

# CRANBROOK LOCAL PLAN EXAMINATION

## REPRESENTATIONS

### **MATTER 1**

## LEGAL COMPLIANCE

PREPARED ON BEHALF OF WADDETON PARK LTD

January 2020



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## REPRESENTATIONS

### MATTER 1

#### LEGAL COMPLIANCE

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**1. Issue 1: Overall, has the Plan been prepared in accordance with the relevant legal requirements?**

1.1 Question 1

***What are the relevant strategic matters in relation to the DTC? (Defined as matters having a significant impact on at least two planning areas<sup>1</sup>)***

- 1.1.1 It's the occupation of housing that, by the Council's own evidence, produces unacceptable recreational impacts upon the Natura 2000 sites. Thus, satisfactory mitigation of that requirement (Habitat Regulation compliance) is not a strategic matter. Meeting that housing need is proposed to be done by land wholly within this plan area and mitigation is a matter that should be certain, on that basis, also. Thus HRA compliance (or not) is a matter for the Inspector's determination, having regard to the provisions of Regulation 105(4) of The Conservation of Habitat and Species Regulations 2017.

1.2 Question 4

***Is the plan compliant in relation to the East Devon Local Plan 2016 (EDLP)?***

- 1.2.1 The approach adopted by the Council in the Cranbrook Plan (Cran001), with regard to the delivery of necessary mitigation of recreational impacts upon Natura 2000 sites, is not compliant with the EDLP.
- 1.2.2 SANGS delivery is a fundamental element of the strategy enshrined in the EDLP. As explained in our representations to the Publication Draft, the Council (in order to prevent harm occurring to the integrity of the Exe Estuary and Pebblebed Heaths Natura 2000 sites) are committed to the timely provision of SANGS (in accordance with Strategies 10 and 47 of the EDLP – see EDLP extracts at Appendix 1).
- 1.2.3 Strategy 10 allocates land to accommodate the Clyst Valley Regional Park (CVRP) and confirms that the CVRP will *"take recreation pressure away from more environmentally sensitive locations thereby overcoming concerns arising from application*

*of the Habitat Regulations that would otherwise prevent development from coming forward" (point c), Strategy 10).*

1.2.4 Strategy 10 states that:

*"Of particular relevance to the Habitat Regulations will be the need for continued checks and monitoring to ensure that any mitigation measures for built development, linked to Clyst Valley Regional Park provision, achieve the ends envisaged and offers effective mitigation against adverse impacts that could otherwise occur. Each phase of any development occurring and park provision will be assessed and monitored."*

1.2.5 Strategy 47 requires that mitigation proposals (including those of the 'South-east Devon European Site Mitigation Strategy') to be implemented alongside or ahead of development to safeguard the integrity of European designated wildlife sites and states that:

*"Where mitigation lags behind development it will be a potential indicator that the worth and integrity of European sites could be being eroded. This will provide a policy basis and justification for resisting further development or occupation until effective mitigation is delivered in accordance with past development/occupancy."*

and that:

*"Work will be undertaken to establish effective trigger points or markers against which to formally assess delivery of mitigation and therefore establish a basis to refuse planning permissions with a formal first review planned for April 2018."*

1.2.6 It is therefore clear that, in accordance with the provisions of Strategy 10 and 47, the Council are required to keep the delivery of SANGS under review. This was a key matter in finding the EDLP sound, as made clear by the EDLP Inspector in his report (see paragraph 25 and 121 [of Appendix 2] and paragraphs 4.4-4.12 of our representations to the Publication Draft).

1.2.7 However, contrary to the comments of the EDLP Inspector, and the provisions of Strategy 10 and 47, it is apparent that there has been no review of SANGS provision to date (see letter received from the Council dated 17<sup>th</sup> April 2019 [Appendix 3]). A review which, given the provisions of Strategy 10 and 47, and the findings of the EDLP Inspector, in accordance with the Habitat Regulations, is critical to meeting the District's housing needs in an acceptable manner.

1.2.8 It is plain that no review has been carried out – that is a breach of the EDLP. The Inspector will note that an FOI request has been made seeking clarity in respect of this matter [Appendix 4]. The

relationship of strategic responsibility of the Council to SANGs in order to facilitate timely housing delivery is clearly set out in the EDLP. As Strategy 47 clearly states:

*“habitat mitigation will form the first draw on CIL funds”*

and;

*“To help ensure and secure timely delivery of mitigation, specifically SANGS, the Council has the option of exercising Compulsory Purchase order powers to ensure the availability of land.”*

1.2.9 Cran001 does not propose any substantive changes to the provisions of Strategy 10 or 47 (see Appendix 1 to Cran001). No changes are proposed to Strategy 10. The only change proposed to Strategy 47 is to the population multipliers quoted and the references made to CIL (since a nil rate is now proposed for Cranbrook).

1.2.10 Despite the narrow scope of the proposed changes listed it appears (following a review of Cran001 and its evidence base) that the SANGS delivery strategy now proposed by the Council, and set out in CB15, is actually predicated on a fundamentally different approach to HRA mitigation than that considered by the EDLP Inspector and enshrined in the EDLP. That approach was plainly strategic, as Strategy 47 states:

*“Through this strategic approach monies collected through CIL, negotiated separately through Section 106 agreements or potentially otherwise paid or contributed through other means will address mitigation requirements.”*

1.2.11 CB15 only seeks to ‘safeguard’ land for SANGS, whereas Strategy 10 allocated land for the CVRP, and identifies the SANGS potential of large parts of the CVRP.

1.2.12 CB15 sets out an expectation that applications for the provision of SANGS will be accompanied by an appropriate delivery, enhancement and mitigation strategy, including a masterplan and details of the financial arrangements necessary to deliver future management, thereby passing the delivery burden of undefined and unallocated land parcels to the developer, whereas the CVRP delivery was plainly underwritten by CIL contributions and other funding streams.

1.2.13 The ‘potential’ SANGS to be safeguarded are essentially residual areas of land in the control of developers (i.e. those that are not suitable for development) rather than sites identified specifically for their ability to deliver suitable SANGS. This, in our view, represents a piecemeal approach to SANGS suitability

assessment and delivery (as opposed to the plan led approach that is enshrined in the EDLP).

- 1.2.14 Plainly it's not for the Council to pick and choose which elements of the DP that they wish to consider or ignore – the plan must be read as a whole. As the Supreme Court put the point (in *Tesco*, UKSC 13, Appendix 5):

*"planning authorities do not live in the world of Humpty Dumpty; they cannot make the development plan mean whatever they would like it to mean."* (paragraph 19).

- 1.2.15 Strategies 10 and 47 were critical to the EDLP being found sound and cannot be eschewed. Cran001 is not therefore compliant with the EDLP.

### 1.3 Question 5

***What would be the implications for the plan delivery of the continued protection of the green wedges identified in the EDLP?***

- 1.3.1 Strategy 8 (Development in Green Wedges) of the EDLP is not absolute and does not preclude development unless:

*"..... it would add to existing sporadic or isolated development or damage the individual identity of a settlement or could lead to or encourage settlement coalescence."*

- 1.3.2 The Preferred Approach Masterplan, dated October 2017, stated that:

*".....Although development encroaches into the green wedge to the north of Rockbeare its location maintains a clear visual separation between Rockbeare and Cranbrook which is the purpose of the green wedge. Strategy 8 in the Local Plan which covers green wedges allows for development where settlement coalescence would not result."* (page 18)

- 1.3.3 In a report to the Strategic Planning Committee (SPC) dated 20<sup>th</sup> March 2018 [Appendix 6] (with particular regard to our client's site) that:

*"The inclusion of land in the Rockbeare Neighbourhood Plan Area as part of the Cranbrook Plan, including within the green wedge, would allow for a more coherent pattern of development when assessing Cranbrook and its relationship with London Road whilst still retaining the character of Rockbeare and preserving views out of the village as development would be obscured from Rockbeare due to land form."* (page 17)

and that:

*“The decision to propose to allocate land within these areas for development at Cranbrook arises from careful consideration of the evidence documents which support the preferred approach and the consensus of responses to the Issues and Options Consultation in 2016.” (page 17)*

1.3.4 It is therefore clear that there are sites outside of those proposed in the current version of Cran001 that have potential for development despite their location with the green wedge.

1.3.5 Paragraph 11 a) of the Framework requires plans to seek opportunities to meet the development needs of their area and be sufficiently flexible to adapt to rapid change. In our opinion, the absolute protection of the green wedge is only likely to inhibit flexibility and prevent the ability of the plan to adapt to rapid change, which could, in turn, harm the delivery of housing.

