
Appeal Decision

Inquiry opened on 12 May 2015

Site visits made on 22 & 27 May 2015

by Clive Hughes BA (Hons) MA DMS MRTPI

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

Decision date: 10 August 2015

Appeal Ref: APP/W1145/A/14/2224155

Knapp House Activity Centre, Churchill Way, Northam, Bideford EX39 1NT

- 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 LTPH Property Ltd against the decision of Torridge District Council.
 - The application Ref 1/0984/2013/OUTM, dated 22 November 2013, was refused by notice dated 13 March 2014.
 - The development proposed is described as "mixed use development comprising marina, hotel, medical centre, food store, community hall, retail units/ café, care home/ dementia unit, assisted living units, up to 300 dwellings (including 20 local needs affordable), 80 holiday dwellings, play areas, open space, new access and ancillary infrastructure – affecting a public right of way".
 - The inquiry sat for 9 days on 12 to 15 May, 19 to 22 May and 27 May 2015.
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Decision

1. The appeal is dismissed.

Procedural Matters

2. The application is in outline form with all matters of detail reserved for future determination.
3. The development falls within the scope of Paragraph 10 of Schedule 2 of the Town and Country Planning (Environmental Impact Assessment) (England and Wales) Regulations 1999 (EIA Regulations). The planning application was accompanied by an Environmental Statement (ES) and an ES non-technical summary. At appeal stage the appellant was informed, pursuant to Regulation 22 of the EIA Regulations, that, to comply with Schedule 4 of the EIA Regulations, further information was required. This information was submitted just before the Inquiry opened. The further information was advertised, albeit that the time for further representations had not expired when the Inquiry opened, and forwarded to statutory consultation bodies. The Rule 6 party, No to Knapp Development (NKD), made verbal and written representations at the Inquiry. No other representations were submitted.
4. Prior to the opening of the Inquiry the appellants increased their offer in respect of the number of local needs affordable houses within the scheme from 20 to 75. The Council is satisfied that while the proportion remains below 40%, this increased amount is acceptable. The Council therefore decided not to offer any evidence in respect of its third reason for refusal.

5. During the Inquiry the appellant submitted two draft Unilateral Undertakings (UUs) in respect of i) the appeal site; and ii) land at Salterns Lea. These provide for, amongst other things, various financial contributions, the provision of 75 units of affordable housing and the provision of a compensatory site in respect of biodiversity matters. A completed UU was submitted after the close of the Inquiry in accordance with an agreed timetable. The UU, which requires the completion of the second UU relating to the compensatory site at Salterns Lea, is considered in greater detail below and has been taken into account in this Decision.

Background

6. The appeal site, which has an area of about 21.23 ha, is roughly rectangular. It is located to the east of Northam and is sited on the opposite side of Churchill Way to houses in J H Taylor Drive. Churchill Way is the main north/south road between Bideford and Appledore. The site lies on the west bank of the River Torridge, more or less mid way between Bideford and Appledore. It slopes downhill from west to east, with a central valley with a stream running down to the river. There are various uses within the site with much of it being agricultural and used for grazing. The north west corner is occupied by Knapp House which is a holiday and activity centre. There is a large house, dating from the 18th century, with additional related buildings. There is also a substantial caravan park. All this development is accessed from Churchill Way. The south east corner is partly a saltmarsh following a breach of the sea wall.
7. The land to the south is in agricultural use, with a couple of houses. To the west, on the opposite side of Churchill Way are houses and an organic shop (Marshford). To the north lies a substantial shipyard (The Appledore Shipyard/ Babcock Marine), several dwellings and agricultural fields while to the east is the River Torridge.
8. The site is highly visible from public viewpoints. There are public rights of way around all sides of it and a further public right of way that crosses it. Along the eastern boundary, adjacent to the river, and along part of the northern boundary, runs part of the National Trail known as the South West Coast Path. There is an alternative route for part of this path that runs north/south across the site. There is a footway beside Churchill Way along the western boundary. This footway has two further routes running east to the river. The footpath to the south of the site runs from Bloody Corner and, for much of its length, hugs the southern boundary of the site. A further track, Bidna Lane, runs to the north although for part of its length the site boundary runs further south to exclude Hillside Cottage, Mouna and River View from the site.
9. The site is also clearly visible from the east bank of the River Torridge. Along that bank runs part of the route of the Coast Path and a local long distance walk/ cycleway (The Tarka Trail). It can also be seen from the village of Westleigh and from Tapeley House, a Grade II* listed building set in a Grade II* Registered Park and Garden, both of which are set at a higher level on the opposite side of the river. The site is in the direct line of sight for those leaving Westleigh by road and heading west towards the main road and the river.
10. Various different parts of the site have been the subject of planning applications over the years. These are set out in detail in the Statement of Common Ground (SoCG). Of particular relevance have been various planning permissions for marina developments dating back to 1978. These have

involved the construction of a marina with associated developments which within the various applications have included club houses, stores, holiday homes, hotel, shops, restaurants etc. The most recent planning permission, in 1997, was a renewal of an earlier permission in 1993. These marina schemes all involved land at the eastern end of the site, close to the river.

