale reserved for future consideration. I have determined these two appeals on that basis.
6. On the opening day of the Inquiry, a number of Feniton residents expressed concern about the relocation of the Inquiry venue from Feniton Bowling Club to the Flybe Training Academy at Exeter Airport. I explained that as I understood it, the change of venue was not the result of any undue pressure from the appellants, but rather an informed (and, with the benefit of hindsight, entirely appropriate) decision by the Council that a larger venue was needed to accommodate the five main parties and the very large number of interested people that wished to attend. In order to ensure that any residents unable to travel to the new venue had a fair opportunity to address the inquiry, I held an evening session at Feniton Primary School on Wednesday 15 January. I would like to record here my gratitude to the residents who provided a sound-system, collected names at the door, and generally helped me to ensure that the evening session was as inclusive as possible.
7. All three appellants provided S.106 deeds (SLP submitted four: two for each appeal scheme). I consider the content and operation of these deeds below, in the context of assessing the benefits and adverse impacts of each appeal.
8. Towards the end of the Inquiry, applications for awards of costs against the Council were made by Feniton Park Ltd and Strategic Land Partnerships. These applications are the subject of two separate decision letters of even date.
9. After the inquiry closed the government published, on 6 March 2014, new national Planning Guidance (PG) which revoked and replaced much existing guidance. All of the main parties were given the opportunity to comment on the implications of this for their respective cases, and I have had regard to the comments received, as well as the content of the PG, in determining these appeals.
10. Numbers in square brackets are references to paragraphs within this decision letter.

## **Main issues**

11. The three main issues, common to all four appeals, are
  - (a) the district's housing supply position, and its policy implications;
  - (b) the effect the proposed development would have on the character and appearance of the area; and
  - (c) whether Feniton is an appropriate location for the proposed development.
12. The sequence of these issues is not intended to reflect their relative importance, but rather to provide a logical structure to my decision. I start by considering the District's housing supply situation and the implications this has for the application of planning policy, since that determines the decision-making process I must follow. I then consider the site-specific impacts that each proposal would have on the character and appearance of the area, before turning to matters such as Feniton's flooding problems and existing infrastructure, which are relevant to each of the proposals now before me. I will then be in a position to weigh all of the various considerations in the planning balance, and reach a conclusion as to which, if any, of these development proposals should be permitted.

## **The district's housing supply position, and its policy implications**

13. Policy S3 of the Adopted East Devon Local Plan 2006 ("the Local Plan") lists the villages of East Devon, including Feniton, around which a Built-up Area Boundary (BuAB) is defined. It states that: *These villages are identified as offering a range of services and facilities and through the definition of Built-up Area Boundaries they are regarded as appropriate to accommodate a limited scale of future development.* Policy S5 of the Local Plan states that: *The countryside is defined as all those parts of the plan area outside the Built-up Area Boundaries for towns and villages.* It then goes on to explain that development in the countryside will only be permitted where it is in accordance with a specific Local Plan policy that explicitly permits such development, and where it would not harm the distinctive landscape, amenity and environmental qualities of the area within which it is located.
14. Every single one of the appeal sites currently before me lies outside the Feniton BuAB, on land that is consequently defined as "countryside". As a result, all of the four appeal proposals would fundamentally conflict with adopted Development Plan policy aimed at restricting residential development in the countryside. Conflict with Development Plan policy is not, however, the end of the matter. Planning law<sup>1</sup> requires that applications for planning permission must be determined in accordance with the Development Plan, unless material considerations indicate otherwise. One such material consideration is the guidance set out in the National Planning Policy Framework (NPPF), published by the government in March 2012.

### *Housing supply*

15. Paragraph 49 of the NPPF states that if a local planning authority cannot demonstrate a five-year supply of deliverable housing sites, relevant policies for the supply of housing should not be considered up-to-date.

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<sup>1</sup> S.38(6) of the PCPA 2004 and S.70(2) of the TCPA 1990

16. At the start of the inquiry the Council, Feniton Parish Council, and all three appellants produced a joint written statement setting out their agreement that the deliverable housing-site supply for the district is in the range of 2.2 to 4.3 years, and that this constitutes “a significant shortfall” (ID 4).
17. This agreement was challenged by the Campaign to Protect Rural England (CPRE). The carefully considered and clearly argued grounds on which the CPRE disputed the housing supply calculations of various parties are not without merit. It is right that the housing requirement identified in the Secretary of State’s Proposed Changes to the (now revoked) Regional Strategy for the South West (RSSW) was based on the evidence of household projections that are no longer the most up-to-date available, and that there is evidence of a lower rate of population growth in East Devon than those projections predicted. Further, if it can be demonstrated that the shortfall against delivery of housing in an earlier plan period is merely a theoretical shortfall against a calculated need that never in fact materialised, then it is clearly arguable that no real backlog, such as would need to be added to the overall housing requirement for the next plan period, exists.
18. However, these arguments need to be made at the Examination in Public (EiP) into the Council’s emerging new Local Plan (eLP), where they can be considered alongside those of other interested parties who take an opposing view to CPRE, contending that the Council’s assessment of housing requirement is too low rather than too high. The EiP is the proper forum in which to examine those arguments, in the light of all the available evidence. It is not for me, in the context of determining whether specific development proposals should be permitted, to usurp that function of the EiP by forming a view as to whether the housing requirement figure set out in the eLP will meet the objectively assessed housing need for the district: I have neither the remit nor the evidence. I do however need to determine whether the Council is able currently to demonstrate a five year supply of housing land, as required by paragraph 49 of the NPPF.
19. For that purpose, I agree with the Council, and the other four main parties, that the most appropriate housing requirement figure is that set out in the Secretary of State’s Proposed Changes to the RSSW. I appreciate that it is now somewhat dated, but the crucial point is that unlike any of the more recent alternative assessments of housing need, it was informed by evidence that has been independently examined, and robustly tested at an EiP. On that basis, the district’s current supply of deliverable housing sites falls short of five years. By operation of paragraph 49 of the NPPF, then, Local Plan policies that are “relevant policies for the supply of housing” should not be considered up to date.

*Relevant policies for the supply of housing*

20. There is some disagreement as to which of the adopted Local Plan policies are relevant for the supply of housing. The Council contends that these are only such policies as relate solely to housing, and that the second part of Policy S5 is a “countryside protection” policy.
21. In support of its argument on this point, the Council drew my attention to two earlier appeals. In the Alsager decision<sup>2</sup> the Inspector concluded that a policy

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<sup>2</sup> Appeal ref: APP/R0660/A/13/2195201 (CD 7.7)

aimed at protecting the countryside by preventing development outside Settlement Zone Lines (equivalent to BuABs) was “not sufficiently directly related to housing land supply that it can be regarded as time expired”. However, the Inspector was there considering whether the policy should be treated as time-expired on a different basis: that is, that the SZLs had been drawn specifically to reflect the identified requirement, and housing allocations, for a period that had ended two years previously. That is not the same point as whether a policy is not up-to-date if the Council cannot demonstrate a 5-year housing supply.

22. In the Irchester decision<sup>3</sup>, the Inspector held that while policies aimed primarily at the protection of the countryside may also have an effect on housing supply, that was not their “main purpose”, and as such it did not seem to him that these were policies of the kind that paragraph 49 says should be regarded as out of date. The wording of the policies there under consideration is not provided, and whether or not a specific policy can reasonably be described as “relevant... for the supply of housing” is ultimately a matter for the decision-maker. But I would hesitate to accept the proposition that a policy could not be relevant to the supply of housing simply because housing is not its main purpose. It was open to the government to say, in the NPPF, that the provisions of paragraph 49 apply to policies “specifically related to” or “solely concerned with” the supply of housing: instead, the term chosen was “relevant... for”.
23. The Council also drew my attention to the judgment of the High Court in *William Davis v Secretary of State*<sup>4</sup>, which suggests, at paragraph 47, that Inspectors who had applied paragraph 49 of the NPPF to “policies which did not relate to housing” did so in error. That is a proposition I accept: it is unlikely that a policy which has no relation at all to housing could be relevant to housing supply. However, I do not agree with the Council’s interpretation of paragraph 47 of this judgment as finding that “policies that did not relate solely to housing were not supply of housing policies” (ID 68, 2.6). Rather, the finding in that paragraph was that the particular policy under consideration was not covered by paragraph 49 because it “does not relate to the supply of housing” (emphasis in original). This confirms my view that the assessment to be made is whether a particular policy is related to the supply of housing, and not whether housing is its sole or main purpose.
24. I consider that Policies S3 and S5 of the Local Plan, which seek to direct development (including residential development) toward locations within the BuABs, and to restrict the amount that takes place outside the BuABs, are clearly of relevance for the supply of housing. It follows that in the absence of a demonstrable five-year supply of deliverable housing sites, these policies should not be considered up-to-date.

#### *The implications for the decision-making process*

25. I do not criticise the Council for seeking to argue otherwise, because I think that stems from its understandable concern that the countryside should be protected from inappropriate development. In my experience, many local planning authorities fear that if policies which would otherwise restrict

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<sup>3</sup> Appeal ref: APP/H2835/A/12/2182431 (Mr Blackmore’s Appendix 7)

<sup>4</sup> *William Davis Limited, Jelson Limited v Secretary of State for Communities and Local Governments, North West Leicestershire District Council* [2013] EWHC 3058 (Admin) (ID 68)

house-building in the countryside are to be considered not up-to-date, then proposals for such development would become very difficult indeed for them to resist. But the NPPF should not, it seems to me, be interpreted as permitting a housing development free-for-all. Rather, paragraph 49 aims to ensure that in situations where (as here) the existing Local Plan policies have failed to secure a sufficient supply of deliverable housing sites, the "presumption in favour of sustainable development" is duly applied.

26. The mechanism for applying that presumption is set out in paragraph 14 of the NPPF. It explains that where relevant policies are out of date, then (unless material considerations indicate otherwise) permission should be granted, unless any adverse impacts of doing so would significantly and demonstrably outweigh the benefits when assessed against the policies in the Framework taken as a whole, or specific policies in the Framework indicate development should be restricted. This clearly does not equate to a blanket approval for residential development in locations that would otherwise have conflicted with Local Plan policies. If the adverse impacts of the proposal (such as harm to the intrinsic character and beauty of the countryside) significantly and demonstrably outweigh the benefits, then planning permission should still be refused.
27. The Council sought to persuade me that this approach would be incorrect, since "paragraph 14 NPPF (sic) only applies to a scheme which has been found to be sustainable development"<sup>5</sup>. With the greatest of respect, I do not think that can be right. Paragraph 14 does not specify certain criteria against which each scheme must first be assessed, in order to determine that it would constitute sustainable development, before then going on to apply a presumption in that development's favour. Rather, what paragraph 14 does is to set out how the "presumption in favour of sustainable development" (described as "a golden thread running through both plan-making and decision-taking") is to be operated, by prescribing the specific approaches that must be taken when plan-making and when decision-taking.
28. The second limb of paragraph 14 concerning "decision-taking" is drafted so as to be applicable to the determination of all development proposals. Approving those that accord with the development plan (unless material considerations indicate otherwise) equates to applying the presumption, without the need for any prior decision as to whether the proposal would be "sustainable development". Similarly, where the development plan is absent, silent or relevant policies are out of date, no separate decision as to sustainability is specified: rather, the decision-taker is enjoined to grant permission unless either the adverse impacts would significantly and demonstrably outweigh the benefits, or specific policies in the NPPF indicate the development should be restricted.
29. If the approach to decision-taking set out in paragraph 14 of the NPPF is taken, then it must follow that the presumption in favour of sustainable development will be correctly applied. This is the decision-making process I have previously recommended to the Secretary of State, who is responsible for the NPPF. He agreed with, and subsequently applied, my advice.<sup>6</sup> It is the decision-making process I shall follow here.