1.4 Question 7

***Is the Local Plan legally compliant with respect to Sustainability Appraisal [SA]?***

1.4.1 In our view, the Local Plan is not legally compliant with respect to SA.

1.4.2 Having regard to the provisions of Part 4, paragraph 8(5) of the Local Plan Regulations (and as explained in our response to Matter 2, Issue 3, Question 26) the Sustainability Appraisal (Cran057) is fundamentally flawed due to the confusion inherent in the emerging ‘developer led’ approach that the plan is taking to SANG delivery (contrary to that enshrined in the EDLP) and its failure to undertake any robust assessment of the SANGS strategy proposed in Cran001 against that set out in the provisions of the EDLP (in particular Strategies 10 and 47).

1.4.3 Cran057 does not properly engage with the necessary subject matter and, critically, fails to consider the implications that a lack of certainty in this regard would have on the effectiveness of the plan in delivering housing in a timely manner, without adverse impacts on the Natura 2000 sites.

1.5 Question 8

***Is the Local Plan legally compliant with respect to Habitats Regulations and any requirement for Appropriate Assessment [AA]?***

1.5.1 Appropriate Assessment (AA) is a process and it is the responsibility of examination to reach a determination on this matter, having regard to the available evidence, in order that a clear conclusion on the point can be reached, as required in accordance with the provisions of Regulation 105(4) of The Conservation of Habitats and Species Regulations 2017 (thus enabling the plan to proceed to adoption or not). The HRA Assessment document (Cran 020) is not determinative.

1.5.2 That document has clearly been concluded on the understanding that the strategic approach set out in the EDLP, and underwritten by CIL/CPO is continuing:

*“By making a proportionate financial contribution, the need for complex individual mitigation to be designed and implemented for each development project is removed.”* (paragraph 3.11, page 41)

1.5.3 The document is bland and unclear on assessing delivery and certainty:

*“The document should be seen as a live document that is reviewed at appropriate points in SANG delivery.”* (paragraph 3.18, page 43).

1.5.4 And it points to another document ‘SANGS Delivery Strategy 2013-2031’ (Cran021). That document is devoid of any proper assessment of the suitability of any of the land being considered for SANGS (instead we find those criteria in emerging policy CB15). Some of the land identified is, having regard to those criteria, plainly unsuitable for that use (for example the block of land immediately south of the rail line and wholly within the fluvial flood zone [see Cran017]). We therefore conclude that some of the land controlled by developers and proposed for SANGS is unsuitable for that purpose. The issue of delivery of suitable SANGS to mitigate, in a timely manner, the impacts arising from housing completions is therefore significantly greater than set out by the Council.

1.5.5 Cran021 (Figure 1) identifies a directly securable shortfall in quantum terms (even discounting the unsuitability point that we make in the paragraph above).

1.5.6 This shortfall is expected to be addressed by other land owners providing land (paragraphs 2.4). This expectation is naïve. Financial contributions are mentioned (at paragraph 2.6), but no information is provided about where, when and how such contributions will lead to actual SANG delivery. At paragraph 3.1 it becomes clear that:

*"it is expected that their shortfall will be met within the areas of land safeguarded for SANGS through the Plan, and the acquisition and establishment costs borne by the respective developer."*

- 1.5.7 The live document/review point is repeated (at paragraph 3.2). The Council have already made clear their lack of respect for the existing DP provisions on this matter, so there can be little certainty that any such unspecific review will be carried out in a timely manner. An AA determination must be made via this examination, not a some 'live point' in the future.
- 1.5.8 The approach set out in Cran021 document contrasts sharply with:
- that strategic approach proposed and considered by the EDLP Inspector (see paragraph 25, Appendix 2)
  - that re-confirmed approach in this plan (see SOCG [Cran061, page 15], HRA document [Cran020, paragraph 3.11] and Appendix 1 to Cran001)
- 1.5.9 The strategic approach, based upon land allocation (as opposed to safeguarding) and the underwriting of that approach by the Council, was key in the EDLP being found sound. The Council are committed to that approach and have not sought to vary it via the submission of this plan. The delivery responsibility for implementing European protected sites mitigation rests with the Council.
- 1.5.10 However, on their own evidence, it is plain that they are seeking to walk away from their clearly set out (and enshrined in the DP and various other documents that form the evidence base to this plan) SANG provision role (which clearly extols the utilisation of a first draw of CIL and the use of CPO powers).
- 1.5.11 For the reasons set out in our response to Question 4, for Appropriate Assessment to be successfully completed, there must be certainty that suitable SANGS can be provided before the occupation of development, in accordance with the EDLP (specifically Strategies 10 and 47) that this plan does not seek to vary (except on a narrow, numeric, point).
- 1.5.12 However, the Council's evidential abandonment of the strategic approach to SANG enshrined in the EDLP and the embracing of the 'developer remnant' approach, set out in CB15/Cran021, lacks both candour and rigor, and provides no certainty in relation to the timely delivery of necessary mitigation.
- 1.5.13 The 'thrown together' nature of the Council's revised approach is evident since they admit that:

*"Where possible an attempt has been made to ensure that each of the primary land owners within the development are able to deliver SANGS on land under their control....With such an approach to delivery however it is important that adjoining parcels should be so designed that they function together as a larger whole. Without such connection there is a risk that areas would otherwise comprise isolated pockets of green space and fail to deliver the necessary mitigation"* (paragraph 3.103, our underlining)

- 1.5.14 There's no certainty that such connection will occur with such a 'developer led' approach. As the Council admit, when considering overprovision:

*"In such a scenario the approach helps to reduce the potential for any one landowner to be beholden on others where a ransom situation could otherwise ensue."*

- 1.5.15 And the Council clearly state (paragraph 3.104) the off-site payment method is now proposed as an 'exceptional circumstance', as opposed to the norm (as the HRA evidence assumes, and as was put to the EDLP Inspector and is enshrined in the EDLP).

- 1.5.16 In our opinion it is plain that, paying particular regard to the proposals submitted by the Council, and the evidence before this examination, adverse impacts on the integrity of the Exe Estuary and Pebblebed Heaths Natura 2000 sites cannot be ruled out with any certainty. It is not therefore possible to reach a positive conclusion in respect of AA.

## 1.6 Question 9

***Does the Plan make it clear, as required by Part 4, paragraph 8(5) of the Local Plan Regulations, which parts of the existing development plan it will supersede?***

- 1.6.1 Appendix 1 to Cran001 'Status of Policies' confirms which parts of the existing development plan that Cran001 will supersede.
- 1.6.2 With regard to Strategies 10 and 47 Appendix 1 confirms that Cran001 will not supersede Strategy 10 and will supersede Strategy 47 specifically only in part:

*"where reference is made to different population multipliers per dwelling and where reference is made to CIL at Cranbrook (or implied by reference to it being with the West End) as Cranbrook will be funded by S106 contributions"*.

## 2. **Issue 2: Is the Plan's preparation compliant with the Duty to Co-operate [DTC] imposed by Section 33A of**

**the Planning and Compulsory Purchase Act 2004 (as amended) [PCPA]?**

2.1 Question 14

***What, if any, is the synergy between this plan and the Greater Exeter Strategic Plan (GESP)?***

- 2.1.1 There isn't any synergy between Cran001 and the GESP, but there perhaps should be in light of the deficiencies that we have identified in respect of the Council's approach to HRA (see response to Questions 4, 8 and 9 above)?
- 2.1.2 It is apparent from the letter received from the Council (dated 17th April 2019) [Appendix 3] that any review of Strategies 10 and 47 of the EDLP is being done so primarily via the Greater Exeter Strategic Plan (GESP) process. Since the Council's revised approach to Habitat Mitigation is non-compliant with the EDLP then we question whether Cran001 is premature to the outcome of the GESP?