11. In 1997 the Secretary of State (SoS) went against an Inspector's recommendation and dismissed an appeal for a marina, 245 dwellings and related industrial units on a site of about 8 ha adjacent to the river. This site was described as the south eastern part of the Knapp House estate, with a 250 boat marina in approximately the same position as now proposed but with a gap between the development and the ship yard. The site only extended about half way from the river to Churchill Way. The SoS concluded that although the issues were finely balanced, the benefits did not outweigh the harm from allowing permanent housing in this relatively isolated, rural location contrary to the objectives of the development plan and national policy.
12. The eastern part of the site, adjacent to the river, was allocated for a marina and associated holiday development in the *Bideford Area Local Plan 1994*. Policy AP13 stated that the use of the site for permanent accommodation would not be permitted and nor would the commencement of construction of the holiday accommodation be permitted in advance of the use of the marina. This allocation was not carried forward in the *Torrige District Local Plan 2004* (the LP). The eastern part of the site, about 2/3 of the appeal site, is identified on the Proposals Map accompanying the 2004 LP as being a Coastal Preservation Area (CPA). The easternmost part of the site, where it is proposed to dredge the river bed to create an access to the marina, lies within the Taw & Torridge SSSI. The site also lies within the buffer zone around a UNESCO biosphere, with the boundary lying a little way to the north of the centre of Northam and to the north on the far side of the estuary. The adjoining shipyard is in an area identified for general industrial use in the LP.
13. In August 2014 the Council adopted the *Torrige Estuary Strategy* (TES). This quotes the draft *Devon Economic Strategy 2013-2017* where it highlights the need for effective coastal/ estuarine infrastructure, including tourism facilities and marine facilities in order to encourage enterprise and tourism. The TES identifies that the North Devon coast lacks good berthing locations and identifies that there may be a market opportunity to provide marina facilities. It adds, however, in paragraph 6.12 that these need to be appropriately located and identified in the LP. At paragraph 7.3 this desire for a plan led approach is repeated, the TES saying that the Council will encourage marina developments in appropriate locations and in accordance with the LP.

The Proposals

14. The proposals involve the construction of a 250 berth marina, 300 dwellings, up to 80 units of holiday accommodation, the conversion of Knapp House to a hotel (up to 40 bedrooms), a private care village of 90 rooms and up to 100 independent living units, a food store, small shops and kiosks, a waterfront restaurant, offices, community centre, a water taxi service, water sports academy base, storage area for boats in winter, car parking, play areas, open space, roads, landscaping, off-site highway works and other related works and facilities.

15. The application, while in outline form with all matters reserved, is nonetheless accompanied by a Master Plan (Drawing No MP-03 Rev F), as set out in the Design and Access Statement (DAS). This plan shows the proposed layout. Other plans in the DAS set out such details as the proposed storey heights, areas of open space, movement within and around the site, phasing and the noise attenuation strategy.

Main Issues

16. The Council acknowledges that it cannot demonstrate a 5-year housing land supply and that this affects the weight that can be given to relevant local and national policy. The main outstanding issues are:
- The effect of the proposed development on the character and appearance of the area;
 - Whether there is a particular or proven need for the development to be located within a CPA;
 - The effect of industrial processes at the adjoining shipyard on the living conditions of future site residents;
 - The effect of the proposed development on the setting of Tapeley Park House, a Grade II* listed building; Tapeley Park House garden, a Grade II* Registered Park and Garden; and Westleigh Conservation Area;
 - Whether the proposed development provides adequate mitigation or compensation for any adverse environmental effects, including any effects on wildlife/ biodiversity;
 - Whether the marina is viable as a stand alone enterprise;
 - The impact of the proposed development on local communities and whether any adverse impacts could be addressed by contributions and provisions that could be secured by the UUs; and
 - Whether the proposals comprise sustainable development as defined in the National Planning Policy Framework (the Framework) and whether the benefits of the development are sufficient to outweigh any identified harm.

Reasons

The effect of the proposed development on the character and appearance of the area

17. The appeal site comprises a substantial area of largely undeveloped land within a gap between Bideford and Appledore. Much of the land is in agricultural use for grazing and there is a large area of woodland. Part of the site is in use as an activity centre and camp site which includes numerous caravans. The proposals, which involve the site being largely developed for a variety of uses, would very significantly alter both the character of the area and the appearance of the site.
18. Concerning the character of the area, much of the site is visually dominated by the Babcock Shipyard that lies immediately to the north. The main building on that site is very substantial and is highly visible from the surrounding area and especially in views of the area from the river, from its east bank and from the

- rising ground to the east. It is a long established use and, as shipbuilders, clearly needs a riverside frontage. Thus it does not appear out of place, albeit that its scale and siting means that it visually dominates its immediate surroundings. From further inland, to the west of the site, it is largely screened by existing vegetation and due to the slope of the ground.
19. This use, and buildings, also impact on the aural character of the area with the fans clearly audible from many parts of the appeal site. In addition it generates a significant amount of traffic with deliveries and employees. However, it only occupies a relatively shallow site with the buildings situated close to the river. Unlike the proposed marina development, which would fill the whole gap between the river and Churchill Way, the shipyard has a large area of open countryside inland of it between it and the road.
 20. The character of the appeal site, however, is largely that of open land in agricultural use with woodland and some recreational use. This character would change very significantly as most of the site would be developed with the built form being continuous from Churchill Way to the west to the river to the east. While there would be a central green corridor, the character would change from being an open area between Bideford, Appledore and Northam, to being part of an east/ west line of development stretching from Westward Ho! to the west as far as the River Torridge.
 21. The appeal site forms an important component in the area of open space between the three settlements. It would be severely diminished by these proposals. That loss would be seriously harmful to the character of the area. The provision of an open corridor down part of the centre of the site would not adequately compensate for the harm caused to the character of the area.
 22. In terms of the impact on the appearance of the area, there was a high degree of agreement between the Council and the appellants concerning the visual impact of the proposed development. That there would be a very significant impact on the appearance of the area is inevitable as the site is currently largely undeveloped and is visible from so many public viewpoints.
 23. On the western side of the River Torridge views of the development would be largely limited to views from Churchill Way and from the public footpaths. From Churchill Way (Appellants' viewpoint 1 in *Landscape and Visual Assessment* Appendix VI) the receptors would be a mix of walkers and drivers/passengers. The long view across the site, connecting the housing in J H Taylor Drive with the river and Tapeley Park, would be lost and this is correctly identified as a large effect. I am not convinced that this would reduce to medium/ large in the longer term as the proposed planted mound would mean that the pleasant long views, and the visual connectivity, would be forever lost.
 24. Receptors on the public footpaths would be particularly sensitive to change as parts of the footpaths are very close to the site; in one important instance a path crosses the site. The susceptibility is also high as walkers would be likely to be concentrating on the view and travelling at a relatively slow speed. The fact that one of the footpaths forms part of the South West Coast Path is also highly relevant as walkers are directed to use this path and it is a tourist attraction in its own right.
 25. There would be adverse impacts on the users of the footpaths and the South West Coast Path in particular. I agree with the appellants that the magnitude