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<sup>5</sup> Paragraph 37 of the High Court judgment in *William Davis v Secretary of State* (supra)

<sup>6</sup> Appeal Ref: APP/P1133/A/12/2188938 IR 12.36-12.37; DL 16 (Appendix 7 to Mr Harris' proof of evidence)

*The weight that attaches to the housing shortfall*

30. That there is an agreed significant shortfall in the district's five-year supply of deliverable housing sites is a factor which weighs in favour of permitting the current proposals for additional housing. There are, however, various matters said by the Council to reduce the weight this factor should carry in the overall planning balance. One such is the Council's preference for taking a disaggregated approach to assessing housing supply, distinguishing between the "West End" of the district, where the new settlement of Cranbrook is being built, and the "Rest of East Devon". Considered separately, the housing supply figure for the West End has consistently been below 5 years, whereas supply in the Rest of East Devon has consistently exceeded 5 years.
31. A disaggregated approach to the district's housing requirement may well be a sensible means of planning for the future geographic distribution of housing. But in circumstances where (as here) there are currently insufficient housing sites to meet district-wide needs, paragraph 49 of the NPPF provides that relevant policies for the supply of housing should not be considered up-to-date. In such circumstances there is a pressing need to address the housing shortfall, and no policy basis in the NPPF for applying an in-principle geographical restriction on where that may take place.
32. The Council also contends that the lack of a five-year housing supply is likely to be short lived, since it will be resolved through the imminent EiP process and adoption of the eLP. However, as discussed above [17], there are conflicting views about the district's housing requirement as well as its housing supply, and until the EiP process has been completed there is no guarantee that the eLP will be found sound and proceed to adoption. In any event, unless there is certainty (and there is not) that the EiP will find the district's housing shortfall to be significantly smaller than is currently agreed, awaiting its outcome is not a reason to postpone development that would assist in remedying that shortfall. The Council has made it very clear that it does not seek to argue that granting planning permission for the current proposals would be premature, or in any way prejudice the outcome of the eLP.
33. Taking all of this into account, it remains the case that each of the proposed developments would help to address what is agreed to be a significant shortfall in the district's housing supply. In view of the government's drive "to boost significantly the supply of housing", encapsulated at paragraph 47 of the NPPF, that is a benefit to which I must attach considerable weight.

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

*The Feniton Park Ltd Appeal*

34. This appeal site covers an area of around 0.6ha, on the north-eastern side of Feniton, immediately adjoining the existing residential area of Acland Park. Last used for agricultural purposes, it has been derelict since the 1970s. There is a concrete yard, with various sheds and barns in a state of some dilapidation. Agricultural land adjoins the western edge of the site, and playing fields that are part of Feniton Football Club lie on its eastern side. Three oaks and an ash on the western boundary are protected by Tree Preservation Orders.

35. The appeal scheme proposes the demolition of the existing structures, and re-development of the site to provide 32 houses. A mixture of two-storey accommodation, including terraced housing, semi-detached pairs, a detached house and some flats over garages, would be grouped around a central street which would form a continuation of Acland Park road. The simple roof forms, rendered walls and timber detailing would accord with the modest style and proportions of the existing nearby dwellings, and provision is made within the site for the planting of new trees and shrubs, as well as for vehicular parking and turning space.
36. The appeal site does not occupy a prominent position within the landscape. It can be seen from the recreation ground, and its gated entrance and dilapidated buildings currently form a rather unattractive endpoint to views along Acland Park. Otherwise, views into the site are limited to those available from high land to the east and north east, and glimpses over boundary hedgerows along the rural lanes to the east. In all of these, the appeal site is seen against a backdrop of rising land, and the adjoining residential development of the built-up part of the village. In this context, I agree with the Council that replacing the existing dilapidated structures with the proposed housing development would visually improve the appeal site.
37. Wainhomes provided an alternative suggested layout, based around an access road which zig-zagged from side to side. Given the narrowness of the site, which has been likened to a finger of land extending into the open countryside, I am not convinced that this would necessarily have been a better approach than that which is currently proposed. In any event, I am satisfied that subject to conditions ensuring the retention of the protected trees and the provision of further details concerning satisfactory replacement boundary planting, the appeal scheme would have a beneficial rather than adverse impact on the character and appearance of the area.

*The SLP 59-home Appeal and the SLP 120-home Appeal*

38. Feniton sits in a natural bowl between higher ground to the west and east, and shallower rising slopes extending north and south from the village. The higher ground to the west is a rounded hill with a woodland copse at its summit, and is known as (among other names) Long Park Hill. The two SLP schemes constitute alternative proposals for residential development of the same site, which extends to some 5.4ha, and is part of a field known locally as Camp Field, which lies on the lower slopes of Long Park Hill. The eastern boundary of the appeal site adjoins Ottery Road, and the residential development on the opposite side of Ottery Road currently forms the western edge of the built-up part of Feniton.
39. Both the 120-home and 59-home schemes sought only outline planning permission, such that details of layout and landscaping (as well as scale and appearance) would remain to be determined at a later stage. Nevertheless, the "Illustrative Masterplan" that accompanied each application showed that in both schemes, the buildings would be located toward the northern end of the appeal site, and the southern end would provide areas of public open space, incorporating allotments, play areas and community orchards. New planting would extend along the western boundary of the appeal site, screening the buildings from the adjacent countryside and providing opportunities to create a circular pedestrian route along the edge of the settlement. A lower-lying area

- of land along the south-eastern boundary would be used to accommodate a flood attenuation scheme.
40. In 2008 the Council published the *East Devon and Blackdown Hills AONB and East Devon District Landscape Character Assessment & Management Guidelines* ("the LCA Assessment"), which identifies the character of the landscape in this part of Feniton as of type 4D: "Valley floors – lowland plains". I saw at my site visit that the area around the appeal site displays many of the features the Guidelines identify as "key characteristics": there is gently-sloping farmland, an isolated farm, a village (Feniton itself) that has been significantly enlarged and modified by 20<sup>th</sup> Century expansion, and long views over low hedges. I also saw that Long Park Hill is a distinctive feature of the local landscape, and forms part of the setting of the village.
  41. The appeal site lies on the lower slopes of Long Park Hill, and the area proposed for development is wholly contained below the 80m contour line, so that it does not rise up above the natural bowl within which most of the existing development at Feniton already sits. It is not visible from the heart of the village, or in any long views other than the southern approach from Public Footpath FP1. It is however a prominent and locally valued element of public views from Ottery Road, since it forms part of the open, undeveloped hillside which currently affords uninterrupted views up toward the wooded hilltop of Long Park Hill. The LCA Assessment urges the protection and enhancement of views to wooded skylines on hills within and around the area.
  42. The construction of either 59 or 120 houses on the appeal site, together with such employment buildings (if any) as may be built on the area of serviced employment land provided as part of each scheme, would obscure the existing sweep of uninterrupted views from Ottery Road up toward the top of Long Park Hill. From the junction of Ottery Road and Green Lane, all the way along Ottery Road to the northern boundary of the appeal site, views of the open hillslope to the west would be replaced by views of residential development. I appreciate that in these views, and also in views from FP1, a clear gap of open land would be retained between the furthest extent of the development and the uppermost reaches of Long Park Hill, but the construction of a considerable quantity of built development on its lower slopes would result in the suburbanisation of what is currently a rural and open part of the landscape. In my judgment this would fundamentally and harmfully alter the distinctive character of this part of Feniton.
  43. While the proposed planting would help to screen views of the new development, I am not convinced that this would provide any meaningful mitigation for the loss of the existing views over open countryside. Similarly, while it has been pointed out that the edge of the settlement is currently formed by the gable-ends and close-boarded fencing on the eastern side of Ottery Road, I am not persuaded that development on the opposite side of the road, however carefully designed, could create an improved settlement edge and "arrival experience" that would necessarily be better than, or an adequate substitute for, the existing views of the open slopes of Long Park Hill.
  44. The proposed development would open up new views of Long Park Hill, and long views of the landscape to the south, from the proposed public areas such as the community orchard, informal recreation space and footpath along the western boundary of the site. But again, this would not really compensate for

the loss of views from Ottery road: while pedestrian footways are not provided on many sections of that road it is nevertheless one of the main routes in to the village, and there is evidence that it is used by recreational walkers as well as cyclists, horse-riders and vehicular traffic. It seems to me doubtful that any more than a small proportion of this traffic would divert in to the proposed development in order to benefit from new views.

45. In summary, I find that both of the appeal schemes would significantly and harmfully alter the character of this part of Feniton, and have an adverse visual impact on public views. They would therefore conflict with the objectives of Policy D1 of the Local Plan, which seeks to ensure that development does not adversely affect important landscape characteristics and prominent topographical features. The extent of the built-up development in the 59-home scheme would occupy a smaller proportion of the appeal site than would the built-up area of the 120-home scheme, and so the associated harm, in the terms that I have identified above, would be less. Nevertheless, I consider the harm that would be caused to the character and appearance of the area, by either of the two schemes, to be an adverse impact of great weight.

#### *The Wainhomes Appeal*

46. This appeal site is on the eastern edge of Feniton, and so lies on the opposite slope of the landscape 'bowl' to the SLP appeal site, in the area of open countryside between this part of the settlement and 'old' Feniton to the east.
47. The appeal site covers some 3.43 ha extending from Station Road, which adjoins its northern boundary, to Green Lane, which runs along its southern boundary. It is immediately adjacent to an area of land on which permission was granted in 2012 for 50 dwellings ("the Wainhomes Phase 1 scheme")<sup>7</sup>, construction of which is under way. The development now proposed would connect to and integrate with that permitted development, linking to its estate roads and utilising the same vehicular access point from Station Road. The appeal scheme proposes the construction of 83 dwellings ranging from 1 to 2 storeys high, mainly grouped in clusters around looped streets and cul-de-sacs. Their form and design would reflect that of the dwellings in the Phase 1 development.
48. This appeal site is also part of the area classified by the LCA Assessment as character type 4D: "Valley floors – lowland plains", and this part of Feniton displays many of the features identified as "key characteristics" of that classification: there is mixed farmland, a level to gently sloping landform, and "a surprising feeling of remoteness" on sections of Green Lane between the older and newer parts of Feniton. As the Council pointed out, the landscape further to the east is classified as character type 3B: "Valley slopes – lower rolling farmed and settled slopes", and the area around the appeal site also displays some of the key characteristics of this classification. Indeed, I saw at my site visit that both Green Lane and Station Road have more in common with the "winding, often sunken lanes" associated with LCA type 3B than the "wide low roadside hedges and banks" associated with LCA type 4D. I saw little evidence of the "long views over low hedges" associated with LCA type 4D: the long views available from Green Lane and Station Road are largely restricted to gated gaps in their boundary hedges.