# CRANBROOK LOCAL PLAN EXAMINATION

## REPRESENTATIONS

### **MATTER 1 - APPENDICES**

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January 2020



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- Appendix 3 FOI Council Response, dated 17<sup>th</sup> April 2019
- Appendix 4 FOI Request, dated 8<sup>th</sup> January 2020
- Appendix 5 Tesco vs. Dundee Judgement (UKSC 13)
- Appendix 6 SPC Agenda Extracts, dated 20<sup>th</sup> March 2018

**Appendix 1      East Devon Local Plan Extracts**



# **East Devon Local Plan 2013 to 2031**

**Adopted – 28 January 2016**

- 7.5 Strategic West End developments to the East of the M5 Motorway will be located in an area to the North of the new A30 and to the South of the Exeter to Waterloo railway line. There will also be West End development to the West of the motorway and to the North-East of Pinhoe for 800 homes.
- 7.6 East Devon's West End will accommodate a wide range of highly skilled, secure and well paid jobs. This will ensure the overall development is of sub-regional and East Devon-wide importance. Every opportunity will be taken to draw the benefits of development, skills, training and wealth created in this part of the District, through into the rest of East Devon.
- 7.7 High quality business will be attracted to this Western part of the District as a result of its proximity and ease of access to the M5 motorway and to Exeter. High quality transport links are an essential part of the appeal of this area and will be crucial to its future success. Improvement works to Junction 29 of the M5 Motorway have been completed.

### Strategy 9 - Major Development at East Devon's West End

High quality development with associated infrastructure, built within a high quality landscape setting, will be provided in East Devon's West End. The overarching strategy for development will need to dovetail with the development strategy for Exeter with the provision of homes close to jobs and other facilities and services. High quality walking and cycling connections; enhanced bus and rail services, and improved highway provision will be integral to the overall development

Within the West End of East Devon the following schemes will be provided:

1. Cranbrook - Major new East Devon market town;
2. Pinhoe - Mixed use, residential led development;
3. North of Blackhorse/Redhayes (Tithebarn Green/Mosshayne) – residential development;
4. Skypark - Substantial high quality business park;
5. Exeter Science Park - Research/technology employment site;
6. Exeter International Airport - Provision to be made for airport-related employment uses within operational site area.
7. Multi-modal Interchange - Facility for interchange of goods and distribution centre; and
8. Exeter Airport Business Park - Middle range business park providing for medium to smaller business uses.

The major developments at East Devon's West End and the Clyst Valley Regional Park proposals are identified on the Proposals Map (West End inset map).

Funding contributions will be sought from all developments in the West End to secure implementation of integrated transport and infrastructure provision.

### West End Green Infrastructure

- 7.8 Green Infrastructure comprises of open green spaces, footpaths and other links. It is a generic term for the creation of high quality, attractive and functional places that provide a setting for day-to-day living, enhance the character and diversity of the landscape, and

conserve heritage assets, all of which contribute to the area's unique sense of place and cultural identity. It will enrich the area's wildlife value by addressing the negative impact of habitat loss and fragmentation by promoting habitat enhancement and linkage. Green Infrastructure will also help to connect residents and visitors to leisure and work destinations along a network of safe and clearly defined routes. Tree cover in urban settlements will make places more resilient to climate change thus keeping temperatures down<sup>24</sup>.

- 7.9 Green Infrastructure is seen as an essential part of the vision for a long-term sustainable future for the Exeter and East Devon Growth Point area. Green infrastructure is also relevant to all other parts of the District and policies in the plan refer to provision. The Council and partners are all committed to developing strategic networks of accessible, multi-functional sites as well as linkages. These contribute to people's well-being in addition to sustaining an important wildlife resource.
- 7.10 In East Devon's West End, Green Infrastructure is especially important as there will be a very significant level of development occurring with a substantial increase in the resident and employee population. Biodiversity, wildlife interests and environmental interests can be harmed by large scale development. However, if undertaken in a positive manner, in line with sound Green Infrastructure planning, adverse environmental impacts can be minimised and opportunities for habitat improvements and new provision can be generated. The net environmental benefits post development can be far greater than the green field starting position.

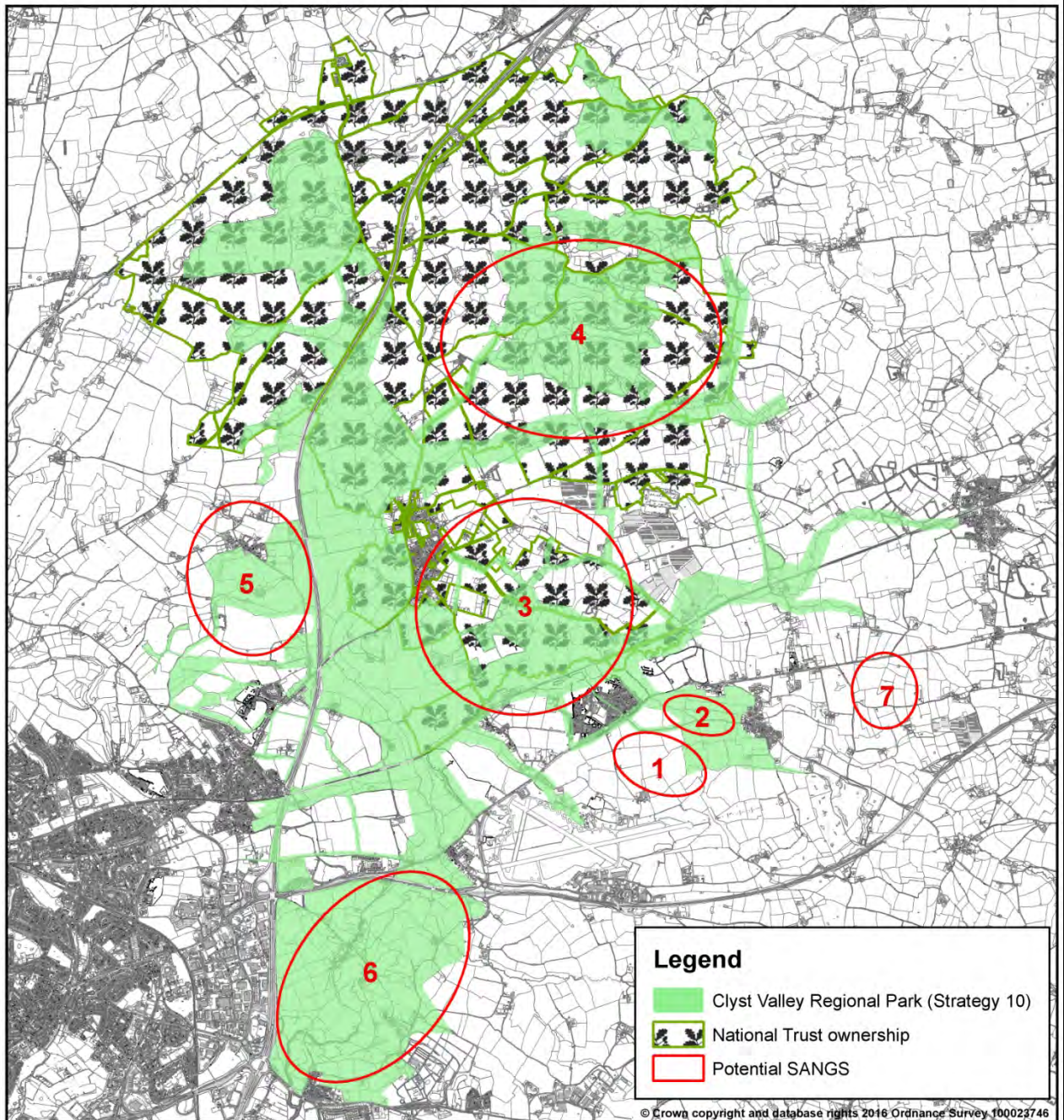
### **Clyst Valley Regional Park**

- 7.11 The Clyst Valley Regional Park proposal does not establish a 'policy boundary' that prevents or 'says no' to development. It sets out where particular emphasis will be attached to establishing high quality landscapes and settings for development, people and wildlife.
- 7.12 The Clyst Valley Regional Park will enable and support major development in the West End of East Devon without generating adverse biodiversity impacts. The Habitats Regulations require the Appropriate Assessment of any project where the likelihood of significant effects on European wildlife sites cannot be ruled out. The definition of a project should be taken in its widest sense, including any development that would normally need to have the benefit of planning permission, and could include projects where planning permission is not required. The timely delivery of a suitably sized, appropriately designed Clyst Valley Regional Park needs to be secured within this Plan in order to enable a conclusion that the Plan's housing allocations will not adversely affect the integrity of the Exe Estuary and East Devon Heaths Natura 2000 and Ramsar sites. Suitable Alternative Natural Greenspace (SANGS) will be provided within, adjoining or with appropriate accessibility to the Clyst Valley Regional Park. Only some parts of the overall park will be SANGS. National Trust Land that will form part of the Clyst Valley Regional Park, and therefore extend its coverage, is shown on the map below.