- of the impact would be large and permanent. In particular, in the north east corner of the site where the path passes the proposed multi storey car park, at a distance of barely 5m (as scaled off the Masterplan), the impact would be severely detrimental. This impact would be exacerbated by the need for a noise barrier to be constructed projecting from the eastern elevation of that building adjacent to the path. The route alongside the river would be closed for up to 8 hours per day as the marina entrance would be open to allow boat access/ egress either side of the high tides. An alternative route, passing beside the marina, would be available and this would provide added interest for some walkers that would compensate for the loss of the riverside route.
26. There would be further long term harm to the views from the public footpath to the south of the site between Bloody Corner and Boat Hyde which in places would run close to the development. I accept, however, that there would be again be potential benefits, especially at the eastern end of this path where there would be views of the marina itself which would add interest to the view.
27. The South West Coast Path also runs along the eastern side of the River Torridge, opposite the appeal site. Here it shares a track with the Tarka Trail, a popular footpath/ cycle path that is also a tourist attraction, which affords clear views across the river to the site. While the shipyard is a major feature in the view, the gap between Appledore and Bideford is also an important component in the view. It is from this side of the river that the gap between the settlements is clearest. The rising ground of the appeal site would mean that the full depth of the development would be seen, albeit that the buildings around the marina would be 3 to 4 storeys high and so would hide some of the proposed development behind.
28. There are other clear views from the eastern side of the river in which the appeal site plays an important part. In particular there are several viewpoints within Westleigh, on the road leading down from Westleigh to the river and from Tapeley House and Park, which is a Grade II* Listed Building set within a Grade II* Registered Park and Garden. In all these viewpoints the transformation of the site from a largely open gap between settlements to a largely developed site would be clear; the erosion of the rural setting would be harmful. The effect would be medium/ large; notwithstanding the distance involved I am not convinced that this effect would reduce to medium in the longer term as the erosion of the open gap would be permanent.
29. From further north the views of the site would be largely blocked by the buildings at the shipyard, but I disagree with the appellants concerning views from within Instow. The 4 storey holiday units and the 3/ 4 storey building at Block 9 would be visible, albeit at some distance, from Marine Parade, Instow, beside and above the southernmost building on the shipyard site.
30. Overall the proposals would be severely harmful to both the character and the appearance of the area. This would be contrary to LP Policy ENV5 which expects development to conserve or enhance the natural character, natural beauty and amenity of the landscape. This policy identifies conservation, enhancement and restoration as the priorities within The Torridge Estuary and Setting Landscape Character Area. This scheme, due to the depth of the development, would fail to enhance the settlement edge or road corridor, conserve the historic field pattern or restore the saltmarsh as set out in Figure 9A of the LP as cited in Policy ENV5's supporting paragraph 6.51A.

31. While the area has no formal protection insofar as it is not within an identified Area of Great Landscape Value or Rural Gap, the Council argued that this is because it is largely within a CPA, a designation that is considered in greater detail below. Nonetheless, due to the provisions of LP Policies ENV5 and ENV6 the site can reasonably be described as a valued landscape which, in accordance with Paragraph 109 of the Framework, should be protected and enhanced. These proposals would fail to do that. They would result in substantial harm to both the character and the appearance of the area, contrary to the provisions of the development plan and Government advice.

Whether there is a particular or proven need for the development to be located within a CPA

32. LP Policy ENV6(3) (Designated Landscape Areas) relates specifically to the CPA. It says that development will be permitted only where there is a particular and proven need for that development to be located within the CPA, including where it supports public access and enjoyment of the coast, and where the need outweighs any harm to the unspoilt nature of the area. Supporting paragraph 6.58 identifies the need to restrict coastal development to that which requires a coastal location. The designation dates from 1966 and was introduced to safeguard unspoiled stretches of coastline. Paragraph 6.61A says that the Council will ensure that development is consistent with the conservation and enhancement of natural beauty and the protection of heritage features.
33. About two-thirds of the appeal site lies within the CPA. The remainder of the site, which is that part furthest from the River Torridge, has no specific LP allocation. It is self-evident that a marina needs to be located adjacent to the coast; the question therefore is whether there is a proven need for the marina to be located here and, if so, whether that need justifies the provision of all the other facilities within the CPA that are only related to the marina insofar as they enable it to be a viable project.
34. It is agreed by all parties that the marina, on its own, would not be viable and that it would need an element of enabling development to make it viable. This principle was accepted by the Secretary of State in his appeal decision in 1997 in respect of a part of this site. The only difference between the parties in this case is the length of time before the marina becomes viable. There is already public access to this part of the coast. The test posed by this policy, therefore, is whether the need for a marina in this location (taking account of all the other benefits of the development) outweighs any identified harm such as to justify the provision of part of the enabling development to be located within the CPA. No evidence was put forward to suggest that the enabling development could or should be provided elsewhere. That test is considered in the balancing exercise at the end of this Decision.
35. One of the other factors in the test is that the Council has said, in the TES, that it will encourage new marina developments. While this encouragement is subject to the caveat that this applies to appropriate locations that are in accordance with the LP, it is a further factor in the balance as is the fact that much of the river frontage within the District is within the CPA.