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<sup>7</sup> Appeal Ref APP/U1105/A/12/2172708 (CD 7.1)

49. Wainhomes contends that in views westward from these gateways, the proposed development would be seen against the backdrop of the existing buildings of Feniton. But since the topography of the area is such that the majority of Feniton is contained within the natural bowl formed by the landscape, the existing buildings are largely hidden from view. The development permitted under the Wainhomes Phase 1 scheme will be more readily apparent, when completed, because it is set on rising ground. The ground level of the appeal site is higher again, and so there would be only limited views of the rest of the village to provide visual context for the new dwellings. Construction of the proposed dwellings would effectively advance the edge of this part of the settlement eastward, reducing the extent of open countryside that currently separates it from the older part of the settlement, and reducing the extent to which users of Green Lane may experience a sense of remoteness.
50. On Public Footpath FP8, from the top of Long Park Hill, there are panoramic views eastwards toward the appeal site. Again, the topography of the area is such that in these views, a large proportion of the built-up part of Feniton is hidden. Some existing properties are however visible, and in future these will include the completed dwellings of the Wainhomes Phase 1 scheme. From this position, residential development would provide the foreground to the new housing proposed in this appeal, and a clear gap of open land would be retained between the furthest extent of the new development and the wooded ridge that lies between the newer and older parts of Feniton. Nevertheless, the presence of the new dwellings would clearly extend the built-up part of the settlement into what was formerly open countryside, to the detriment of its rural character.
51. The Wainhomes Phase 1 scheme makes provision for a "Green Link". This is a public pedestrian route running north from Green Lane alongside the existing edge of the settlement, such that its users would have views eastward over the open countryside beyond, before walking through the Phase 1 development to reach Station Road. The appeal proposal would preclude delivery of the Green Link on its existing route, instead making alternative provision for pedestrian access between Green Lane and Station Road. Walkers could either follow a circuitous footpath running inside the perimeter boundary of the proposed development, or, after passing through the pedestrian access from Green Lane, follow a more direct route along the internal vehicular access roads. I agree with the Council that both of these options would be considerably less attractive than the permitted Green Link route, since users would effectively be walking through a housing estate for the whole length of the path, rather than just its northern half.
52. The southern part of the proposed development would involve the subdivision of a field which has remained intact since before the 1888-1890 tithe map. However, the Wainhomes Phase 1 scheme has already involved the loss of a corner of the adjoining field to the north, leaving it an irregular shape that is uncharacteristic of the locality. Thus the disruption caused by the bisection of the southern field would be offset to some degree by the restoration of rectilinear proportions to the northern field, such that taken as a whole, I consider the appeal proposal could not fairly be said to cause significant damage to the characteristic field pattern of the area.

53. In summary, I find that the appeal scheme would harmfully alter the character of this part of Feniton by replacing open countryside with built development. It would encroach into the existing gap between the two parts of the settlement and bring built-up development closer to Green Lane, thereby reducing the sense of remoteness experienced by users of this highway. It would also have an adverse visual impact in public views from Green Lane, Station Road, FP 8, the "Green Link" that is to be provided between Green lane and Station Road, and from the allotments and recreation ground on the eastern edge of Feniton. I conclude that it would conflict with the objectives of Policy D1 of the Local Plan, which seeks to ensure that development does not adversely affect important landscape characteristics.
54. Views of this appeal site from public vantage points are more limited than is the case for the SLP appeal site, and it does not play as prominent a role in providing part of the setting to the village. I consider the harm that its proposed development would cause to the character and appearance of the area would be less than that caused by either of the SLP proposals, but would still constitute an adverse impact of considerable weight.

### **Whether Feniton is an appropriate location for the proposed development**

#### *Flooding*

55. Given the misery and devastation that flooding can cause, I am not surprised that local residents submitted a great deal of written, oral and photographic evidence to help me understand the problems that have been, and continue to be, experienced in Feniton. It is clear that Feniton's flooding problems pre-date the extreme weather conditions experienced this winter, and are caused by inadequacies in the existing drainage network, which has insufficient capacity to cope with large volumes of surface water run-off from the slopes that surround the village. A significant number of homes have flooded as a result, many on more than one occasion, and the volume of water ponding at Patteson's Cross can prevent access to and from the A30. An additional problem is that in combined sewers, the foul water system can be overwhelmed by excessive surface water flow and this has led to contaminated waste water backing up into residents' houses, and bursting out of manhole covers in the road. I do not underestimate the distress this causes.
56. In order to address these problems, the Council is working on a Flood Defence Scheme for Feniton. This will involve the installation of a considerable length of 1050mm diameter pipe, to channel surface water along a new path under the railway, connecting into the system just above Metcombe cottage. A new ditch will be formed to bypass Metcombe Cottage, and additional work carried out downstream to reduce further risk of flooding at Patteson's Cross.
57. The evidence of the Council is that the engineers commissioned to design the Flood Defence Scheme have costed it at £1.6 million, and that funding of £1.5 million has already been secured. I am told that the Council's solicitor has written to the relevant land owners with a view to conducting the necessary surveys this year, and while the results of those surveys will largely dictate the delivery timetable, it is hoped that the Scheme will be installed in 2015/2016.
58. SLP pointed out that there has already been some slippage in the timetable, and that the need to deal with emergency flooding situations elsewhere could require the diversion of some of the existing funding. While that may be so, it

seems to me that on the basis of the evidence provided to date, there is no convincing reason to doubt that the much-needed Flood Defence Scheme will be delivered in the next few years.

59. I can well understand why many people take the view that no further development should take place in Feniton until the Flood Defence Scheme has been installed. However this is not (currently, at least) the approach taken by national or local planning policy: the presence of existing flooding problems does not act as an outright bar to any further development. Rather, the extent to which each development proposal would add to, or ameliorate, the existing flooding problems at Feniton is one of the many considerations that must be weighed in the overall planning balance.

### *Highways*

60. The development proposal which is now the subject of the Wainhomes Appeal was the last of the four appeal schemes to be determined by the Council. One of the reasons given by the Council for refusing to grant planning permission for this proposal was that "insufficient information has been submitted to evidence that the cumulative impacts arising from this and other potential developments around the village would not result in a severe impact on the highway network in terms of highway safety and local capacity". Wainhomes subsequently commissioned a Highway Engineer to produce a "Cumulative Impacts Report" providing such additional information as the Highway Authority considered necessary. Having assessed the report in consultation with the Highway Authority, the Council gave notice that it no longer wished to pursue this reason for refusal.
61. Feniton Parish Council retains a number of concerns about the coverage, and methodology, of the Cumulative Impacts Report. These aspects of the report were, however, agreed with the professional officers of the Highway Authority. The report focuses on the capacity of Ottery Road to cope with the additional traffic, because that was the approach requested by the Highway Authority. It uses the methodology set out in TA 46/97 "Traffic Flow Ranges for Use in the Assessment of New Rural Roads" because, while Ottery Road is clearly not a new rural road, the Highway Authority accepted that TA 46/97 was the only recognised tool that could be used to assess the potential impacts. No more appropriate methodology has been put forward, and no alternative professional quantification of the cumulative impact has been provided.
62. In the course of the inquiry, Network Rail wrote to the Planning Inspectorate<sup>8</sup> requesting that if the appeals were allowed, financial contributions be required from the appellants to mitigate the increased traffic and usage of the level crossing on Ottery Road. It subsequently wrote again<sup>9</sup> to advise that having reviewed the evidence, it believed that the impact of the proposed developments on the level crossing would be negligible, and consequently withdrew its request for financial contributions, and its objections to all of the proposed schemes.
63. Feniton Parish Council retains concerns about the effect the proposed development would have on the level crossing, based on its view that the Transport Statements provided by the appellants were inaccurate. However,

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<sup>8</sup> By e-mail dated 16 January 2014 (ID 44)

<sup>9</sup> By e-mails dated 24 & 27 January 2014 (ID 45 and ID 46)

the Highway Authority is satisfied with the quality of the Transport Statements, and Network Rail wrote in response to the Parish Council's concerns<sup>10</sup>: "After reviewing the information and assessing it alongside Network Rail's own observations of the level crossing it was considered [by the local Level Crossing Manager] that there was no evidence that the developments would result in a significant impact on the level crossing that would necessitate an objection to the developments or a reasonable request of financial contributions to upgrade works to the crossing." It was open to Network Rail, had it shared the Parish Council's concerns, to uphold its objections pending the provision of more information, but it saw no need to do so. There is, then, no substantive evidential support for an argument that the proposed developments would have any significant adverse impact on the safety or functionality of the level crossing.

64. Constructing any, or all, of the four proposed housing schemes would increase the number of cars using the roads in and around Feniton, and I can understand why existing residents would prefer that not to happen. However, the evidence before me was judged sufficient by the professional officers of the Highway Authority, and demonstrates that even if all four of the schemes were permitted, the ensuing increase in both vehicular and pedestrian movements would not give rise to an unacceptable risk of conflict between road users, or exceed the capacity of the road network. Paragraph 32 of the NPPF makes it clear that planning permission should only be refused on transport grounds where the residual cumulative impacts of development are "severe". That is not, in my opinion, a description that could reasonably be applied to the individual or cumulative impacts of the current proposals.

#### *Local services and facilities*

65. As was recorded by the Inspector who determined the Wainhomes Phase 1 appeal in 2012, Feniton has a corner shop, takeaway and hairdressers, a community hall, public house and primary school. There is also a church and post office in 'old' Feniton, although this older part of the settlement is some 1.2km from the newer centre that has grown up around the train station, and the roads that link the two are narrow, unlit and have no footways.
66. The nearest secondary school is The Kings School in Ottery St Mary, some 3 miles away. Both this school and Feniton Primary are currently at, or very close to, capacity. That being the case, Devon County Council sought contributions from each of the development proposals, to secure the provision of the additional educational facilities needed to accommodate the predicted increase in pupil numbers likely to arise from the increase in housing. The evidence of the County Council demonstrates that it has calculated the financial contributions (partially offset, in the case of the two SLP proposals, by a transfer of land) necessary to mitigate the increased strain that each development proposal would otherwise place on local education provision. Each of the appellants has executed a S.106 deed securing payment of the contribution requested by the County Council in the event that their respective proposals were allowed. The fact that the local schools are at or near capacity is not, then, a consideration which weighs against the current appeal schemes.
67. The nearest health services are the Coleridge Medical Centre in Ottery St Mary, the Ottery St Mary hospital, and the community hospital and doctors surgeries

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<sup>10</sup> By e-mail attached to a letter from Mr Neil Parish MP dated 4 February 2014 (ID 59)

in Honiton, some 5 miles away. A number of objectors to the appeal proposals expressed concern that the Coleridge Medical Centre is already at or near capacity, and so would struggle to cope with additional demands for its services likely to arise from occupiers of the proposed new housing. If it were the case that the Medical Centre has insufficient capacity to cope with the likely increase in demand, it would be open to the relevant authority to seek a contribution from the development proposals (in the same way that a contribution has been sought for the provision of additional educational facilities, as discussed above). No such contribution has been requested, or identified, by the Council or the County Council. Nevertheless, it remains the case that residents of Feniton must travel out of the village in order to access health care.