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<sup>24</sup> Exeter Area and East Devon Growth Point (2009) "Green Infrastructure Study and Strategy" – [ID: Environment – Env015]

**Areas in / adjoining the Clyst Valley Regional Park with potential for SANGS**



Note all areas and boundaries are indicative only

1. Land understood to be in New Community Partners control with limited potential for built development. Site has SANGS potential.

2. Land that adjoins/forms part of application 15/1825/MOUT that was not proposed for built development. Site has SANGS potential.

3. Land predominantly in National Trust ownership with ongoing discussions with the Trust that through agreement could have SANGS potential.

4. Ashclyst Forest, which is in National Trust ownership, and discussions are ongoing in respect of opening up extensive areas as SANGS.

5. Land north of Old Park Farm housing development sites will provide extensive open space. Scope for links to SANGS and possible provision.

6. Land south of Mosshayne/Tithebarn Green may have open space and SANGS potential.

7. Woodland Trust site. Scope for SANGS provision.



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## Strategy 10 - Green Infrastructure in East Devon's West End

We will ensure that the Green Infrastructure Strategy for East Devon's West End dovetails with comparable work being undertaken in Exeter to provide a green framework within which strategic development occurs. All development proposals of the West End will individually and collectively contribute to the implementation and long-term management of green infrastructure initiatives through appropriate contributions and/or on site provision, and Green Infrastructure initiatives should feature in all developments.

### **Clyst Valley Regional Park**

Land to accommodate the Clyst Valley Regional Park is allocated on the Proposals Map. Developer contributions, the Community Infrastructure Levy and other agricultural-environmental funding streams will be used in combination to deliver this 'landscape' scale strategic project. Landowner, developer and multi-agency collaboration will be essential to achieve the broad range of outcomes intended for this area to ensure the planned growth is delivered sustainably over the plan period. The Clyst Valley Regional Park will:

- a) Provide high quality natural green space that is complementary to development and will be a stimulus to encourage commercial and business development of the highest standard.
- b) Ensure natural ecosystems function in the West End of our District and ensure residents, workers, school children and visitors of all abilities have easy access to high quality open spaces, with linked benefits to health, education and food production.
- c) Take recreation pressure away from more environmentally sensitive locations thereby overcoming concerns arising from application of the Habitat Regulations that would otherwise prevent development coming forward. Provision of the park could help address need and requirements arising from development in other parts of East Devon, Exeter and potentially Teignbridge. We will encourage a park that 'reaches into' the open spaces of our neighbouring authority partners.
- d) Provide new wildlife corridors that enhance the biodiversity of the West End.
- e) Provide green corridors, open space and biodiversity enhancement areas. Enhance cycling and walking opportunities to link habitats and sustainable movement networks that promote the overall recreational experience for the West End.
- f) Conserve and enhance heritage assets and their setting to reflect their intrinsic importance, maximise beneficial outcomes for park users and to encourage use of the park and to enrich the cultural identity of the area.

The park will be designed and managed to highest natural green design standards and it will be subject to parkland, open and recreation space and countryside and green infrastructure policies. Development will not be allowed in the designated area unless it will clearly achieve valley park specific objectives for people and wildlife. Countryside policies of the plan will still apply in non-allocated development locations and areas.

### **Habitat Regulations and West End Development**

Where the likelihood of significant effects on European wildlife sites cannot be ruled out from developments in the West End, the Council will undertake an appropriate assessment of impacts and will only support and approve proposals where it can be demonstrated that adverse effects on site integrity can be prevented.

Of particular relevance to the Habitat Regulations will be the need for continued checks and monitoring to ensure that any mitigation measures for built development, linked to Clyst Valley Regional Park provision, achieve the ends envisaged and offers effective mitigation against adverse impacts that could otherwise occur. Each phase of any development occurring and park provision will be assessed and monitored.

Mitigation measures in respect of the West End established as needed to comply with Habitat Regulation assessment will need to accord with measures set out in the 'South-east Devon European Site Mitigation Strategy'. Provision of SANGS will be an essential part of the overall West End development. Where possible SANGS should dovetail with wider Green Infrastructure policies and be compatible with neighbouring authorities' plans. The functionality of any potential SANGS and its contribution to the avoidance of a likely significant effect must be clearly demonstrated.

### **West End Physical Infrastructure**

7.13 Having the right physical infrastructure in place is a critical requirement for any new development. The scale and nature of development proposed for East Devon's West End is such that significant attention will be attached to securing infrastructure provision.

### **West End Transport and Movement**

7.14 One of the major constraints to development of the West End was the capacity of Junction 29 on the M5 Motorway. Significant road improvements have now been completed and these increase vehicle capacity and provide for direct access into the Science Park. A new cycle and pedestrian bridge now spans the M5 motorway and the Science Park spine road is completed.

7.15 In 2010 a study was completed examining growth options in the West End and transport consideration<sup>25</sup>. In January 2011 Devon County Council outlined its commitment to improving public transport and other forms of green travel. In its briefing note, Devon Metro – fulfilling the potential of rail<sup>26</sup>, one of the aims is to promote opportunities to enhance rail travel into Exeter to help facilitate economic growth and a reduction in carbon emissions. In the short term, new stations and service improvements are planned

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<sup>25</sup> Parsons Brinckerhoff for Devon County Council (2010) Assessments of Options for Delivery of RSS Growth in the Exeter Sub Region [ID: Infrastructure – Inf012]

<sup>26</sup> Devon County Council (2011) Devon Metro – Fulfilling the Potential of Rail – [ID: Infrastructure – Inf010]



# **East Devon Local Plan 2013 to 2031**

**Adopted – 28 January 2016**

- 18.41 The District's heathland, pasture and woodland soils as well as timber vegetation contain significant natural stores of organic carbon
- 18.42 The South West Regional Biodiversity Partnership Nature Map provides a clear strategic picture of areas within the District with high potential for re-creation of Biodiversity Action Plan habitats (Strategic Nature Areas). Strategic Nature Areas within the District include areas suitable for the re-creation of lowland heath, native woodland, coastal and floodplain grazing marsh, neutral grassland and purple moor-grass and rush pasture.

### **National and International Wildlife Sites**

- 18.43 The internationally designated sites (SPAs, SACs and Exe Estuary Ramsar site), nationally designated sites (SSSIs) and statutorily protected wildlife species within the District all have statutory protection. As these sites are already legally protected the Local Plan will not contain Policies specifically relating to them. The Dorset and East Devon Coast WHS extends from Orcombe Point at Exmouth along the East Devon Coast to Lyme Regis and then on to Studland in Dorset and is designated for its outstanding geology representing 185 million years of the Earth's history. At the local level there are eight local nature reserves, 270 County Wildlife Sites and 21 Regionally Important Geological sites.
- 18.44 Local wildlife sites, such as Local Nature Reserves and wildlife corridors, are also important and are highly valued at a local level throughout the District. Within our built-up areas, 'community greenspaces' are essential 'green lungs' which provide wildlife habitats and formal and informal recreation spaces. Phear Park and the Valley Parks in Exmouth, the Axe Estuary Wetlands and the Byes in Sidmouth are all examples of community greenspaces which, whilst different in character, contribute hugely to local biodiversity and residents' quality of life.

### **The Habitat Regulations**

- 18.45 The East Devon Heaths Special Protection Area (SPA) is a network of heathland sites which are designated for their ability to provide a habitat for internationally important breeding populations of nightjar and Dartford warbler. The Exe Estuary SPA is designated for its internationally important populations of birds. The River Axe Special Area of Conservation (SAC) is designated for its habitat provision, particularly for vegetation and fish species. Sidmouth to West Bay SAC is a coastal strip designation, focusing on sea cliff, scree and drift line vegetation. Beer Quarry and Caves SAC is designated for the existence of 3 bat species and the last Devon Pebblebed Heaths SAC (same areas as the SPA) is designated in recognition of its wet and dry heathland vegetation and for the Southern Damselfly. These areas are protected by the Habitats Directive (EC Directive 92/43/EEC on the Conservation of Natural and Semi-Natural Habitats and of Wild Fauna and Flora) and the Habitats Regulations (The Conservation (Natural Habitats) Regulations 1994). Under these Regulations East Devon District Council has a duty to assess whether there is a risk of any plan or proposal having a significant impact on the integrity of the SPA or SAC.

- 18.46 The NPPF advises on the promotion, preservation, restoration and re-creation of priority habitats and protection and recovery of priority species. International and national legislation and policy already provides statutory protection for, and comprehensive guidance on the management of valued biodiversity and geological assets. We will apply these safeguards carefully together with the use of continued Local Plan policies, to conserve these precious assets.