The effect of industrial processes at the adjoining shipyard on the living conditions of future site residents

36. Babcock Marine & Technology (BM&T) occupy the shipyard to the north of the appeal site. The main buildings are close to the common boundary. BM&T have a leasehold tenancy until 2024 for the Bidna and Newquay shipyards and the associated slip. It is the last remaining shipyard in England capable of building vessels in the 70-120m range; a 90m offshore patrol vessel is currently under construction for the Irish Naval Service. In the last two years the employment level has been around the equivalent of 400 full time employees, with a further 50 sub-contractors, giving annual labour costs in the region of £14m. The importance of the business to the area was clearly demonstrated when the accompanied site visit to the premises in connection with this appeal had to be put back due to a clash with a visit by the Chancellor of the Exchequer.
37. A representative of BM&T gave evidence to the Inquiry. Former employees and local community representatives also gave evidence concerning its importance to the area including the employment of apprentices and the highly skilled nature of much of the work. The premises operate a three shift system which enables round the clock working.
38. The Council alleges that insufficient evidence had been submitted to show that the proposed residential development would not be detrimentally affected by noise, disturbance and odours, thereby creating a potential statutory nuisance. A statutory nuisance could, potentially, be catastrophic for the shipyard. No evidence concerning odour was put forward at the Inquiry although during the site visit paint fumes were clearly noticeable within some small areas of the shipyard premises but not on the appeal site itself.
39. Various mitigation measures are proposed by the appellants and their provision could be enforced by the imposition of conditions on any permission. The submitted evidence demonstrates that if these measures are taken then there would be no harmful noise nuisance caused to future residents of the proposed development.
40. There are currently a handful of dwellings that are close to the appeal site and have no acoustic protection. There have been very few complaints concerning noise from the shipyard in the last 5 years, and these mainly related to an industrial use within an unsuitable structure which caused a short lived nuisance. Overall, the shipyard does not seem to have caused unacceptable levels of noise. As alleged by some witnesses, this low level of complaints may be due to local residents understanding the importance of the shipyard to the economy of the area. It was suggested that incoming residents may not have the same relationship with the local area and its economy. While that may be true to some extent, the submitted noise surveys do not indicate a high level of noise emanating from the premises such that complaints would be likely.
41. The proposals include a noise attenuation strategy which incorporates three noise barriers, one of which would be attached to a building, and the use of a strategically placed multi-storey car park to ensure that future residents do not suffer from unacceptable noise levels. The Council failed to demonstrate that these measures would not be sufficient to result in a satisfactory living environment for future residents. I am satisfied that the appellant's evidence, carried out in accordance with BS4142:2014 in January 2015, is not only

reasonably accurate but is based upon a worst case scenario. The modelling seems to over-estimate the likely maximum noise levels from the shipyard as the noisiest equipment, the shot blaster, does not operate at night.

42. It is impossible to be certain that no residents of the proposed development would ever complain about noise from the shipyard. Unexpected new sources of noise, such as that from the temporary building, may always cause a degree of nuisance. The shipyard's response to that complaint was quick and effective. Subject to the provision and maintenance of the noise barriers, including the multi-storey car park, I am satisfied that it is highly unlikely that the presence of new residents in the area would impact on the operations within the shipyard. This conclusion is reinforced by the presence of existing residents close to the shipyard who have shown a readiness to complain in the past when unacceptable noise levels arose. There would therefore be no conflict with LP Policies DVT11 and DVT13.
43. The reason for refusal also refers to odours, but no evidence was produced to show that this is likely to be an issue for future residents. Again, there are existing residents close to the shipyard who would also be affected in the event that it became an issue. The representative of BM&T accepted that it would be the responsibility of the shipyard to deal with this matter in the event that it became a problem.

The effect of the proposed development on the setting of Tapeley Park House, a Grade II* listed building; Tapeley Park House garden, a Grade II* Registered Park and Garden; and Westleigh Conservation Area

44. The effect on the setting of heritage assets did not form part of the Council's reasons for refusal other than in a reference to the adverse impact of the development on the attractive and unspoiled riverside site that is visible from across the River Torridge. That is perhaps surprising as English Heritage (now Historic England (HE)) objected to the planning application, an objection that was reiterated by HE in its response to this appeal.
45. In addition to the HE objection various concerns about the impact on designated heritage assets and other heritage assets were raised by NKD, Westleigh Parish Council, the owner of Tapeley House and Park, local community representatives and residents. In particular, concern is raised about the impact on views across the river from within the house and garden of both Tapeley House and Park; on views from Westleigh Conservation Area; on views of Westleigh Church, a Grade I listed building; and on a possible battlefield site.
46. Tapeley House is a Grade II* listed building sited immediately opposite the appeal site on the eastern side of the River Torridge. Tapeley House is set within a park that is a Grade II* Registered Park and Garden. I have had regard to the statutory duty in s66 of the Planning (Listed Buildings and Conservation Areas) Act 1990.
47. The List Entry for Tapeley Park describes it as an early C20 formal terraced garden by Sir John Belcher and mid C19 pleasure grounds and lake, set within parkland of C18 origin. The description refers to the setting of the house and park on a broad, high ridge which enjoy wide views across the Torridge Estuary and out to sea and across Bideford. There is no doubt that the appeal site forms part of this setting. The *Environmental Statement Non-Technical*

Summary concludes that the overall impact of the development on archaeology and cultural heritage is considered to be moderate adverse. The preceding paragraphs, however, refer almost exclusively to archaeological potential rather than to the listed building and park.