68. There are very limited opportunities for employment in Feniton itself. Feniton Parish Council provided a Ward Profile for Feniton and Buckerell (Local Futures, 2013) which identifies that while the percentage of the working-age population in employment is very high, there is very little employment locally. The Ward Profile also assessed the proportion of users who have access to various services within a reasonable time, and concluded that while the score for Primary School access is above the national median, the scores for access to GPs, secondary schools, Further Education and hospitals are all well below the national median.

*Accessibility by "sustainable" modes of transport*

69. The NPPF advises that transport policies have an important role to play in facilitating sustainable development, and contributing to wider sustainability and health objectives. Paragraph 29 states that the transport system needs to be balanced in favour of sustainable transport modes, "giving people a real choice about how they travel." However, it goes on to recognise that opportunities to maximise sustainable transport solutions will vary from urban to rural areas.
70. The inquiry heard a great deal about train services to and from Feniton.
71. Perhaps the first point to note is that, questions of frequency aside, the fact that Feniton has any kind of train service at all gives it a considerable advantage, in terms of choice as to sustainable modes of transport, over many other villages in Devon.
72. The current timetable shows that Pinhoe (the station which serves the Exeter Business Park) is 12 minutes from Feniton by train, Exeter Central Station 17 minutes, and Exeter St Davids (for intercity services) 21 minutes. Trains from Feniton to these stops leave at 06:12, 07:18, 07:59 and 09:21 during the morning peak from Monday to Friday, and on the return journey during the evening peak, depart from Exeter St Davids at 16:24, 17:25, 17:46 and 18:25 from Monday to Friday.
73. This is an improvement upon the train service that operated when the earlier Wainhomes Phase 1 appeal was decided in 2012, at which date the Inspector noted "a two hourly train service to Exeter and London with an additional service in rush hour". He also noted that if the 17:54 train home from the Exeter Business Park were missed, there was not another stopping at Feniton until 23:06. That is no longer the case: there is still a 17:56 and 23:06 service from the Exeter Business Park station to Feniton, but in between there are also stopping services leaving at 18:37 and 21:37. I note that census figures

suggest the train services are not particularly well-used by residents of Feniton, but these pre-date the improvements to the timetable so cannot be relied upon to reflect the up-to-date position.

74. The railway station itself occupies a fairly central location in Feniton, such that it lies within reasonable walking distance of all of the appeal sites currently under consideration. Concerns were raised about the distance rail commuters would be required to walk at the other end of their journey, and I understand that the quality of the walk between Pinhoe station and Exeter Business Park is not good. The stations at Exeter Central and Exeter St Davids are however well-served by buses, which would provide the opportunity for onward travel by public transport.
75. There are conflicting views as to the likely future of train services from Feniton. Some fear that as the new settlement at Cranbrook grows, residents and businesses will generate pressure to increase stops there at the expense of other stations on the same line. Others, drawing on the County Council's *Exeter-Honiton-Axminster Corridor: Infrastructure Report for East Devon Local Plan* (July 2013) for support, point out that the current strategy is to create a new loop in order to improve the existing rail services, as the most practical way of addressing increasing traffic problems in Exeter. I note that funding for the proposed improvement is not certain, but it seems to me that the current available evidence provides no substantive reason to fear a reduction in the existing rail service to and from Feniton; rather, it provides cautious hope for improvement.
76. Feniton is not well served by buses. There are five services each way per day to Sidmouth via Ottery St Mary and one service each way per day to Honiton, with none on Sundays.
77. While walking and cycling for leisure are popular activities, the roads connecting Feniton to neighbouring settlements with other services and facilities are narrow country lanes, with no street lighting or pedestrian footways. This renders commuting out of the village on foot or by bicycle an unattractive, and for most unviable, option.
78. Taking all of this into account, I consider that although Feniton has a reasonably good rail service for a rural village, opportunities for residents to use other modes of sustainable transport are limited. Feniton lacks many of the services and facilities found in larger settlements, which means that residents have to travel out of the village to find them; to Ottery St Mary, for example, if they need access to medical care. Thus, while future occupiers of the new dwellings who kept traditional office hours in Exeter, Honiton or Axminster may well be able to use the train to commute to work, it is likely that they would still be reliant on the use of a private car to reach the shops, services and facilities that cannot be found in Feniton. Many others would also be reliant on the use of a car to commute to work: the evidence provided by Wainhomes suggests there is potential for approximately 30% of journeys to work from the dwellings in that particular scheme to be made using rail from Feniton station.
79. The future occupiers of the currently proposed housing would be likely, then, to be dependent at least to some extent on the use of a car, so the effect of permitting any of the proposals would be to increase the number of trips made to and from Feniton by private vehicle.

80. It is worth noting that this is also likely to be the case, albeit to varying extent, in most of the district's rural settlements; the NPPF explicitly recognises that development in rural areas is unlikely to offer the same opportunities for promoting sustainable modes of transport as is development in urban areas. That is not, of course, reason in itself to focus all new development on the urban areas, because the "sustainability" of putting development in a particular location is about much more than just the accessibility of that location.

*The question of "sustainable development"*

81. Paragraph 7 of the NPPF explains that there are three dimensions to sustainable development: economic, social and environmental. Paragraph 8 goes on to advise that in order to achieve sustainable development, economic, social and environmental gains should be sought jointly and simultaneously through the planning system.
82. In terms of the economic dimension, the government has made clear its view that house building plays an important role in promoting economic growth. The NPPF does not, however, identify a straightforward correlation between the construction of houses and ensuing economic growth. Rather, in describing the "economic role" that is to be played by the planning system, paragraph 7 identifies the need to identify and coordinate development requirements, including the provision of infrastructure.
83. Proposals for housing development on "windfall" sites, such as those currently before me, can be required, through the mechanism of planning obligations, to contribute toward improvements in local infrastructure only insofar as the improvements are needed to mitigate the effects of each specific proposal. By contrast, residential development that is plan-led can be brought forward in concert with the necessary supporting infrastructure. It seems to me that while the former type of residential development will clearly have some economic benefit, including the creation of jobs in the construction industry, the latter type better accords with the paragraph 7 requirement that the planning system ensure sufficient land of the right type is available in the right places, and at the right time, to support growth.
84. The appellants rightly point out that the future occupiers of the proposed new houses would provide more custom for the existing shops and services in Feniton, thereby contributing to the local economy. There is also an argument that while there are currently only very limited employment opportunities in Feniton itself, there is reasonably good access, by train as well as by private car, to employment opportunities in the nearby city of Exeter. The provision of housing, within relatively easy reach, would help to support the important economic role played by Exeter.
85. The benefits to Exeter's economy have, however, to be considered in the context of the implications for Feniton itself: as paragraph 9 of the NPPF makes clear, pursuing sustainable development involves seeking positive improvements in people's quality of life. There is a real danger, as the current residents recognise, that constructing large amounts of new housing on the premise that its occupiers would commute out to Exeter risks turning Feniton into a dormitory town.
86. A further consideration, in relation to this social dimension of sustainable development, is the importance placed by the NPPF on widening the choice of

high quality homes, and ensuring that sufficient housing (including affordable housing) is provided to meet the needs of present and future generations. As discussed above, the proposed development would be of clear benefit in these terms given the current significant shortfall in the district's housing supply. But again, the NPPF does not identify a straightforward correlation between the construction of houses and ensuing social benefit. Paragraphs 54 and 55 explain that housing development should reflect local needs, and be located where it will enhance or maintain the vitality of rural communities.

87. Substantially increasing the number of residences in a settlement without proportionate increases in the provision of local shops, infrastructure, employment opportunities and other local services risks eroding community cohesion. This type of impact is always hard to quantify, given the difficulties of obtaining tangible evidence. Prior to the approval in 2012 of the Wainhomes Phase 1 scheme, there were 674 dwellings in Feniton; that development will add a further 50, and even the smallest of the current proposals would add 32 more, resulting in an overall increase of 12.2%. This would constitute a sizeable expansion, and I accept the Parish Council's argument that it would take the existing community some time to adapt, and may have adverse consequences for the social and cultural wellbeing of existing residents. There is evidence that many of them chose to live in Feniton specifically because it is a small, quiet, rural settlement.
88. This is not a consideration which could on its own outweigh the pressing need to address the current housing shortfall. But I take the point that Feniton, like other communities, expects (quite rightly) that decisions about its capacity to accommodate more housing should be taken through the Local Plan process, which enables detailed assessment and comparison with the capacity of the district's other settlements. In this context, a considerable quantity of new housing being allowed on appeal in advance of that process, shortly after an earlier appeal resulted in permission for 50 new houses, could lead to hostility and resentment being directed towards the occupiers of the new housing. I appreciate that not all existing residents would feel that way, and that Feniton has in the past proved itself able to adapt admirably to new development. Nevertheless, I consider the potential adverse impact on the existing community to be a consideration which must be weighed in the overall balance.
89. As to the environmental dimension of sustainable development, the likely increase in vehicular traffic would be at odds with the aim of minimising pollution. Building houses on undeveloped parts of the countryside would also conflict with the core planning principles, set out in paragraph 17 of the NPPF, of conserving and enhancing the natural environment and encouraging the effective use of land by reusing land that has been previously developed. In this context, I note SLP's point that much of East Devon's land is heavily constrained by designations, such as the "Green Wedge" policy at issue in a recent appeal in Seaton<sup>11</sup>: I am told that 66% falls within one or other of the two Areas of Outstanding Natural Beauty in the district. But I have not been provided with evidence to indicate that meeting the district's housing requirement will inevitably necessitate the residential development of all, or even most, non-designated areas of countryside. In the absence of such evidence, I see no reason on this basis to reduce the weight that attaches to the loss of such areas to residential development.