### **The Exe Estuary and Pebblebed Heaths**

- 18.47 The Council has formed the view, after receiving advice from Natural England (the government agency responsible for the promotion of wildlife), that there is a risk that residential development (and occupants/their pet) could impact on East Devon Heaths SPA or the Exe Estuary SPA boundary. This advice is reinforced by follow-on work on Habitat Regulations assessment. A particular concern raised by Natural England is that new housing development may have an adverse effect on the SPAs; for example an increase in recreational activity and dog walking may disturb the ground-nesting birds on the Heaths or roosting or feeding birds on the Exe Estuary. Predation of birds by domestic cats is already identified as a particular concern on the East Devon Pebblebed Heaths and any increase in the number of homes could be expected to increase in cat numbers and further exacerbate adverse impacts/predation. To help preserve the integrity of the East Devon Pebblebeds Heath, specifically on account of the impacts of domestic cats through bird predation, new dwellings will not be allowed on or within 400 metres of the Pebblebed Heaths Special Protection Area.
- 18.48 In response to potential adverse impact the Council, in conjunction with Exeter City Council, Teignbridge District Council, Natural England, the Royal Society for the Protection of Birds and The Exe Estuary Management Partnership, has commissioned a series of reports from Footprint Ecology on the protected European Wildlife sites. These reports<sup>100</sup> have assessed:
- a) underlying ecological functioning of the sites;
  - b) current recreational and other use and impacts on the sites; and
  - c) projected impacts arising from extra development.

The final report in the series is a:

- d) Mitigation and Delivery Strategy – this will address proposed mitigation measures to overcome and address adverse impacts predicted to arise from increased user pressure on the designated sites, primarily recreation use and dog walking related.<sup>101</sup>

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<sup>100</sup> Footprint Ecology (2012) – “Exe Estuary Visitor Survey Phase 1” – [ID: Environment – Env020]

Footprint Ecology (2012) – “Exe Estuary Visitor Survey Phase 2” – [ID: Environment – Env021]

Footprint Ecology (2012) – “Exe Estuary Visitor Survey Map Annex” – [ID: Environment – Env022]

Footprint Ecology (2012) – “Assessment of Recreational Impacts on Dawlish Warren SAC” – [ID: Environment – Env023]

Footprint Ecology (2012) – “Exe Estuary SPA & Dawlish Warren SAC - Interim report relating to strategic planning and impacts from recreation.” – [ID: Environment – Env024]

<sup>101</sup> Footprint Ecology (2013) – “Eastern Devon Habitat Mitigation strategy” – [ID: Environment – Env038]

- 18.49 The Mitigation and Delivery Strategy includes a series of recommendations that link issues surrounding increased development (particular new homes and by implications the impacts of home occupiers) and mitigation that is required in order to ensure that development is acceptable and will not lead to adverse impacts or worsening of habitat integrity. The success of the plan and proposals and projects within the plan will be dependent upon implementation of the proposals in the strategy and this will require joint initiatives with Exeter City and Teignbridge District Council. Initiatives and actions under the strategy will be applicable to strategic policy proposals as well as more local and detailed proposals. The strategy will be especially important in respect of mitigation of impacts arising from strategic developments at the West End and in Exmouth and in other localities where adverse impacts could arise from development, especially on the Exe Estuary and Pebblebed Heaths. It could also have relevance to much smaller scale developments for example as related to re-use of rural buildings (see Policy D8).
- 18.50 East Devon District Council is working with Exeter City Council and Teignbridge District Council to determine the risks arising from their combined growth to sensitive international wildlife sites and to implement measures to mitigate these risks. East Devon District Council will continue to implement this Joint Interim Approach and will accelerate progress in developing and adopting its successor. This will require establishing a cross-authority partnership to:
- co-ordinate the identification and agreement of relevant mitigation measures;
  - raise appropriate funds from relevant developments;
  - co-ordinate the delivery of agreed measures;
  - monitor annually the effectiveness of delivered measures, and if necessary modify their management.
- 18.51 The Exe Estuary and Pebblebed Heaths are already under threat from visitor use and any extra use (use by occupants/users of development) could lead to unacceptable adverse impacts. Mitigations measures are therefore essential in respect to accommodating development. The habitat assessment work that the Council has commissioned shows that the overarching levels and locations for growth set out in the plan, when it comes to implementation of plan proposals, need:
- a) further detailed assessment; and
  - b) the plan to make clear that it is reliant upon the forthcoming detailed mitigation and delivery strategy
- 18.52 New development within 400m of the Exe Estuary should be subject to a project level assessment to check for potential impacts on roost sites or key areas for birds outside the SPA boundary. The habitat related works that we have undertaken removes the need for individual development schemes to be subject to separate Appropriate Assessments. Appropriate mitigation that will be paid for out of the Community Infrastructure Levy income and/or through Section 106 agreements.

## **Beer Quarry and Caves SAC**

18.53 At the Beer Quarry and Caves SAC the Council will seek to work with Natural England to develop a ‘consultation zone’ and planning guidance that encompasses the important commuting and foraging habitats of bats.

## **Habitat Regulations Assessment – Air and Water Quality Issues**

18.54 The Habitat Regulations Assessment<sup>102</sup> also identified a series of concerns relating to air and water quality matters. In some case these may be relevant to determination of planning applications. However, these air and water related considerations and recommendations in the report are relevant to wide range of activities and issues that also extend beyond land use planning and the Local Plan.

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<sup>102</sup> Footprint Ecology (2012) – “Habitat Regulations Assessment of the East Devon Local Plan” – [ID: Environment – Env025]

## Strategy 47 - Nature Conservation and Geology

### **All development proposals will need to:**

1. Conserve the biodiversity and geodiversity value of land and buildings and minimise fragmentation of habitats.
2. Maximise opportunities for restoration, enhancement and connection of natural habitats.
3. Incorporate beneficial biodiversity conservation features.

Development proposals that would cause a direct or indirect adverse effect upon internationally and nationally designated sites will not be permitted unless:

- a) They cannot be located on alternative sites that would cause less or no harm.
- b) The public benefits of the development clearly outweigh the impacts on the features of the site and the wider network of natural habitats.
- c) Prevention, mitigation and compensation measures are provided.
- d) In respect of Internationally designated sites, the integrity of the site will be maintained.

Development proposals where the principal objective is to conserve or enhance biodiversity or geodiversity interests will be supported in principle.

Where there is reason to suspect the presence of protected species applications should be accompanied by a survey assessing their presence and, if present, the proposal must be sensitive to, and make provision for, their needs.

### **Habitat Regulations and Mitigation of Potential Adverse Impacts of Development**

Where development or the occupants of development could lead to adverse biodiversity impacts due to recreational or other disturbance, we will require mitigation measures and contributions to allow for measures to be taken to offset adverse impacts and to create new habitats. This will be of particular importance where development could impact upon 'European Designated Sites' (In the case of other impacts to internationally, nationally and locally designated sites, we will seek appropriate mitigation measures). Where European designated sites might be affected there will be a need for Appropriate Assessment in line with Conservation and Species Habitat Regulation requirements. Mitigation measures will be required if harmful impacts are predicted or could arise.

In respect of the Exe Estuary and the Pebblebed Heaths (and Dawlish Warren in Teignbridge) an over-arching strategic approach to habitat mitigation measures has been established through the Disturbance Study. All residential development schemes within a straight line 10 kilometres distance of any part of the SAC and/or SAC designated areas of the Exe Estuary or Pebblebed Heaths will be required to provide mitigation. The onus will rest on developers demonstrating that mitigation can and will be provided and granting of planning permission will be linked to clear evidence that delivery will actually happen to agreed timescales. The Disturbance study work and associated assessments will typically negate the need for residential development schemes to be subject to individual Appropriate Assessment. Through this strategic approach monies collected through CIL, negotiated separately through Section 106 agreements or potentially otherwise paid or contributed through other means will address mitigation requirements.

Non-residential development schemes within the 10 kilometres catchment (and potentially beyond) will need to be subject to project level assessment to establish potential need for and form of any mitigation. The Council has commissioned technical advice in respect of tourism accommodation development that will parallel that for residential schemes.

Payment as part of the CIL contribution will typically be the expected approach and habitat mitigation will form the first draw on CIL funds. Mitigation will include on-site and off-site measures, to include:

- Improved wardening and management of sites;
- Information and education;
- Changes to access arrangements and points;
- Habitat improvements and provision ; and
- Provision of Suitable Alternative Natural Green Space (SANGS).