48. The obelisk within Tapeley Park is itself Grade II listed although it was largely destroyed by lightning in 1933. Views from the Park and the site of the obelisk are both referred to in the listing description of the Park. There are views out from inside Tapeley House across the river to the appeal site and their importance to its setting relate to their associations to the builder, Commodore William Cleveland, and his naval background.
49. The proposals would significantly alter the outlook across the river. Previous schemes only involved development close to the river but this scheme would fill the open space between the river and Churchill Way giving a much more urban setting to the listed House and Park. While the appeal site is some distance from the heritage assets, and only forms a part of their setting, the development would nonetheless impact significantly on this setting as the principal views are towards the river. The impact on the setting would result in some harm. I consider that this harm would be less than substantial, however, due to the distance involved, the adjoining shipyard and the fact that the site only forms a relatively small part of the overall setting. In accordance with paragraph 134 of the Framework the harm needs to be weighed with the public benefits of the proposal.
50. Westleigh is a small village set on higher ground on the eastern side of the River Torridge. The greater part of the village lies within the Westleigh Conservation Area; immediately to the north of the Conservation Area lies the Registered Park and Garden. The Conservation Area Character Appraisal identifies views out across the estuary and mentions the green spaces south of Appledore around Hyde Barton and Knapp House, as well as the industrial hangers at the Appledore Shipyard. Although the village is over 1km from the appeal site, the change in the character of the land on the western side of the estuary would be apparent. From Viewpoint 14, in particular, the appeal site would be in the direct line of sight in a view that is constrained on either side by hedges. In this view the fields to the south of the shipyard would be almost entirely replaced by built development and this would result in some harm to the heritage asset. For the same reasons as those in respect of Tapeley House and Park, the harm would again be less than substantial.
51. Within the Westleigh Conservation Area lies the Parish Church of St Peter, a Grade I listed building. In views from Viewpoint 16, which lies on a public footpath to the west of the Conservation Area, the development would be visible either side of the church tower. In many views from this path, however, the tower would prevent views of much of the development. The distance would be almost 1.5 km and although it would be visible, the impact would be very limited. I agree with the LVIA that from this viewpoint it would be only a minor interruption to the setting of the church and village and that the scale of effect would be small, both during construction and afterwards.
52. The Battlefields Trust wrote in support of a local resident who made representations concerning a possible battlefield in this location. The Trust considers that the hypothesis put forward in *The Defeat of the Sons of Harold in 1069* (N Arnold, 2015) is sufficiently compelling to require further detailed

investigation in advance of any works commencing. The alleged battlefield would be a non-designated heritage asset. Due to this evidence, and the remainder of the archaeological evidence in the Environmental Statement, a condition requiring an archaeological investigation in advance of any development has been agreed between the main parties.

Whether the proposed development provides adequate mitigation or compensation for any adverse environmental effects, including any effects on wildlife/ biodiversity

53. The Council offered no evidence on this issue. The Officers' Report refers to s40 of the Natural Environment and Rural Communities Act 2006 and s74 of the Countryside and Rights of Way Act 2000 which require that decision makers have regard to the purpose of conserving biodiversity. The Report also refers to LP policies, the Framework, and the Taw and Torridge SSSI. It concludes that subject to adequate conditions and an Agreement that secures the proposed compensatory saltmarsh habitat, the development would accord with the cited policies of the development plan and with Government advice.
54. Natural England (NE) was consulted on the planning application and raised no objections subject to the provision of the compensatory saltmarsh land. Notwithstanding the lack of any objection from the Council or NE, I have had regard to the strong objections raised by NKD and other third parties. NKD produced an expert witness at the Inquiry.
55. ODPM Circular 06/2005 states that *"it is essential that the presence or otherwise of protected species, and the extent that they may be affected by the proposed development, is established before planning permission is granted."* The Framework states that *"the planning system should contribute to and enhance the local environment by minimising impacts on biodiversity and providing net gains in biodiversity where possible"*. The objectives of LP Policies ENV1 and ENV7, in seeking to protect biodiversity, accord with the Framework.
56. The proposals include the digging of a channel within the SSSI to achieve access to the marina for two hours or so either side of high tide. NE has said that it is unlikely that the scale of impact will result in significant damage to the SSSI, subject to a sensible Construction Environmental Management Plan (CEMP), mitigation and compensation measures. LP Policy ENV7 makes no reference to the need for the harm to be significant to result in conflict with the policy. It says that if the proposals would be liable to harm the SSSI then they would only be permitted if suitable conditions could be imposed to prevent damaging impacts on wildlife habitats. In this case the identified harm, and unchallenged evidence showed that there would be a loss of intertidal mud habitat, would need to be weighed against the other material considerations to determine whether the nature conservation interests are overridden. The evidence from NKD concerning the potential impact on fish interests, including a designated sea bass nursery, was not challenged.
57. The proposals would result in the loss of an area of saltmarsh. This is an unusual habitat in that it was formed by the incursion of sea water into the site when the sea wall was breached towards the end of last century. It is agreed that the saltmarsh is fed by a freshwater stream resulting in the saltmarsh being in a state of transition towards a more freshwater dominated wetland. In time, therefore, the saltmarsh will reduce unless there are further sea water

incursions. The appellants argued that the loss of this unusual habitat would be compensated for by a site further up stream. This also has a freshwater stream and would represent a satisfactory replacement and would be secured by the submitted UU.

58. I have noted that the Environment Agency has indicated that the compensatory site has been selected for reversion to saltmarsh. I have also taken into account the fact that it would be impossible to exactly replicate the conditions of the appeal site elsewhere. This is due to the differing levels of salinity and the fact that the appeal site flooded many years ago and is in a state of constant change. The species attracted to the compensatory site would inevitably be different and it could not be a complete like for like replacement. The loss of biodiversity carries weight in the overall balance against the proposed development. The harm is reduced, however, by the provision of a compensatory site.
59. The impact upon protected species is a further cause for concern. The survey data in respect of some species is quite out of date and so cannot be relied upon. While the data in respect of the intertidal survey, the winter and passage bird survey, and the barn owl nest survey are up to date, much of the data is not. The site has the ability to support various protected species, including bats, dormice and otters. In the absence of up to date surveys, however, the extent of any harm to protected species is not certain.
60. The function of the central green corridor seems to be flawed in that it fails to provide the necessary north/ south routes for wildlife to cross the site. The proposed development would result in the creation of a developed band across from Westward Ho! via Northam to the appeal site and the River Torridge. While species could, to some extent, move within the central green area, this would be on a west/ east alignment. The Masterplan shows that north/ south connectivity would be largely lost. The only north/south routes through the development, using the wider landscaped areas between dwellings, would involve crossing 2 or 3 roads. Even the west/ east routes would be interrupted by a play area and roads. This loss of connectivity between the countryside to the north and south of the site would be particularly harmful to species such as the brown hare. While NKD has cited LP Policy ENV9, this policy relates specifically to Important Wildlife Corridors shown on the LP Proposals Map. This site is not covered by this designation and so the policy does not apply. The Framework, at paragraphs 114 and 117, refers to the identification of local networks and the need for the approach in Local Plans to protect and enhance such networks. The evidence to the Inquiry from NKD is that this site performs this function. Due to the overall pattern of development in the vicinity this seems a reasonable conclusion; the proposals would undoubtedly interfere with the ability of wildlife to travel along north/ south routes. The harm to biodiversity would result in some conflict with paragraph 118 of the Framework.
61. I conclude that there would be some harm to biodiversity and wildlife on the appeal site and within the wider area. This would result in conflict with LP Policy ENV7 and with the Framework and weighs against the development.