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<sup>11</sup> Appeal Ref: APP/U1105/A/13/2202124 (ID 54)

90. Paragraph 7 also identifies the planning system's role in helping to use natural resources prudently. Each of the appeal sites is designated Grade 2 agricultural land, which is one of the categories of best and most versatile land. Paragraph 112 of the NPPF advises that the economic and other benefits of such land should be taken into account, and the loss of good quality agricultural land is an adverse impact to be weighed in the overall planning balance. Again, in the absence of evidence that meeting the district's housing need will inevitably necessitate the residential development of agricultural land of equivalent quality, I see no reason to reduce the weight that attaches to the loss of such land.
91. A number of objectors to the proposed development expressed concern that the loss of this Grade 2 agricultural land would also have adverse implications for the nation's food security. This was a matter that was addressed by the Secretary of State in the context of an appeal in Bloxham<sup>12</sup>. He confirmed the Inspector's interpretation that "Government policy is strongly directed towards an increase in housing designed to stimulate the economy. Nowhere is there guidance that requires the retention of agricultural land per se for food security. This is not therefore a matter that can weigh against the proposed development." The same reasoning applies to the current proposals.
92. It is correct to note that the Inspector who determined the Wainhomes Phase 1 appeal found Feniton to be "a sustainable location" but it would be incorrect, in my view, to equate this with a finding that any and all further residential development at Feniton must necessarily be sustainable too. The question of whether or not a particular proposal constitutes "sustainable development" is not simply a matter of location; it involves, as evidenced by the length and complexity of this decision letter, a wide variety of other considerations.
93. The Council recognises Feniton as "appropriate to accommodate a limited scale of future development" (in the terms of LP Policy S3) and as one of a number of settlements offering "a reasonable range of accessible services and facilities to meet some or many of the everyday needs of local residents" (in the terms of eLP Strategy 27). In simple terms, it is a consistent theme of the existing and emerging Development Plan for the area that while Feniton has some capacity to accommodate additional housing, that capacity is not limitless.
94. Emerging Strategy 27, in its current form, seeks to impose a specific numerical limit on the amount of additional development that would be acceptable in the district's "small towns and larger villages", including Feniton. However, that limit and the method of its calculation are evidently the subject of dispute, and this emerging policy as yet carries very little weight. As with the question of the district's objectively assessed housing need – which will be crucial to establishing the quantity of new housing that needs to be provided across the district – the EiP is the proper forum in which to examine the arguments as to where the necessary housing should be located. An informed decision will need to be made in the light of the various Strategic Housing Market Assessments, the Council's *Small Towns and Villages Sustainability Assessment 2013*, Mr Seaton's alternative sustainability appraisal, and a large volume of other evidence. It is not for me, in the context of determining the current appeal proposals, to usurp that function of the EiP by expressing a view as to whether

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<sup>12</sup> Appeal reference APP/C3105/A/12/2189191, para 129 [CD 7.17]

Feniton is a more or a less “sustainable” location for housing than other settlements within East Devon.

95. I am, however, required to determine whether the current appeals should succeed, in advance of the conclusion of the new Local Plan’s adoption process, and in the context of an existing Local Plan that has not secured a sufficient supply of housing to meet the district’s five-year housing requirement. As discussed at some length above [13 – 29], the NPPF sets out the approach to be taken in such situations, in terms of applying the “presumption in favour of sustainable development” as described at paragraph 14. That approach is to weigh the adverse impacts and the benefits of the proposed development in the balance, and to grant planning permission unless the adverse impacts significantly and demonstrably outweigh the benefits.

### **The benefits and adverse impacts of the individual proposals**

#### *The Feniton Park Ltd Appeal*

96. I have concluded that in the context of the acknowledged significant shortfall in the district’s housing supply, the fact that the proposed development would help to remedy that shortfall carries considerable weight in its favour [33]. An additional benefit, of some weight, would be the visual improvement resulting from the re-development of the appeal site [37]. I have also concluded, above, that the economic benefits of constructing additional housing at Feniton would not be unalloyed [82 – 84]; nevertheless they carry a small amount of weight in favour of the proposed 32 new dwellings.
97. Around 75% of the appeal site is currently impermeable. Its drainage is via a private surface water sewer network that connects directly to Feniton’s existing combined sewer system. The Drainage Strategy for the proposed development would involve disconnecting the surface water from that combined system, and since the existing surface water flow is calculated as greater than the foul water flow that would be generated by the proposed dwellings, this would result in an overall reduction in flows discharging into the combined sewer system. While the potential reduction in pressure on the combined system has not been quantified as a benefit of such substance as to carry significant weight in favour of the proposed development, it is nevertheless clear that there would be no adverse impact, in drainage and flood risk terms, such as would weigh against it.
98. While the site is technically classified as “best and most versatile” agricultural land, I share the Council’s view that the current state of the land, the extent of the existing structures and hard-surfacing and the fact that it has not been in meaningful agricultural use for several decades, make it unlikely that it would ever now be returned to such a use. I do not, therefore, consider the loss of good-quality agricultural land to be a consideration that weighs against permitting the proposed development. However, notwithstanding the presence of existing structures on the appeal site, it does not fall within the NPPF’s definition of “previously developed land”, and so cannot benefit from the favourable weight that might otherwise attach to proposals that make efficient use of land through re-developing brownfield sites.
99. Local Plan Policy H4 explains that the Council will seek to negotiate with developers to provide a minimum of 40% affordable housing. The S.106 Undertaking executed by the appellant (ID 66) secures the provision of four of

the 32 proposed houses as “affordable dwellings”, which equates to only 12.5%. The Council contends that Feniton’s need has already been provided for, at least until 2017, through provision of the affordable homes required as part of the Wainhomes Phase 1 scheme, but this is based on the findings of a 2012 “Feniton Local Housing Needs Report”, which have not yet been tested at EiP. In any event, the Council acknowledges that East Devon currently has an “overwhelming” district-wide need for affordable housing. That being the case, the four new affordable dwellings that would be provided on the appeal site is a benefit that carries a small amount of weight in favour of permitting the appeal; not as much weight as would have been the case had 40% of the proposed dwellings been secured as affordable.

100. The S.106 Undertaking provided by the appellant contains various other planning obligations. A planning obligation may only constitute a reason for granting planning permission if it is necessary to make the development acceptable in planning terms, directly related to the development, and fairly and reasonably related to it in scale and kind. One of the obligations contained in the Undertaking is to pay a £216,800 “Education Contribution”. As discussed above [66], this is the sum calculated by the County Council as necessary to enable the provision of additional education facilities to accommodate the children likely to be living in the proposed 32 new houses, and so renders the impact of the development neutral in these terms.
101. Similarly, the provision for payment of an £85,000 “Flood Relief Contribution” in the S.106 Undertaking is rendered necessary by the importance of ensuring that Feniton’s existing flooding problems are not made worse by the construction of further housing, and so constitutes mitigation for, rather than a benefit of, the proposed development.
102. The S.106 Undertaking also includes obligations to make a contribution toward an “all-weather multi-purpose sports facility”, to relocate the existing cricket pitch further north within the playing fields, and to reposition a power cable to facilitate the expansion of adjacent sports facilities. There is evidence that the village already has an adequate supply of sports facilities. It is, however, material to note that while the current state of the appeal site limits its potential usefulness for recreational purposes, it is nevertheless part of an area identified under Local Plan Policies RE1 and RE4 as a Recreation Area / Allotment site. I therefore accept the Council’s argument that the contributions toward facilitating other recreational opportunities are necessary to compensate for its loss to housing, in order to prevent any conflict with the aims of Policies RE1 and RE4.
103. For the reasons discussed above [87 – 88], I consider that permitting the proposed 32 new dwellings would have an adverse impact, of some weight, on the vitality and social inclusivity of the existing community at Feniton.
104. The only (still extant) Development Plan policy with which the Council’s refusal notice identified conflict was Local Plan policy S5. For the reasons set out above [19 – 24] I have concluded that the provisions of the NPPF mean that policy S5 must be considered “not up-to-date”, and so the fact that the development would take place outside the settlement boundary is not, in and of itself, a reason to refuse permission. As to the location of the development in the countryside adjoining the settlement boundary, I have already noted above that improvements in the character and appearance of the area, as a

result of the proposed re-development of the appeal site, carries some weight in its favour. However, I have also found that the new housing would be likely to increase the number of journeys made by private car [79], and this is an adverse environmental impact of some weight.

105. Taking all of this into account, I conclude that considered on its own merits, the benefits of permitting this particular proposal would on balance clearly outweigh the adverse impacts.

*The SLP 120-home Appeal*

106. As with the Feniton Park Limited appeal, the fact that the proposed development would help to remedy the district's existing significant shortfall in housing carries considerable weight in its favour. Further, in the context of East Devon's "overwhelming" district-wide need for affordable housing, the fact that 40% of the new dwellings would be provided as affordable homes, in accordance with Local Plan Policy H4, carries some weight in favour of the proposed development. I have found that the economic benefits of constructing additional housing at Feniton would not be unalloyed, but consider that they nevertheless carry a small amount of weight in favour of the proposed 120 new dwellings.

107. However, unlike the Feniton Park Limited appeal, I have found that the harm this proposal would cause to the character and appearance of the area constitutes an adverse impact of great weight [45]. While this harm was not offset by the proposed provision of publicly accessible facilities such as allotments, a community orchard and managed parkland, it is fair to note that those facilities would bring community and social benefits which should be afforded a small amount of weight in the overall balance.

108. A further consideration is the impact that the proposed development would have on the Grade II Listed Building known as Sweethams, and on the historic linear boundary separating the parishes of Feniton and Ottery St Mary. Sweethams stands in a fairly prominent position on the road leading from the A30 into Feniton, close to the southern boundary of the appeal site. Originally a 17<sup>th</sup> Century cottage, it has been the subject of a number of alterations and more modern additions. Its significance derives mainly from the evidential value contained within its original fabric, and from its historic value as a rural dwelling of some antiquity. The building also retains its close association with the road network between Feniton and Ottery St Mary, and this aspect of its setting makes a positive contribution to its significance, as does the surrounding farmland, being part of this rural dwelling's original context.

109. Having special regard to the desirability of preserving the Listed Building and its setting<sup>13</sup>, I note that neither the physical fabric of Sweethams nor its relationship with the road network would be affected by the proposed development. However, the construction of housing and a landscaped park on a previously undeveloped field, which to date has formed part of the historic agricultural context for the dwelling, would have an adverse impact on this aspect of its setting and thereby the significance of the Listed Building.

110. The ancient boundary in question dates back at least as far as the 11<sup>th</sup> Century. Historically, it marked the division between Hayridge Hundred and

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<sup>13</sup> A statutory requirement imposed by S.66 of the Planning (Listed Buildings and Conservation Areas) Act 1990

Ottery Hundred, was the parish boundary between Feniton and Ottery St Mary, and was also a manorial boundary. Its significance derives from its association with the historic division, ownership and administration of the land, but the extent to which the boundary today remains a discernible feature within the landscape is limited. A hedge remains along the line of the boundary to the west of the appeal site, although there is little visible distinction between this and other field-boundary hedges. There is no visible above-ground remnant of the boundary on the appeal site itself, or amid the existing development of Feniton on the eastern side of the appeal site.