On-site mitigation measures are likely to be most appropriate in the very early years of the Local plan's life. Off-site provision in the form of SANGS should aim for a target level of provision of around 8 hectares of open space provision for every net new 1,000 residents accommodated through development. At a residential density averaged at 2.2 persons per each new home built this will equate to around 176 SqM of SANGS space per each net extra dwelling. However actual space standards will depend on the quality, character and location of provision. SANGS will need to include substantial open space areas ideally of semi-natural character and should specifically be appealing to dog walkers. They can utilise land previously inaccessible to the public or arise from improvements of currently accessible but under-used spaces. To help ensure and secure timely delivery of mitigation, specifically SANGS, the Council has the option of exercising Compulsory Purchase Order powers to ensure availability of land.

Developments on the western side of the District – including in the West End, Ottery St Mary, Budleigh Salterton, and Sidmouth will all fall under the coverage of this policy.

To help preserve the integrity of the East Devon Pebblebeds Heath, specifically on account of the impacts of domestic cats through bird predation, new residential uses will not be allowed on or within 400 metres of the Pebblebed Heaths Special Protection Area.

The mitigation proposals, including those of the 'South-east Devon European Site Mitigation Strategy', will need to be implemented ahead of development being occupied and must provide for mitigation in perpetuity to ensure that development does not have a net adverse impact on the integrity of European designated wildlife sites. This will include provision of on-site, off-site and cross-site measures and monitoring. The delivery and success of mitigation will be monitored alongside development (specifically new housing development) and changes in population. Where mitigation lags behind development it will be a potential indicator that the worth and integrity of European sites could be being eroded. This will provide a policy basis and justification for resisting further development or occupation until effective mitigation is delivered in accordance with past development/occupancy. Work will be undertaken to establish effective trigger points or markers against which to formally assess delivery of mitigation and therefore establish a basis to refuse planning permissions with a formal first review planned for April 2018.

**Appendix 2      East Devon Local Plan Inspector's Report,  
Killerton Estate Prospectus for Action and Main  
Modifications Extracts**



The Planning Inspectorate

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# **Report to East Devon District Council**

**by Mr Anthony Thickett BA(HONS) BTP MRTPI Dip RSA**

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

**Date 15 January 2016**

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PLANNING AND COMPULSORY PURCHASE ACT 2004 (AS AMENDED)

SECTION 20

## **REPORT ON THE EXAMINATION INTO THE NEW EAST DEVON LOCAL PLAN 2006 TO 2026**

Document submitted for examination on 2 August 2013

Examination hearings held between 11 February and 14 March 2014 and 7 and 8 July 2015.

File Ref: PINS/U1105/429/5

22. The development of a new town at Cranbrook in the West End of the District has been a long term policy objective and a significant amount of development has taken place or has planning permission. The Plan supports the continued development of Cranbrook and growth at the West End. It lies outside any national landscape designations and provides an opportunity for the creation of a sustainable settlement combining housing, employment, schools, shops green space and other facilities. By directing the majority of new development to the West End the Plan respects the District's landscape constraints and builds on existing achievements and commitments. Cranbrook has expanded significantly since the start of this examination. The following modifications are necessary to reflect this and other developments in the West End: **MMs 28, 29, 30, 31, 32** and **33**.
23. To avoid any doubt, **MMs 21** and **26** move the requirement for all developments in the West End to contribute to transport and other infrastructure to a more logical place in Strategy 9. In 2014 the Council decided to produce a Masterplan for Cranbrook to review progress and refresh its vision and design guidance. Insofar as it relates to securing delivery of housing, I am not persuaded that this exercise is necessary or that it is necessary to modify the Plan to refer to it.
24. Development at the West End must make provision to mitigate any potential harm to the Exe Estuary and Pebblebed Heaths SPAs. Most of the housing forecast to be built in the next 5 years already has planning permission or a resolution to grant and so have or are committed to contributing to the provision of Suitable Alternative Natural Greenspace (SANG). Concern has been expressed by Natural England and others regarding the provision of SANGs keeping pace with the demands arising from existing and planned development. To address these concerns the Council has been working with the developers of Cranbrook and the National Trust. The developers of Cranbrook have identified land within and outside the Cranbrook development boundary which has the potential to provide SANGs. The National Trust owns the adjoining Killerton Estate and in August 2015 produced 'A Prospectus for Action'<sup>10</sup> which identifies the potential of the Estate and the willingness of the Trust to improve access to the Estate.
25. A lot remains to be done but I am satisfied that the Council and its partners are working together to ensure that SANGs will be provided in time to satisfactorily mitigate any impacts on the SPAs. **MMs 22, 23, 24** and **25** strengthen Strategy 10 and its reasoned justification and are necessary to ensure that this is the case. Related to this and necessary to ensuring a co-ordinated approach is the Council's commitment to produce a Green Infrastructure Strategy (**MMs 92** and **93**)<sup>11</sup>. However, the situation will need to be monitored carefully and the Plan's strategy revisited if delays to the provision of SANGs prevents development at the West End delivering the number of new homes required at the time required to meet the identified

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<sup>10</sup> Full title: The Killerton Estate: Opportunities arising from the Exeter and East Devon Growth Point, A Prospectus for Action

<sup>11</sup> This commitment was originally expressed in a policy (Strategy 42). However, the NPPF advises that only policies 'that provide a clear indication of how a decision maker should react to a development proposal should be included in the plan'. Consequently, **MM93** deletes Strategy 42.

- need.
26. Turning to the rest of the District, I am concerned that too little growth is planned for the other main towns and larger villages. Axminster (the only Town Council attending the examination which welcomed growth) has an allocation for 650 dwellings but Exmouth, the largest town in the District has only one allocation of 350 dwellings, Honiton only 150 and Sidmouth 125<sup>12</sup>. I accept that dwellings have been built or granted planning permission in all these settlements since April 2013. I also acknowledge the environmental considerations referred to above and that the NPPF does not require the assessment of housing need to be broken down below the District level. Nevertheless, I have significant concerns regarding the impact of the Plan's strategy on satisfying the need of their indigenous populations, particularly for affordable housing.
27. The Plan at paragraph 16.23 states that the '*lack of affordable housing is a critical issue in East Devon and in order to retain younger people in our neighbourhoods and communities, as well as housing others in need, we need more affordable homes*'. The District has a high concentration of elderly people, particularly in the coastal towns of Budleigh Salterton, Sidmouth and Seaton. Budleigh Salterton and Sidmouth are in the area of highest market values (and therefore least affordable). Although the policy requirement for affordable housing is higher in these areas the Plan only makes provision for 870 houses in these three towns, 705 of which were built, under construction or had planning permission in September 2014<sup>13</sup>. The Plan's strategy risks the coastal towns becoming the preserve of affluent retirees which cannot be healthy or sustainable.
28. As submitted Strategy 27 assigned dwellings to the small towns and larger villages in the District. The number of dwellings assigned to each settlement was not based on a proper assessment of its ability to accommodate that number. The Council propose to amend Strategy 27 by listing settlements that may be able to accommodate growth but deleting any reference to numbers. The provision of new housing in the listed settlements will be left to Neighbourhood Plans. The table at Strategy 2 indicates that villages and rural areas will contribute 1,123 dwellings to the housing target. In order to be successful this approach depends on Town and Parish Council's producing a Neighbourhood Plan and for that plan to allocate land for housing.
29. Strategies 6 and 7 as modified by **MMs 18** and **19** would give local communities the flexibility to allocate land outside built up area boundaries. However, there is no requirement for communities to produce a Neighbourhood Plan and most of the Town and Parish Councils engaged in the examination resisted rather than welcomed new housing. As Strategy 27 (as proposed to be changed) no longer assigns housing numbers, it seems to me that a Neighbourhood Plan which did not allocate land for housing could not be said to conflict with the Local Plan.
30. The Council is confident that new housing will come forward through
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<sup>12</sup> Table at Strategy 2 of the Plan

<sup>13</sup> Strategy 2

landscape of the valley illustrates what can be achieved through sensitive design and landscaping.