Whether the marina is viable as a stand alone enterprise

62. The Council is not satisfied that the marina is viable as a stand alone project and so the economic benefits of the marina would not outweigh the harm

arising from permitting the housing and commercial development. The appellant, however, has never said that it would be viable. That is the reason for the significant amount of enabling development. The appellant intends to construct the marina in the first phase of the development (as set out in the UU) and that thereafter it would receive an annual subsidy from the housing and commercial development until such time as the occupancy rate was sufficient to make an operating profit. In addition the scheme would contribute towards a 30 year sinking fund for the replacement of capital items over the longer period.

63. The expert witnesses on this issue agreed that the marina would become viable; the main difference concerns the time period. This difference is, in part, due to differences in costs, especially marketing. As the management plan in the UU would result in the subsidy being paid to the marina until it became viable, for the purposes of this Decision the actual time period is not important. There was little difference between the Council and the appellant; there is an agreed position statement between them dated January 2013. The only significant change since that was signed is that there is now a Council resolution to approve a facility at Brunswick Wharf, located a little distance upstream in Bideford. The proposed pontoons at that site would be likely to be attractive to a different market than the proposed marina so its impact on viability is likely to be limited.
64. The evidence demonstrates that the marina would not be viable as a stand alone enterprise in its initial years. Nonetheless, the Council agrees that it would become viable in time and for this Decision that is key. The evidence shows that the marina is likely to become viable within a reasonable timescale; until then it would be subsidised by the housing and commercial development. That would not be harmful and does not weigh against the scheme.

The impact of the proposed development on local communities and whether any adverse impacts could be addressed by contributions and provisions that could be secured by the UUs

65. The appellant has submitted a completed UU. It relates specifically to the appeal site. A second, unsigned, UU relates to the provision of a compensation site as set out in the biodiversity section above. The main UU makes a number of provisions. These include the provision of 75 affordable dwellings together with a schedule as to their mix of sizes, tenure and phased provision. The scheme would be phased and the UU requires the marina to be built during phase 1 with phase 2 not being implemented until phase 1 is practically complete. Other requirements of the UU relate to the establishment of a management company; an off-site drainage contribution (£176,000); the management of the open space; the construction of the community building; and the management and occupation of the continuous care retirement community. The UU requires the owner/ developer to enter into an UU in respect of off-site biodiversity mitigation land; a copy of this is attached to the main UU.
66. The UU also makes provision for an education contribution of £1,119,600 together with a phased programme for payment by instalments. This sum comprises £933,100 towards primary education and £186,500 as a land contribution to support the expansion of primary education provision. The appellant will also pay a highway contribution of £100,000 to be put towards to

the A39 Heywood Road roundabout. The sustainable transport contribution of £78,750 would be put towards the provision of bus services, and associated infrastructure, serving Northam and Appledore.

67. The suggested conditions include the requirement that the road improvements to the Heywood Road/ Churchill Way junction be completed prior to the commencement of works. A further suggested condition would require off-site highway works for widening Churchill Way and providing off-street parking adjacent to Searle and Grenville Terraces. A plan showing these details was submitted with the application (Drawing No D63036 C100 Rev B). At the Inquiry NKD objected to the provision of this parking on the grounds that it was not required by the occupiers of the houses, being on the opposite side of the road. I saw that at present a combination of parked cars and poor forward visibility makes this section of Churchill Way quite hazardous. The Council has supported the provision of these 7 off-street parking spaces and I consider that they would be a benefit of the scheme.
68. I have taken the completed UU, the unsigned UU and the suggested conditions into account in the planning balance. They weigh in favour of the development.

The planning balance

Whether the proposals comprise sustainable development as defined in the Framework and whether the benefits of the proposed development would outweigh any identified harm

69. The Council acknowledges that it cannot currently demonstrate a deliverable 5-year housing land supply and so it accepts that, in accordance with paragraph 49 of the Framework, the relevant policies for the supply of housing should not be considered to be up to date. This position is reinforced by the fact that the LP was intended to cover the period until 2011 and so the development boundaries were designed to accommodate the development needs for that period. The appeal site lies just outside the development boundary but, in view of the above considerations, this does not necessarily preclude development in this location.
70. Paragraph 14 of the Framework sets out a presumption in favour of sustainable development. The Framework identifies that there are three dimensions to sustainable development; economic, social and environmental. The proposed development would undoubtedly result in major economic benefits for the area. These include a significant number of new jobs, both during construction and afterwards within the new business opportunities that would be created within the development. There would be a boost to the local economy arising from the spending power of new residents, holidaymakers and other visitors. These significant economic benefits weigh in favour of the proposals. Subject to the proposed safeguards, the proposals should not result in harm to the adjoining shipyard, whose economic role in the area as a major employer with a highly skilled workforce is extremely important.
71. The scheme would also have a beneficial social role in that it would provide a large quantity of much-needed new housing in an area where there is an acknowledged shortfall in supply. The new housing would include a significant number of affordable units, a further benefit of the scheme. The provision of employment opportunities within the site, together with retail and community facilities and public open space, would help to create a strong and vibrant