111. I appreciate that the illustrative layouts of the two SLP proposals make some acknowledgement of the route the ancient boundary followed: the 120-home proposal by planting trees along a path following its route, and the 59-home proposal by restricting the built-up part of the development to its northern side. Nevertheless, it seems to me that the proposed construction of housing within the setting of this ancient landscape feature will have the adverse impact of further obscuring the already limited opportunity for present-day observers to appreciate its historic significance.
112. As to the overall impact of the proposed development, I share the view reached by the respective Heritage Experts instructed by SLP and Wainhomes, who both concluded that in the terms of paragraph 134 of the NPPF, the harm to the significance of Sweethams and the historic boundary would, in each case, be "less than substantial". That harm nevertheless remains an adverse impact of some weight, to be included in the overall balance.
113. The proposed development would result in the permanent loss of approximately 5 ha of Grade 2 agricultural land, currently farmed under a tenancy agreement. I consider this to be an adverse impact of some weight.
114. The Ecology Expert instructed by Wainhomes expressed concern about the effect that the proposed development could potentially have upon protected species: specifically, bats and dormice. I note that no detailed surveys for bats were undertaken. The evidence of the Ecology Expert instructed by SLP is that this was because the only trees in which bats might roost are located on the eastern margin of the site, where it was just possible though unlikely that there may be summer roosts, but where any such roosts would be unaffected by the proposed development. Wainhomes dispute this, on the grounds that the likely increase in ambient light levels could potentially cause bats to abandon such roosts. However, the existing ambient light levels are likely to be fairly high, due to the close proximity of street lamps and residential development on the opposite side of the road to the trees. Since it would be possible to impose a condition requiring prior approval of a lighting strategy for the proposed development, I am satisfied that a significant increase in ambient light levels, such as might cause the abandonment of roosts, could be avoided.
115. Other concerns about bats related to the potential for roosts in the modern buildings along Ottery Road, and the farmstead at Long Park, rather than on the appeal site itself. As to the possible use of the appeal site for foraging, full details of the layout and landscaping of this outline proposal are not currently before me, but SLP have confirmed that the existing hedgerows would be retained and enhanced. Guidance set out in Government Circular 06/2005 *Biodiversity and Geological Conservation – Statutory Obligations and their impact within the Planning System* explains that bearing in mind the delay and

- cost that may be involved, developers should not be required to undertake surveys for protected species unless there is a reasonable likelihood of the species being present and being affected by the development.
116. Taking all of this into account, I consider that were I minded to grant outline planning permission for the development, concerns about the potential overall impact on the use of the appeal site by foraging bats could be adequately addressed by a condition requiring that surveys be undertaken to inform the Reserved Matters applications.
117. As to the possible presence of dormice, I note that while there are no historic records of dormice being found on this side of the River Tale, the species was recorded in hedgerows at the Wainhomes site, and so could be present in hedgerows at the SLP site. While two sections of the eastern boundary hedge would be removed, the absence of woody vegetation reduces the possibility of dormice being present and affected. By contrast, the western boundary hedge provides more suitable habitat conditions for dormice, and this would be enhanced by a belt of adjoining tree and shrub planting. Overall, as Wainhomes acknowledge, it is likely that the proposed development would provide improved opportunities for dormice.
118. I note that the Council considers the proposed development has the potential to add value to, rather than detract from, the biodiversity and ecological status of the appeal site. I share that view, and conclude that the concerns raised by Wainhomes in this respect do not weigh against granting permission for the proposal.
119. The SLP appeal site is not itself in an area at risk of flooding, but includes land that the Council is seeking to use in the delivery of its Flood Defence Scheme for the village. The provision of this land as part of the appeal proposal would provide immediate flood-risk reduction measures, in terms of surface water attenuation and improvements to the foul water drainage situation, for neighbouring properties to the south, and would assist the long-term plans for flood protection in Feniton. I recognise that the flood alleviation works could alternatively be completed by the Council using its powers as Land Drainage Authority, but the benefit of more prompt relief for the severe flooding problems currently experienced at Sweethams and Metcombe Cottages carries a small amount of weight in favour of the proposed development.
120. The development proposal also includes the provision of an area of serviced land, for employment use, and SLP suggests that this might enable the Coleridge Medical Centre to recommence surgeries in Feniton, and the pharmacy to re-open. However, there is no evidence to suggest that to date the lack of serviced land has been the only factor preventing the Medical Centre and pharmacy opening in Feniton, or that there is any current interest from other employment-generating potential occupiers. The land in question benefits from being close to the railway station, but the likelihood of its development and subsequent occupation for employment purposes is uncertain and would depend largely on the price, which is not subject to any proposed control mechanism. In the circumstances, I attach only very limited weight to the benefit of providing this employment land.
121. In addition to securing the affordable housing, the two S.106 Agreements relating to this proposal contain a number of other planning obligations. The

payment of a contribution toward a cycle route to St Mary accords with the aims of Local Plan Policy TA4, and the provision of a Travel Plan and Travel Vouchers to future occupiers of the proposed dwellings accords with the aims of Local Plan Policy TA3. Along with the provisions for the management and maintenance of the Public Open Space, Play Area and allotments provided as part of the development, these obligations meet the requirements of CIL Regulation 122.

122. The S.106 Agreement entered into with Devon County Council makes provision for payment of an Education Contribution; that is, the sum calculated by the County Council as necessary to fund the provision of additional education facilities needed to accommodate the children likely to be living in the proposed new houses [66]. It also includes the option for the County Council to accept the transfer into its ownership of land adjacent to Feniton Primary School, owned by the appellant, in lieu of payment of part of the overall Education Contribution to equivalent value.
123. I note SLP's contention that these provisions have considerable benefits, in terms of enabling the County Council to acquire the land needed for expansion of the Primary School. However, the Education Contribution calculated by the County Council took account of the costs of purchasing such land, and if it could not secure acquisition through negotiation with the landowner, it could do so through exercising powers of Compulsory Purchase. That being the case, I am not persuaded that the land transfer arrangements in the S.106 Agreement offer any tangible benefits above and beyond offsetting the impact of the development, which could equally be achieved by payment in full of the requested financial contribution. In my view they do not carry any additional weight in favour of this proposed development, but simply render its impact on local educational services neutral.
124. SLP also points out that the land in question is currently occupied by the Feniton Sports and Social Club, which would be served with a notice to quit if the land were to be transferred to the County Council, and under the terms of its lease, would then be paid a "compensation" payment of £200,000 if it vacated the land within 12 months. SLP contends that this sum of money will help the Club to fund the provision of a new pavilion, for which it already has planning permission. It seems to me that this chain of cause and effect is somewhat tenuous, and lacks certainty. For example, there is no indication that the Club is reliant on the compensation payment to fund its new pavilion, or that it would necessarily put the money to that purpose: the letter I was shown simply states that, as might be expected, the payment is "...something the Club fully intends to take advantage of."<sup>14</sup> I do not doubt that the compensatory payment could potentially facilitate the Club's move from old to new premises, but I do not think this can reasonably be accounted a specific benefit of the development proposal such as to carry any appreciable weight in its favour.
125. I have found that constructing new housing in Feniton would be likely to increase the number of journeys made by private car [79], and this is an adverse environmental impact of some weight.
126. In the context of considering the impact that the Feniton Park Ltd appeal would have on the local community, I concluded that the construction of 32

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<sup>14</sup> Appendix 7 of Mr Seaton's proof of evidence

new houses on appeal would have an adverse impact on social inclusivity [103]. The 120 new houses proposed in this scheme would have a much greater impact; taken together with the 50 already permitted as Wainhomes Phase 1, the current proposal would increase the size of the 674-home village by 25%. This would increase the likelihood and extent of the harm to the existing community that I identified above [87 – 88], and so increases the weight this consideration carries in the overall balance.

127. Weighing all of these many considerations in the balance, I conclude that when assessed on its own merits, the adverse impacts of permitting this particular proposal would significantly and demonstrably outweigh the benefits.

*The SLP 59-home Appeal*

128. Since this proposal concerns a similar, but smaller, development on the same appeal site as the SLP 120-home scheme, the various benefits and adverse impacts are largely similar and so I need not repeat the reasons for their attribution here. Instead, I focus on the extent to which the differences between the two SLP schemes affect the weight afforded.

129. The provision of housing in the context of the district's existing shortfall remains a benefit of considerable weight, and the economic benefits associated with that housing carry a small amount of weight. However, as part of this proposal, only 25% of the new dwellings would be delivered as affordable homes, rather than the 40% that Local Plan Policy H4 specifies as the starting point for "windfall" sites such as this. In the context of the acknowledged district-wide need for affordable housing the provision of this reduced number is still a benefit, but of significantly lesser weight than it would carry had 40% been provided.

130. In my assessment of the impact that the SLP proposals would have on the character and appearance of the area, I concluded that the extent of the built-up development in the 59-home scheme would occupy a smaller proportion of the appeal site than would the built-up area of the 120-home scheme, and so the associated harm would be less. I went on to conclude that nevertheless, the harm that would be caused to the character and appearance of the area, by either of the two schemes, is an adverse impact of great weight [45].

131. Larger areas of publicly accessible open space would be provided by the 59-home scheme than by the 120-home scheme, and the additional community benefit associated with these would result in a slight increase to the weight carried in favour of permitting the smaller scheme. However, since I have found that the proposed provision of serviced employment land as part of the 120-home scheme would have benefits of only very limited weight, I do not consider these would be appreciably increased by the larger area of employment land to be provided under the 59-home scheme.

132. The weight attached to the adverse impact on heritage assets and the loss of approximately 5ha of Grade 2 agricultural land would remain the same as for the 120-home scheme, as would the weight attached to the benefit of early delivery of flood alleviation measures on the appeal site. The lower number of dwellings in this scheme would be likely to result in less of an increase in the number of journeys made by private car than would be the case for the 120-home appeal, but as with the 32 home Feniton Park Limited appeal, I consider this would still be an adverse environmental impact of some weight.

The lower housing numbers would also result in less of an adverse impact on the existing community, but again, as with the Feniton Park Limited appeal, this still needs to be afforded some weight in the overall balance.

133. The two S.106 Agreements completed in respect of this proposal would mitigate the impacts the development would otherwise have on local infrastructure and services, and would comply with the requirements of CIL Regulation 122, in the same way as the two S.106 Agreements completed in respect of the 120-home proposal.

134. I find that in comparison with the benefits of the 120-home scheme, the benefits of the 59-home scheme weigh very slightly heavier in the balance. Nevertheless, assessed on its own merits, the adverse impacts of permitting this particular proposal would still significantly and demonstrably outweigh the benefits.

#### *Wainhomes*

135. As with the other three appeal proposals, the provision of housing in the context of the district's existing shortfall is a benefit that carries considerable weight, and for the reasons already discussed above, the economic benefits associated with that housing carry a small amount of weight. The proposal includes the provision of 33 of the proposed 83 new houses as affordable dwellings, in accordance with Local Plan Policy H4, and this carries some further weight in favour of the proposed development.

136. I have concluded above that the harm the proposed development would cause to the character and appearance of the area is an adverse impact of considerable weight [54]. I have also found that the loss of Grade 2 agricultural land would be an adverse impact of some weight, as would the increase in journeys made by private car that would result from the proposed development. For the reasons discussed above [87 - 88], I consider that permitting 83 new house on appeal would have adverse consequences for the community, which carries some weight against permitting the proposed development.

137. In addition to securing the provision of the proposed affordable dwellings, the S.106 Agreement completed by the appellant, the land owners and the relevant authorities contains a number of other planning obligations. The provision of Public Open Space and an equipped play area are necessary to meet the needs of future occupiers. The financial contribution toward the Ottery St Mary Cycle Link accords with the aims of Local Plan Policy TA4, and the Education Contribution would enable the provision of additional education facilities needed to accommodate the children likely to be living in the proposed 83 new houses. I am satisfied that all of these obligations meet the requirements of CIL Regulation 122.

138. The S.106 Agreement also secures the completion of Flood Alleviation Works, as part of the Council's proposed Flood Defence Scheme for Feniton, on the owners' land or, if certain conditions are not met, payment of £200,000 instead. At the inquiry, Wainhomes contended that these works were not strictly necessary to make the proposed development acceptable in planning terms, since the surface-water drainage scheme that would form part of the development would, in any event, ensure that the construction of the new houses would not worsen the existing flooding problems in Feniton.