94. The proposed allocation would be accessed directly from the A375. That road narrows between Brook Lane and the A3052 and heading north is restricted in places through Sidbury. However, the allocation is supported by a detailed traffic assessment and the Highway Authority is satisfied that any impacts can be safely accommodated. The site adjoins the River Sid. The Environment Agency has considered the flood risk appraisal commissioned by the site's promoters and is content that the risk of flooding downstream can be satisfactorily mitigated.
95. In my view, the evidence submitted to the examination demonstrates that a new employment site to serve Sidmouth would be in the public interest. Further, that it has been shown that there is neither a suitable site within Sidmouth nor a better one outside the town. I consider that any environmental impacts can be satisfactorily mitigated and agree with the Council's contention in its Topic Paper that; *'In the exceptional case of Sidmouth a AONB land allocation is warranted'*. **MM61** includes a number of changes to Strategy 26. I consider the proposed allocation to be sound and I do not recommend its deletion from Strategy 26. Nor do I recommend MM62 which shows the deletion of the allocation on the Sidmouth inset map.

#### Conclusion

96. For the reasons given above and subject to the main modifications referred to, I conclude that the Plan makes adequate provision to meet the needs of the towns in the district.

#### **Issue 5 - Whether the Local Plan makes adequate provision to protect the natural and historic environment**

97. The measures needed to ameliorate the impact of the new development at the West End are addressed above. This section considers the effectiveness of the Plan's general strategic and development management policies relating to the natural and historic environment.

#### Natural environment

##### *Ecology*

98. Strategy 47 sets out general principles regarding the need to conserve features with biodiversity and geodiversity value. **MM4** brings the plan up to date with regard to the latest Habitat Regulations Report. **MMs 104, 105** and **106** require the mitigation proposals contained in the South East Devon European Site Mitigation Strategy to be implemented alongside or ahead of development and are necessary to safeguard the integrity of European designated wildlife sites. **MM107** is necessary to modify Strategy 50 to require the loss of any significant amenity features on a development site to be offset by alternative facilities elsewhere of at least the same value. Policies EN4 and EN5 are adequate to protect local wildlife and habitats from harmful development. I do not consider that the minor change to Strategy MM16 is necessary to make the Plan sound.

117. The submitted plan had 4 appendices. The significant changes to the plan have led to the need to delete one, replace another and renumbering (**MMs 180, 181, 182 and 183**).

## Assessment of Legal Compliance

118. The NPPF says that in preparing local plans '*Early and meaningful engagement and collaboration with neighbourhoods, local organisations and businesses is essential*<sup>30</sup>. The appendix to the Council's statement for Hearing 1 catalogues the measures taken to engage the communities in the District. These included workshops and meetings with Town and Parish Councils, and East Devon Business Forum together with exhibitions and leaflets to all households. Many disagree with the plan's policies and allocations but meaningful engagement does not require agreement as its end product. I am satisfied that the Council complied with its Statement of Community Involvement and conclude that the Authorities have complied with the relevant legislation<sup>31</sup> and national guidance with regard to engaging its communities in the preparation of the Local Plan.

119. The Local Plan is identified within the approved Local Development Scheme (LDS) of July 2013 which estimated adoption in early 2014. The Local Plan's content complies with the LDS but not its timing. However, given the urgent need for an up to date development plan to facilitate and guide the growth the District urgently needs it makes no sense, in my view, to find the Plan unsound on the basis that its progress does not accord with the LDS. Having said this, the LDS ought to be up dated as soon as possible.

120. The Sustainability Appraisal and Habitats Regulations Assessment (HRA) have been revisited and updated as the Plan has changed. I am satisfied that the sustainability appraisal supporting the Plan is adequate and complies with the regulations.

121. The HRA concludes that the majority of policies in the Plan are not likely to have a significant effect on any European site but that given the amount of development proposed and the proximity of European sites (to the West End) significant effects cannot be ruled out. The screening for likely significant effects has been re run as necessary and the appropriate assessment updated accordingly. I consider that the HRA meets the legal requirements but, as stated above, the impact of development at the West End on the SPAs will need to be kept under constant review.

122. The Local Plan complies the Regulations and with the Public Sector Equality Duty.

## Overall Conclusion and Recommendation

123. The Plan has a number of deficiencies in relation to soundness and/or legal compliance for the reasons set out above which mean that I recommend non-adoption of it as submitted, in accordance with Section 20(7A) of the 2004

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<sup>30</sup> Paragraph 155

<sup>31</sup> Section s19(3) of the 2004 Act & Section 18 of the Town and Country Planning (Local Planning)(England) Regulations 2012

Act. These deficiencies have been explored in the main issues set out above.

124.I conclude that with the recommended main modifications set out in the Appendix the New Local Plan 2013 - 2031 satisfies the requirements of Section 20(5) of the 2004 Act and meets the criteria for soundness in the National Planning Policy Framework.

*A Thickett*

Inspector

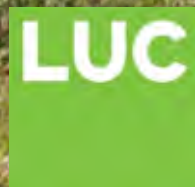
This report is accompanied by the Appendix containing the Main Modifications



# The Killerton Estate: Opportunities arising from the Exeter and East Devon Growth Point

## A Prospectus for Action

Prepared by LUC  
August 2015



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Cover photo shows the rooftops of Cranbrook taken from Elbury Farm on the Killerton Estate.

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# Executive Summary

This Prospectus is the result of a process of internal review and planning by the National Trust which has examined the ways in which the Trust should respond positively to the challenges and opportunities presented by the large-scale residential developments taking place in the Exeter and East Devon Growth Point, on the southern edge of its Killerton Estate.

This document summarises these challenges and opportunities and sets out the Trust's goals and strategic priorities for engaging with the development of the Growth Point.

## Key findings:

1. Cranbrook and the other Growth Point settlements will create major new population centres on the edge of Exeter, requiring a wide range of new services and infrastructure, including access to greenspace.
2. Links from the new communities to surrounding high quality greenspace are currently poor. Surveys of Cranbrook residents have identified significant levels of dissatisfaction on this point.
3. The Killerton Estate provides green infrastructure assets of regional importance, right on the edge of the Growth Point. This is acknowledged in the East Devon Local Plan, including through the identification of the Clyst Valley Regional Park.
4. The GI assets at Killerton include those that are well-known and well-developed such as the House, Garden and Parkland, and some that are less well-known such as Ashclyst Forest.
5. The National Trust is keen to engage with new audiences in Exeter and Growth Point and is looking for opportunities to provide the access to, and active enjoyment of, high quality greenspace by local residents.
6. The National Trust is able to draw on other examples where it is developing new relationships with urban centres such as at

Saltram House (Plymouth and the new town of Sherford).

7. However, there are currently significant barriers to taking forward these opportunities in the Growth Point:

- Some barriers are physical, such as the poor crossing over the railway from Cranbrook to the southern part of the Killerton Estate, and the distance along narrow lanes from there to the assets of Ashclyst Forest and Killerton House.
- Some barriers involve a lack of clear policy mechanisms for delivering the benefits. These include a lack of clarity over the contributions required from developers in the next phases of development, the need for Suitable Alternative Natural Green Space (SANGS) to be created to offset impacts on Natura 2000 sites such as the East Devon Pebblebed Heaths, and the potential role of biodiversity offsetting.

## Next Steps:

There is an urgent need to develop a **Growth Point Green Infrastructure Masterplan** for the next phases of development. The Trust will encourage and support the local authorities in this work, particularly in relation to the Clyst Valley Regional Park and the Clyst Valley Way.

Outline proposals will be developed for **specific green infrastructure projects**, including the creation of new Accessible Natural Greenspace between Cranbrook and Broadclyst; new off-road multi-user routes north from Cranbrook (including an essential requirement for a pedestrian / cycle bridge at the new Cranbrook Station); new and enhanced facilities at Ashclyst Forest (not compromising the tranquil and natural character of the Forest); and new uses for the Elbury Farm Meadows south of the railway.

The new focus on green infrastructure in the southern part of the Killerton Estate will be accompanied by measures to **enhance environmental protection and management**

through the Trust's Whole Farm and Asset Management Plans. Measures will be identified to improve habitat connectivity, flood mitigation, water quality and the protection of heritage assets.

The Killerton Estate has a number of significant advantages which should make it attractive to statutory bodies and developers looking to identify and develop new green infrastructure sites. To prepare for these opportunities, the Trust will **identify sites which meet the appropriate GI criteria** (for instance those for SANGS) and discuss the required management changes with its agricultural tenants.

Through its specialist advisers, the Trust will **develop a programme to engage more closely with the new residents** in the Growth Point communities, using this to access new audiences and visitors in Exeter and the wider region.

In order to determine the best approach to enhance the opportunities at Killerton, the National

Trust will **draw on the experiences of other similar properties**.

The Trust will seek to **enter discussions with decision-makers and developers** in Exeter and East Devon to highlight the package of measures that it can contribute to the sustainable development of the Growth Point. This will focus initially on closer liaison with the District Council's Green Infrastructure Board and the use of developer contributions to fund investment in green infrastructure provision on the Killerton Estate.