- community. The care home and extra care units would have social and economic benefits as they would meet an identified local need and provide employment. The social benefits of the scheme also weigh in its favour.
72. Other benefits of the proposals would be provided through the UU. While these are intended to ensure that the scheme is not a drain on local resources, the financial contributions towards education facilities, highway improvements and community transport facilities all weigh in favour of the development.
73. In addition to the economic and social benefits identified above, the scheme would provide for a marina in an area where the Council has identified that there is a lack of such facilities. The recently adopted TES identifies a need for tourism and marine facilities in the area and says that the North Devon coast lacks good berthing facilities. The eastern end of the appeal site is an obvious location for such a facility as evidenced by the fact that it has, in the past, been identified in the development plan for such use. The support for a marina in the TES, however, is tempered by the Council stating that such development should be plan-led.
74. In considering whether the proposals represent a sustainable form of development, it is necessary to balance these economic and social benefits with the environmental harm that would arise. As set out above, the proposals would fail to protect or enhance the natural, built or historic environment and would fail to improve biodiversity. These harms carry significant weight against the proposed development in the overall balance.
75. The second bullet point of the decision-taking section of paragraph 14 of the Framework is highly relevant. It says that where the development plan is absent, silent or relevant policies are out of date, the presumption in favour of sustainable development means granting permission unless either of two further bullet points are engaged. The first of these is the balancing exercise with the need for any adverse impacts to significantly and demonstrably outweigh the benefits. The second refers to situations in which other specific policies in the Framework indicate that development should be restricted. The footnote to this bullet point sets out examples including policies relating to sites designated as SSSIs and designated heritage assets. Both these are relevant in this appeal as there would be conflict with policies in the Framework in respect of these matters.
76. In 1997 the SoS dismissed an appeal for a marina on part of the current appeal site. Circumstances have changed since that decision and this current proposal concerns a much larger overall scheme although the marina itself would be of similar scale. The SoS found that the marina accorded with Policy AP13 of the Bideford Area LP. That plan, however, is no longer extant and there is no development plan policy that advocates a marina in this location. The SoS concluded that the issues were finely balanced and dismissed the appeal due to the harm that would arise from allowing permanent housing in this location and the clear conflict with the development plan and the principles of sustainable development.
77. I am not convinced that the issues are quite so finely balanced today. The current scheme is very substantially larger than that considered by the SoS with a much greater quantity of enabling development necessary to support a marina of similar scale to that proposed in 1997. By extending the built form right up to Churchill Way, albeit with a landscaped buffer strip adjacent to the

road, the impact of the proposals on both the character and the appearance of the area would be much greater. The scheme would no longer comprise a marina with a modest amount of housing around it as it would result in the entire site between Churchill Way and the River Torridge being developed. While it would not fully close the gap between Bideford and Appledore, it would result in a very substantial amount of built form within an area of undeveloped coast that is identified in the LP as a CPA.

78. The site is highly visible, both from public viewpoints around the site and from higher ground on the opposite side of the river. The viewpoints include the South West Coast Path and the Tarka Trail and from numerous important viewpoints the proposals would have an unacceptable visual impact. It would be so extensive that it would adversely affect the setting of heritage assets on the east bank of the river. While the harm to the heritage assets would be less than substantial this is not outweighed by the public benefits of the scheme.
79. There would be further harm arising from the effect on biodiversity in the area. This would include harm to the SSSI although the extent of this harm is uncertain due to the inadequate information provided in respect of the impact on the intertidal mud habitat and such other interests as the sea bass nursery. It has not been shown that the loss of this habitat would be adequately compensated for by the site to be provided further up stream. There may be further harm arising from the impact of the proposals on protected species as the survey data is inadequate to be certain of the impact. The proposals would seriously disrupt the north/ south wildlife corridor as the mitigation seems insufficient to cater for species such as the brown hare. Overall, this harm carries weight against the proposal.
80. The TES has identified a need for a marina in this general area, and the LP identifies the area centred on Bideford/ Appledore/ Northam as the Strategic Centre for the district. The marina would, in time, be a viable enterprise and, subject to certain safeguards, there is no reason as to why future residents of the scheme would be likely to be harmed by noise from the adjoining shipyard. These factors, however, are outweighed by the harm to the character and appearance of the area, arising from the scale of the enabling development; the less than substantial harm to the setting of heritage assets; and the harm to biodiversity and wildlife. These would outweigh the considerable benefits of the scheme.

Conclusion

81. On balance, therefore, the proposals would provide considerable economic and social benefits. However, these benefits would be significantly and demonstrably outweighed by the adverse impacts of the development. Due to the environmental harm that would arise the proposals would not represent a sustainable form of development. The proposals would be contrary to the development plan and to advice in the Framework. The appeal is therefore dismissed.

Clive Hughes

Inspector

APPEARANCES

FOR THE LOCAL PLANNING AUTHORITY:

Peter Wadsley	Of Counsel, Instructed by Torridge District Council
He called	
Peter Leaver BA(Hons)	Director, David Wilson Partnership Ltd
DipLA CMLI	
Alex Beere BE CEng	Head of Technical Services, MDL Marinas Group
MICE	Ltd
John Pennington DipIIM	Planning and Project Controls Manager, Babcock
	Marine & Technology
Matthew Millichope MA	Torridge District Council – Environmental
DipANC	Protection
Lewis Andrews BA BTP	Torridge District Council – Development
MRTPI	Management

FOR THE APPELLANT:

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He called	
Paul Heavingham LLb	Barrister; Director LTPH Property Ltd
MRICS FCI Arb	
Philip Dunn	Technical Director, Marina Projects Ltd
Nick Perrett BA(Hons)	Managing Director, Redbay Design
DipLA CMLI	
Giles Parker MA MOIA	Managing Director, Sound Barrier Solutions Ltd
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Dr Laurent Duvergé BSc	Director, Kestrel Wildlife Consultants Ltd
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Jeremy Douch BA(Hons)	Regional Director, AECOM Ltd
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David Lander MRTPI	David Lander Consultancy