Nevertheless, delivery of the Flood Alleviation Works is an important component of the overall Flood Defence Scheme for Feniton, and informed the Council's assessment that the current proposal would be acceptable in terms of its impact on surface water drainage. That being the case I consider that this planning obligation is necessary to make the development acceptable in planning terms, and is directly, fairly and reasonably related to the proposed development. It therefore meets the tests of CIL Regulation 122.

139. I conclude that assessed on its own merits, the adverse impacts of permitting this particular proposal would significantly and demonstrably outweigh the benefits.

### **Conclusions**

140. I have considered, in some detail, the impacts of each individual development proposal. The conclusion that emerges from that consideration is that the Feniton Park Ltd scheme ought to be permitted because, far from the adverse impacts significantly and demonstrably outweighing the benefits, the benefits would clearly outweigh the harm. As to the two SLP proposals and the Wainhomes scheme, I have found that the adverse impacts of each would significantly and demonstrably outweigh the benefits, which leads to the conclusion that planning permission for these three proposals should be refused.
141. Had I found that more than one of the proposed schemes should be permitted, it would have been necessary then to go on to consider their combined impacts, in order to assess whether any ensuing shifts in weight altered the balance of benefits and adverse impacts. However, it is clear that while the Feniton Park Ltd scheme should be permitted in any event, each of the other three proposals should be refused on the balance of their own merits. The effect of permitting any of these other proposals in addition to the Feniton Park Limited scheme would be to increase the weight on the "adverse impact" side of the balance, principally due to the additional harm that would be caused to the existing community through increasing the overall proportion of additional dwellings [87 - 88]. That being the case, there is no merit in assessing cumulative impacts further.
142. I determine that the Feniton Park Limited appeal should be allowed, but the SLP 120-home appeal, the SLP 59-homes appeal and the Wainhomes appeal should be dismissed.

### **Conditions**

143. Each of the three appellants helpfully agreed with the Council a list of suggested conditions to be imposed if their respective appeals were allowed, and these were discussed at the inquiry. The list of conditions agreed between Feniton Park Ltd and the Council is document ID 56. I have considered these in the light of the tests set out at paragraph 206 of the NPPF, and the further advice contained in the PG. The conditions that I impose on the grant of planning permission for the Feniton Park Ltd proposal are set out in the schedule attached as Appendix C to this decision.
144. The first of those is a condition requiring the development to commence within two years. This reduction in the usual three-year time limit reflects the fact that taking prompt steps to address the district's current housing shortfall

is a consideration which has carried considerable weight in favour of permitting the proposal. The next condition imposes the standard requirement that the development be completed in accordance with the approved plans.

145. I have attached the suggested conditions requiring the development to be carried out in accordance with detailed schemes, which must first be approved by the Council, to ensure that the ecology and biodiversity of the site, including retained trees, are adequately protected and that all necessary mitigation measures are implemented and maintained.
146. Importantly, the Drainage Strategy for the proposed development involves disconnecting the surface water from Feniton's combined sewer system, so as to secure an overall reduction in flows discharging into that system. I have therefore imposed a condition requiring the design of a detailed surface water drainage scheme to be approved before development starts. I have also imposed a condition requiring a Construction Method Statement to be agreed with the Council before development starts, to minimise the impact on the living conditions of neighbouring residents during the construction period.
147. I have attached conditions requiring further details of the landscaping of the site, including the boundary treatments, and also details of the materials and finishes to be used for the external surfaces of the dwellings, to be agreed with the Council. This will help to ensure that the visual improvements associated with the proposed development are maximised. I have also attached the suggested series of conditions governing the provision of highway-related infrastructure, to ensure that safe access is available to all users. Finally, bearing in mind the previous use of the land, I have attached a condition specifying the action to be taken should contamination be discovered.

*Jessica Graham*

INSPECTOR

## **APPENDIX A: APPEARANCES**

### FOR THE LOCAL PLANNING AUTHORITY:

Mr R Ground, of Counsel He called:	Instructed by the Solicitor to the Council
Mr M Dickins MRTPI	Planning Policy Manager
Mr N Blackmore BSc(Hons) CMLI	Principal Landscape Architect
Mr C Rose BA(Hons) BTP MRTPI	Principal Planning Officer

### FOR FENITON PARISH COUNCIL:

Mr C Hopkins MA (Oxon) PG Dip Law He called:	Solicitor (non-practising), Planning and Environmental Consultant
Mr M Smith	Chairman, Feniton Parish Council
Dr C Horrocks PhD MA (Cantab)	Post-Doctoral Research Assistant
Mr R Giles	Devon County Councillor for Feniton (1993-2013)

### FOR FENITON PARK LTD:

Mr P Cairnes, of Counsel He called:	Instructed by Atkins Ltd
Mr A Jones BA(Hons) PgDipTP MRTPI	Principal Planner, Atkins Ltd

### FOR STRATEGIC LAND PARTNERSHIPS:

Mr D Corsellis He called:	Solicitor, Stephens Scown LLP
Mr C Britton BSc(Hons) MLA CMLI	Managing Director, Chris Britton Landscape Associates
Mr D Seaton BA(Hons) MRTPI	Joint Founder, PCL Planning Ltd

### FOR WAINHOMES (SOUTH WEST) HOLDINGS LTD:

Mr V Fraser, Queen's Counsel He called:	Instructed by Mr S Harris of Emery Planning Partnership
Ms C Brockhurst BSc(Hons) PgDipLA FLI	Partner, Tyler Grange LLP
Dr J Edis BA MA PhD MIFA IHBC	Partner, Heritage Collective LLP
Mr J Arthur BSc MSc CIEEM CEnv	Partner, Tyler Grange LLP
Mr I Awcock CEng MICE MIHT MCIWEM	Director, Awcock Ward Partnership
Mr S Harris BSc(Hons) MRTPI	Director, Emery Planning Partnership

INTERESTED PERSONS:

Mr T Ives	Ms J Blackmore
Ms C Gibbins	Ms T Bennett (on behalf of Mr and Mrs Cooper)
Mr Crowe-Swords	Mr E Peters
Neil Parish MP	Mr C Burton
Dr J Withrington	Mr B Knollman
Cllr C Wright	Cllr S Bond
Mr D Valentine	Mr D Lanning
Rev D Beaven	Mr M Simic
Ms V Jones	Ms P Hill
Ms G Ewings	Ms B Floodgate
Mr A Harper	Dr A Macintyre
Ms S Collins	Ms J Seal
Dr M J Hall (on behalf of CPRE)	Mr I Walker
Mr T Clarke	Mr M Maries
Ms M Cornish	Mr C Gibbins
Ms H Chapman	Mr L Mullinger
Rev K Edmonds	Ms E Clarke
Ms S Derbyshire	Ms B Powell
Ms M Hawker	Mr D Baker
Mr D May	Mr R Barras

Mr Gordon-Lennox (Solicitor to the Council), Mr Wood (Solicitor to Feniton Park Ltd), Mr Oliver (Solicitor to Wainhomes (South West) Holdings Ltd), Mr Cutler (Director, Feniton Park Ltd) and Mr Niles (Strategic Education Manager, Devon County Council) took part in the S.106 discussion session.

Mr Brown (Principal Planning Officer, East Devon Council) took part in the conditions discussion session.

## **APPENDIX B: DOCUMENTS SUBMITTED AT THE INQUIRY**

- ID 1 Notice of appearances (with time estimates) on behalf of Feniton Park Ltd
- ID 2 Copies of e-mail correspondence between Feniton Park Ltd and the Council
- ID 3 List of erratum in Mr Jones' proof of evidence (submitted by Feniton Park Ltd)
- ID 4 Note of agreed position on Housing Land Supply (by all 5 main parties)
- ID 5 Copy of opening submissions made on behalf of Feniton Park Ltd
- ID 6 Copy of opening submissions made on behalf of SLP
- ID 7 Copy of opening submissions made on behalf of Feniton Parish Council
- ID 8 Draft S.106 Agreement, submitted by Wainhomes
- ID 9 Statement of Common Ground between the Council and SLP
- ID 10 4 executed S.106 Agreements, submitted by SLP
- ID 11 Bundle of letters from local residents, expressing concern about the change of inquiry venue from Feniton Bowling Club to the Flybe Training Academy
- ID 12 Copy of article entitled "Praise for village" published in the *Midweek Herald*, concerning flooding in Feniton
- ID 13 List of the names (and availability) of local residents wishing to speak at the inquiry
- ID 14 Copy of *Traffic Flow Ranges for Use in the Assessment of New Rural Roads*, submitted by Feniton Parish Council
- ID 15 Note setting out the existing width dimensions of Ottery Road to Patteson's Cross, submitted by Feniton Parish Council
- ID 16 Feniton and Buckerell Ward Method of transport to work comparison data 2001-2011, submitted by Feniton Parish Council
- ID 17 Copy of the IHT publication *Guidelines for Providing For Journeys On Foot*, submitted by Feniton Parish Council
- ID 18 Mr Awcock's Rebuttal Evidence, submitted by Wainhomes
- ID 19 Copy of the Devon County Council publication *Exeter-Honiton-Axminster Corridor: Infrastructure Report for East Devon Local Plan (July 2013)* submitted by Wainhomes
- ID 20 Copy of the current timetable for adoption of the emerging Local Plan and Villages Development Plan Document, submitted by the council
- ID 21 The Draft Programme for the emerging Local Plan's Examination in Public, submitted by the council
- ID 22 Copies of the Council's letters notifying interested parties that each of the four appeals had been lodged
- ID 23 Mr Awcock's Update Technical Note: Cumulative Impacts at Ottery Road, submitted by Wainhomes
- ID 24 Axminster Ward Method of transport to work comparison data 2001-2011, submitted by Feniton Parish Council
- ID 25 Supplementary Proof of Evidence of Dr Margaret J Hall (on behalf of CPRE)
- ID 26 Table setting out the three different methods put forward for assessing the percentage increase in dwellings in Feniton in the event that the Feniton Park Ltd proposal were constructed
- ID 27 Commentary on Mr Awcock's Rebuttal Evidence concerning drainage matters, submitted by Feniton Park Ltd
- ID 28 Copy of e-mail sent by Mr M Iles of Laurence Rae Associates Ltd to the Council on 15 March 2013, submitted by Feniton Park Ltd
- ID 29 Copy of the Laurence Rae Associates Ltd Drainage Strategy dated March 2013, submitted by Feniton Park Ltd