FOR "NO TO KNAPP DEVELOPMENT":

Peter Hames	Spokesperson for NKD and Chairman of the
	Notham Town Council Planning Committee
He called himself and	
John Day BSc(Hons)	Ecologist
Alan Smith BA(Hons)	Landscape architect – for conditions/ UU sessions
DipLD CMLI	

INTERESTED PERSONS:

Cllr Andrew Eastman	District Councillor for Appledore
Cllr Ken Davis	District Councillor for Appledore
Nick Arnold	Local resident
Jeremy Bell	Local resident
Sam Robinson	Local resident
Niki Tait	Local resident
Jane Carter	Local resident

Mrs Mathias	Local resident
Jasmine Davis	Local resident
Cllr Dr Peter Le Maistre	District Councillor for Westward Ho!
Hector Christie	Local resident
Cllr Jane Whittaker	District Councillor for Northam
Cllr Jim Jackson	Town Councillor for Northam
Vanessa Ebdon	Owner of local business
Terry Crisp	Local resident
Bill Shaw	Local resident
Cllr Peter Christie BA(Hons) MPhil	Chairman, Torridge District Council
Veronica Leat	Local resident
Daniel Bell	Local resident
Tiki Hurley	Local resident
Cllr Lesley Burgess	Westleigh Parish Council
Jackie Avery	Local resident

DOCUMENTS SUBMITTED AT THE INQUIRY

- 1 Council's notification letter and list of persons notified
- 2 Opening statement on behalf of the appellant
- 3 Opening statement on behalf of the Council
- 4 Guidelines for Landscape and Visual Impact Assessment (Third edition) pp 83/4
- 5 Summary proof of evidence of Alex Beere
- 6 Rebuttal proof of evidence of Matthew Milichope with appendix
- 7 Addendum proof of evidence of Matthew Milichope with appendices
- 8 Copy of Fig 2 from Giles Parker's proof of evidence
- 9 Updated/ corrected proof of evidence of Matthew Milichope
- 10 Planning permission NF/2466 dated 19 May 1967
- 11 Letter dated 13 May 2015 from Westleigh Parish Council attaching copy of Westleigh Conservation Area Character Appraisal
- 12 Statement by Sam Robinson
- 13 Statement and attachments by Niki Tait
- 14 Extract from Reeds Nautical Almanac
- 15 Council position statement on 5-year housing land supply
- 16 Summary proof of evidence of Lewis Andrews
- 17 Extract from Torridge District Local Plan 2004 pp 11 - 20
- 18 GoSE "Saved Policies" letter dated 20 September 2007
- 19 Additional pages of Inspector's Report for APP/H1840/A/13/2199085 & 2199426 pp 105/6
- 20 Draft Unilateral Undertaking No 1 - Knapp House (versions 1 and 2)
- 21 Draft Unilateral Undertaking No 2 - Land at Salterns Lea (versions 1 and 2)
- 22 Draft Conditions (versions 1 and 2)
- 23 Copy of letter from Hector Christie to PINS dated 26 October 2014
- 24 Westleigh Village Conservation Area - SWOT
- 25 Four maps showing boundaries of designations (SSSI, SAC, NIA, Biosphere)
- 26 Statement by Cllr Jim Jackson
- 27 Summary proof of evidence of Paul Hevingham
- 28 Written statement by Ben Symons BSc MOIA, Sound Barrier Solutions dated 13 May 2015
- 29 TMV Excavation calculations
- 30 Letter dated 17 May 2015 from The Battlefields Trust
- 31 TDC's background noise measurement/ monitoring locations
- 32 Statement 16 May 2015 by Hector Christie

- 33 Letter dated 19 May 2015 from Lesley Burgess, Westleigh PC
- 34 Viewpoints for site visit; Westleigh Parish Council
- 35 Letter from Dr Mark Haworth-Booth OBE
- 36 Letter dated 5 May 2015 from Sara Spring
- 37 Corrected Table 1 of Appendix to Giles Parker's proof of evidence
- 38 BS 8233:2014 Guidance on sound insulation and noise reduction for buildings
- 39 Statement by David Lander Consultancy concerning former Yelland Power Station site
- 40 Extract from Report of Inspector – Torrridge District Local Plan p105
- 41 Natural England – age of Survey Data
- 42 Statement by Cllr Peter Christie
- 43 Letter dated 20 May 2015 from Lesley Burgess, Westleigh Parish Council
- 44 Drawing No 308_SK01 showing Public and permissive footpaths
- 45 Extracts from Torrridge DC: Local Plan – Glossary pp211/2, 216
- 46 Plans for planning application 1/532/95
- 47 Tapeley Park Guide Book
- 48 Email dated 26 May 2015 from Brian Hurwitz, Sharpe Pritchard re UUs
- 49 Comments on draft conditions from NKD dated 22 and 28 May 2015
- 50 Appellants response to NKD comments on draft conditions
- 51 Final comments on draft conditions by NKD
- 52 Closing submissions on behalf of NKD
- 53 Closing submissions on behalf of Torrridge District Council
- 54 Closing submissions on behalf of LTPH Property Limited

PLANS

- A Location Plan
- B Location Plan (Red & Blue line plan)
- C Drawing No SUR.01 – Site Survey 1
- D Drawing No SUR.02 – Site Survey 2
- E Drawing No SUR.03 – Site Survey 3
- F Drawing No CP01 Rev B – Constraints Plan
- G Drawing No MP-03 Rev F – Masterplan - 03
- H Drawing No RHP-01 Rev A – Retained hedgerow Plan - 01
- I Drawing No D63036 C100 Rev B – Vehicle Tracking for potential road widening adjacent to Searle Terrace, Northam

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