- ID 30 Copy of oral representations made to the inquiry by Cllr C Wright
- ID 31 Letter from Ms F K Jarrett (Headteacher of The King's School, Ottery St Mary) dated 4 December 2013, submitted by Cllr C Wright
- ID 32 Ariel photograph, Drainage Plan (extracted from the Wainhomes Flood Risk Assessment), Plan showing ground levels (provided by the Environment Agency) and collection of photographs showing flooding in December 2012, January 2013 and January 2014, submitted by Ms V Jones
- ID 33 Draft list of suggested conditions for the Feniton Park Ltd appeal
- ID 34 Extract from the July 2010 LVIA concerning the 50 houses permitted on appeal on land adjoining Louvigny Close, submitted by the Council
- ID 35 Devon County Council Position Statement, dated 8 January 2013, concerning Ottery Learning Community & Feniton Primary School
- ID 36 Draft S.106 Agreement and explanatory note, submitted by Wainhomes
- ID 37 Draft lists of suggested conditions for the two SLP appeals
- ID 38 Extract from the Costs Circular 03/2009, submitted by the Council
- ID 39 List of local residents wishing to speak at the inquiry's evening session
- ID 40 Documents submitted at the inquiry's evening session: copies of the representations made by Ms H Chapman, Mr I F Walker, Ms S Derbyshire, Cllr S Bond and Mr M Maries, and photographs of flooding at 23 Feniton Gardens and Patteson's Cross
- ID 41 Copy of Howick Consultants plan titled "Flood Alleviation Proposals Option 5C Relief Works 2" (drg. no. 110.5C Rev B), submitted by Wainhomes
- ID 42 Letter to the Inspector from Mr N M Bennett, dated 15 January 2014
- ID 43 Inspector's note concerning the S.106 Planning Obligations
- ID 44 e-mail to the Planning Inspectorate from Network Rail dated 16 January 2014, requesting a financial contribution of £1,045,000 if the four appeal proposals were to be allowed
- ID 45 e-mail to the Planning Inspectorate from Network Rail dated 23 January 2014, advising that it would like to withdraw its request for a financial contribution
- ID 46 e-mail to the Planning Inspectorate from Network Rail dated 27 January 2014, confirming that Network Rail has no objection to any of the appeal proposals
- ID 47 Costs Argument on behalf of Feniton Park Ltd
- ID 48 Cost Applications made in respect of the two SLP appeals
- ID 49 Note setting out the approach taken by Devon County Council to requests for contributions toward Education Infrastructure in respect of each of the four appeal proposals, submitted by the Council
- ID 50 Copy of the Devon County Council publication *Education Section 106 Infrastructure Approach*
- ID 51 Copies of correspondence with the Council relevant to the costs application, submitted by SLP
- ID 52 Response to the Inspector's note concerning Section 106 Planning Obligations, submitted by SLP
- ID 53 Copy of an e-mail dated 28 January 2014 from the County Council's solicitor concerning the enforceability of the relevant SLP S.106 Agreements
- ID 54 Copy of Appeal Decision ref: APP/U1105/A/13/2202124 (Land East of Harepath Road, Seaton, Devon) submitted by SLP
- ID 55 Copy of Devon County Council's Position Statement (January 2014) for the emerging Local Plan Examination in Public, submitted by SLP

- ID 56 Updated draft list of conditions for the Feniton Park Ltd appeal
- ID 57 e-mail from the Council's Solicitor to Feniton Park Ltd dated 25 June 2013, concerning the S.106 Undertaking
- ID 58 Updated version of Document 36 (supra), submitted by Wainhomes
- ID 59 Letter to the Inspector from Neil Parish MP, dated 4 February 2014
- ID 60 Photographs of flooding at and adjacent to the Wainhomes appeal site on 5 February 2014, submitted by Ms V Jones
- ID 61 Signed Statement of Agreement between the Council and Feniton Park Ltd that the S.106 financial contribution toward Flood Relief complies with Regulation 122 of the Community Infrastructure Levy Regulations 2010
- ID 62 Revised draft S.106 Unilateral Undertaking, submitted by Feniton Park Ltd
- ID 63 Copy of the Council's Supplementary Planning Document *East Devon Open Space Study*, including Appendix A "Developer Contributions"
- ID 64 Executed S.106 Agreements made between the Council, SLP and the owners of the SLP appeal site
- ID 65 Executed S.106 Agreement made between the Council, Devon County Council, Wainhomes and the owners of the Wainhomes appeal site
- ID 66 Executed S.106 Undertaking given by Feniton Park Ltd and the owners of the Feniton Park Ltd appeal site
- ID 67 Copy of the closing submissions made on behalf of Feniton Parish Council
- ID 68 Copy of the closing submissions made on behalf of the Council, including a copy of the judgment in *William Davis Limited, Jelson Limited v Secretary of State for Communities and Local Governments, North West Leicestershire District Council* [2013] EWHC 3058 (Admin)
- ID 69 Copy of the closing submissions made on behalf of Wainhomes
- ID 70 Copy of the closing submissions made on behalf of SLP
- ID 71 Copy of the closing submissions made on behalf of Feniton Park Ltd
- ID 72 Copy of the Council's response to the application for costs made by Feniton Park Ltd (Document 47 supra)
- ID 73 Copy of the Council's response to the applications for costs made by SLP (Document 48 supra)

#### **DOCUMENTS SUBMITTED AFTER THE INQUIRY CLOSED**

- ID 74 Letter from the Planning Inspectorate to the five main parties dated 17 March 2014, inviting comments on the implications of the PG for their respective cases
- ID 75 Feniton Parish Council's response to ID 74 supra, received 25 March 2014
- ID 76 The Council's response to ID 74 supra, dated 27 March 2014
- ID 77 Wainhomes' response to ID 74 supra, dated 27 March 2014
- ID 78 SLP's response to ID 74 supra, dated 26 March 2014

## **APPENDIX C: SCHEDULE OF CONDITIONS**

- 1) The development hereby permitted shall begin not later than two years from the date of this decision.
- 2) With the exception of any variation rendered necessary by compliance with conditions 3 – 12 below, the development hereby permitted shall be carried out in accordance with the following approved plans:

Existing site plan	343.22
Site location plan	343.01
Context plan	343/20H
Proposed site plan	343/21H
Street elevations and sections	343/23C
Proposed house type	343/03B
Proposed house type	343/04C
Proposed house type	343/07C
Proposed house type	343/08C
Proposed house type	343/09B
Proposed house type	343/10C
Proposed house type	343/11B
Proposed house type	343/12A
Proposed house type	343/13C
Proposed house type	343/14
- 3) No development shall take place, including any works of demolition, until details of all measures necessary to ensure that the development is undertaken in accordance with the baseline ecological assessment completed by Ambios Ecology (dated March 2011), and that the necessary mitigation measures are subsequently maintained, have been submitted to, and approved in writing by, the local planning authority. The development shall be carried out in accordance with the approved details.
- 4) No development shall take place, including any works of demolition, until a detailed scheme for the protection of retained trees during construction has been submitted to, and approved in writing by, the local planning authority. The Tree Protection Scheme shall include provision for the supervision of tree protection by a suitably qualified and experienced arboriculture consultant. The development shall be carried out in accordance with the agreed Tree Protection Scheme, shall adhere to the principles set out in BS 5837:2012 "Trees in relation to design, demolition and construction", and shall observe the following restrictions
  - no trenches for services or drainage shall be dug within the crown spread of any retained tree (or within half the height of that tree,

- which ever is the greater) unless agreed in writing by the local planning authority;
- the installation of utilities shall be in accordance with the advice given in Volume 4: National Joint Utilities Group (NJUG) Guidelines for the Planning, Installation and Maintenance of Utility Apparatus in Proximity to Trees (Issue 2) 2007
  - No changes in ground levels, or excavations, shall take place within the crown spread of any retained tree (or within half the height of that tree, which ever is the greater) unless agreed in writing by the local planning authority.
- 5) No development shall take place, including any works of demolition, until a detailed Surface Water Drainage Scheme has been submitted to and approved in writing by the local planning authority. The Scheme shall be implemented in accordance with the approved details prior to the occupation of any of the dwellings hereby permitted. The Scheme shall include
- information about the design storm period and intensity, the method employed to delay and control the surface water discharged from the site and the measures taken to prevent pollution of the receiving groundwater and/or surface waters;
  - a timetable for each stage of implementation; and
  - a management and maintenance plan for the lifetime of the development which shall include the arrangements for adoption by any public or statutory undertaker and any other arrangements to secure the operation of the scheme throughout its lifetime.
- 6) No development shall take place, including any works of demolition, until a Construction and Environment Management 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 parking of vehicles of site operatives and visitors
  - ii) loading and unloading of plant and materials
  - iii) storage of plant and materials used in constructing the development
  - iv) the erection and maintenance of security hoarding including decorative displays and facilities for public viewing, where appropriate
  - v) wheel washing facilities
  - vi) appropriate lighting
  - vii) measures to control the emission of dust, dirt and other pollution, including noise and vibration, during construction and to prevent the burning of any materials on site
  - viii) a scheme for recycling/disposing of waste resulting from demolition and construction works
  - ix) measures to secure air and water quality

- x) the restriction of construction working hours to between 0800 and 1800 on Monday to Friday, and 0800 to 1300 on Saturdays, with no working on Sundays or Bank Holidays.
- 7) No development shall take place until a Landscaping Scheme has been submitted to and approved in writing by the local planning authority. The Scheme shall include details of the planting of trees, hedges, shrubs, herbaceous plants and areas to be grassed; details of proposed walls, fences and other boundary treatments; a timetable for implementation; and details of future maintenance. Any trees or plants which within a period of 5 years from the completion of the development die, are removed or become seriously damaged or diseased shall be replaced in the next planting season with others of similar size and species, unless the local planning authority gives written approval to any variation.
- 8) No development shall take place until a schedule of materials and finishes to be used for the external walls and roofs of the permitted development, and if requested by the local planning authority samples of specific materials and finishes, has been submitted to and approved in writing by the local planning authority. The development shall be carried out in accordance with the approved details.
- 9) No development shall take place until plans and sections indicating as appropriate the design, layout, levels, gradients, materials and method of construction of the estate road, cycleways, footways, footpaths, verges, junctions, street lighting, sewers, drains, retaining walls, service routes, surface water outfall, road maintenance / vehicle overhang margins, embankments, visibility splays, accesses, car parking and street furniture have been submitted to and approved in writing by the local planning authority. The development shall be carried out in accordance with the approved details.
- 10) No development shall take place until
- the access road has been laid out, kerbed, drained and constructed up to base course level for the first 20 metres back from its junction with the public highway;
  - the ironwork has been set to base course level and the visibility splays required by this permission laid out;
  - the footway on the public highway frontage required by this permission has been constructed up to base course level; and
  - a site compound and car park have been constructed
- in accordance with details approved under condition no. 9 above.
- 11) None of the dwellings hereby permitted shall be occupied until
- the spine road and cul-de-sac carriageway, including the vehicle turning head, have been laid out, kerbed, drained and constructed up to and including base course level, the ironwork set to base course level and the sewers, manholes and service crossings completed;
  - the spine road and cul-de-sac footways and footpaths which provide that dwelling with direct pedestrian routes to an existing

highway maintainable at public expense have been constructed up to and including base course level;

- the cul-de-sac visibility splays have been laid out to their final level; and
- the car parking and vehicular access for that dwelling has been completed

in accordance with details approved under condition no. 9 above.

- 12) In the event of any contamination of soil and/or ground or surface water being discovered during excavation or development of the site, the local planning authority shall be contacted immediately. Site activities in the area affected shall be suspended until such time as a method and procedure for addressing the contamination is approved in writing by the local planning authority.