The first action to be delivered by the Trust from this Prospectus will be **the appointment of a dedicated green infrastructure post** based at Killerton House. This person will develop the Trust's offer and liaise proactively with statutory and private sector partners to develop and implement a delivery plan and secure the necessary investment.

**Figure 1. Indicative Masterplan for Phases 1 and 2 of Cranbrook (prepared by the Developer Consortium in 2011) with adjoining National Trust land shown in blue hatching (added by this study).**



Source for the Indicative Masterplan for Phases 1 and 2 of Cranbrook: Exeter and East Devon Growth Point Website: <http://www.iviewer3d.co.uk/eed/downloads.htm>.

The Cranbrook Plan Area now covers almost all of the bottom half of this map (with the further phases currently subject to planning applications). See Figure 2 for a larger scale map showing the Plan Area and the Trust's Killerton Estate.

# 1 Introduction

## Purpose of this Prospectus

The National Trust is an active partner in the development of the East Devon and Exeter Growth Point. The position of its Killerton Estate and the range of natural and human resources available on the Estate offer great potential to the Growth Point, which the Trust is keen to capitalise on.

In May 2014, LUC was commissioned by the Trust to facilitate a review of the opportunities for its further active involvement in the Growth Point. This has focussed on the provision of green infrastructure for the new developments and on the Trust's engagement with new residents.

This Prospectus summarises the outputs of this review. It provides a high level commentary on the opportunities, and identifies strategic priorities and key actions for the Trust to develop with its partners in coming years.

This document is split into three chapters as follows:

- Introduction and Context
- Issues and Opportunities
- Recommended Next Steps

## Context

### The Exeter and East Devon Growth Point

Proposals for large-scale residential and industrial development on the eastern edge of Exeter have been under discussion for over 40 years<sup>1</sup>. In 2006 the area was formally recognised as one of the Government's Growth Points, defining its strategic importance as a location for new growth, particularly residential development. The East Devon Local Plan (currently subject to inspection prior to its expected adoption later in 2015) proposes 16,400 homes in the period 2013 to 2031, of which around 6,300 are planned on allocated land at Cranbrook, with land also identified through the Cranbrook Plan Area for

further expansion of Cranbrook with a further 1,550 houses before 2031. Currently planning permission has been granted for 3,500 homes (of which 600 were built by October 2014) and planning applications have recently been submitted, in five applications, for a total of 4,620 additional homes. The location of these new developments and the Trust's Killerton Estate are shown in **Figure 2**.

### Green infrastructure requirements

The scale of new housing planned for the Growth Point will require significant investment in the infrastructure needed to provide essential services. These include green infrastructure for services such as public recreation and a high quality landscape for new residents, the mitigation of impacts on biodiversity and the provision of space for flood drainage.

The East Devon Green Infrastructure (GI) Plan<sup>2</sup> was published in 2009. The Plan identified opportunities to reconnect communities with the landscape surrounding them whilst improving and creating semi-natural habitat and enhancing green infrastructure assets and networks. The GI Plan identified detailed opportunities around Exeter, and some broad GI opportunities around the Killerton Estate, notably the Clyst St Mary to Killerton Greenway, running north-south, and the East Exeter, Cranbrook and Feniton Greenway, connecting Cranbrook to Exeter (see **Figure 3**). However it lacked the level of detail that is now needed in relation to the Growth Point, particularly Cranbrook.

The East Devon Local Plan (as submitted for inspection) describes the strategy that will be taken to the provision of Green Infrastructure in East Devon's West End. The main element of this strategy is the definition of a new 'Clyst Valley Regional Park' to provide high quality natural greenspace and wildlife corridors that take recreational pressure away from more environmentally sensitive locations and enhance cycling and walking opportunities for local

<sup>1</sup> <http://eastdevon.gov.uk/planning/planning-policy/evidence-and-research/cranbrook/what-is-cranbrook-all-about/>

<sup>2</sup> LDA Design (2009) Green Infrastructure Study for the Exeter Area and East Devon New Growth Point

residents. Of the 2,356 ha of land defined as the Clyst Valley Regional Park, it is proposed that up to 380 ha will become open for public access or help to form linkages between existing greenspaces.

The Hearings at the Examination in Public of the East Devon Local Plan in March 2014 highlighted the importance of public-private partnerships in

delivering the Clyst Valley Regional Park. It has also been proposed that the Regional Park should function as a Suitable Alternative Natural Green Space (SANGS) to mitigate the recreational impact of additional visitors on the protected European wildlife sites of the East Devon Pebblebed Heaths and the Exe Estuary.

**Figure 2. Location of the Growth Point and the Killerton Estate**

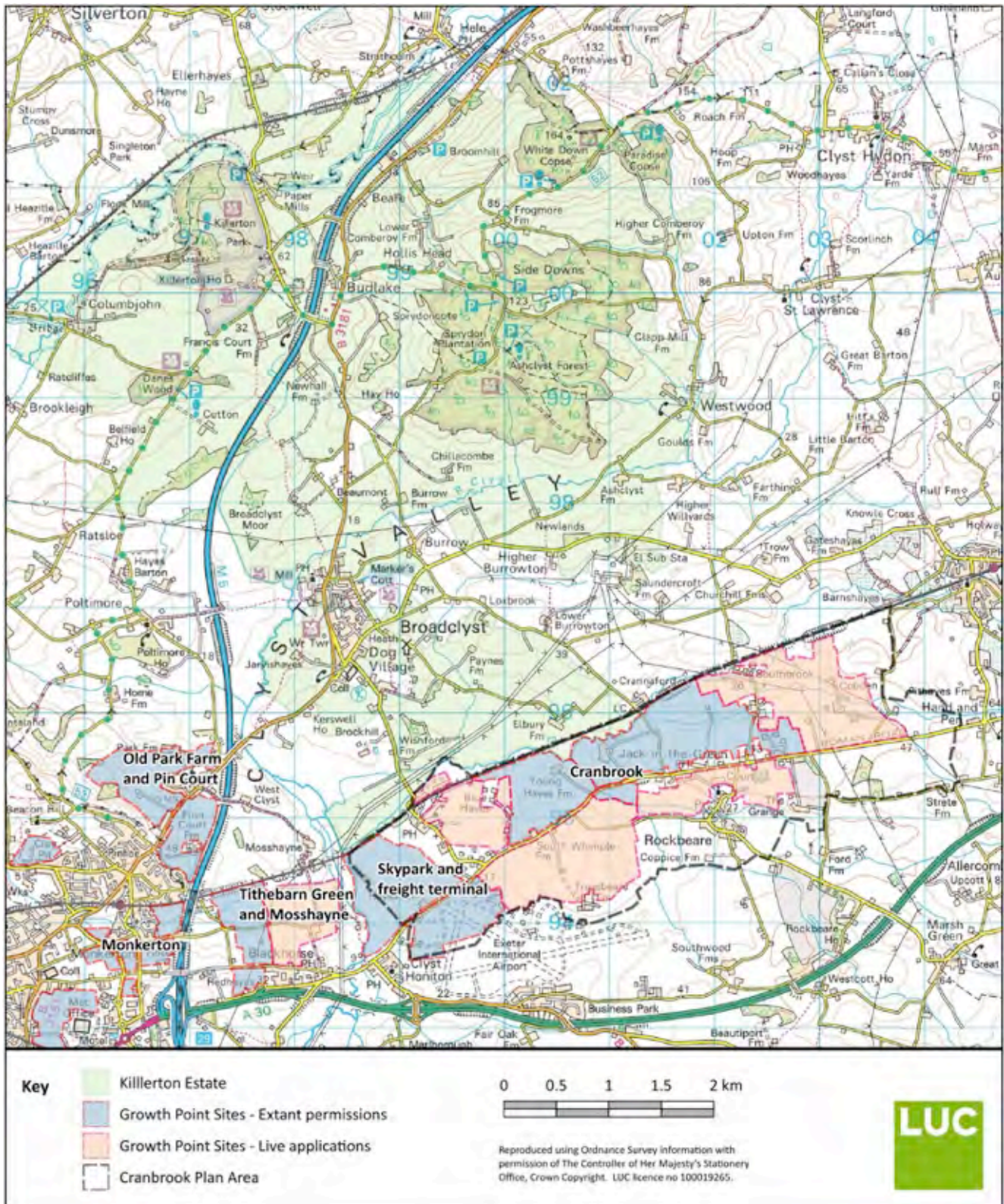
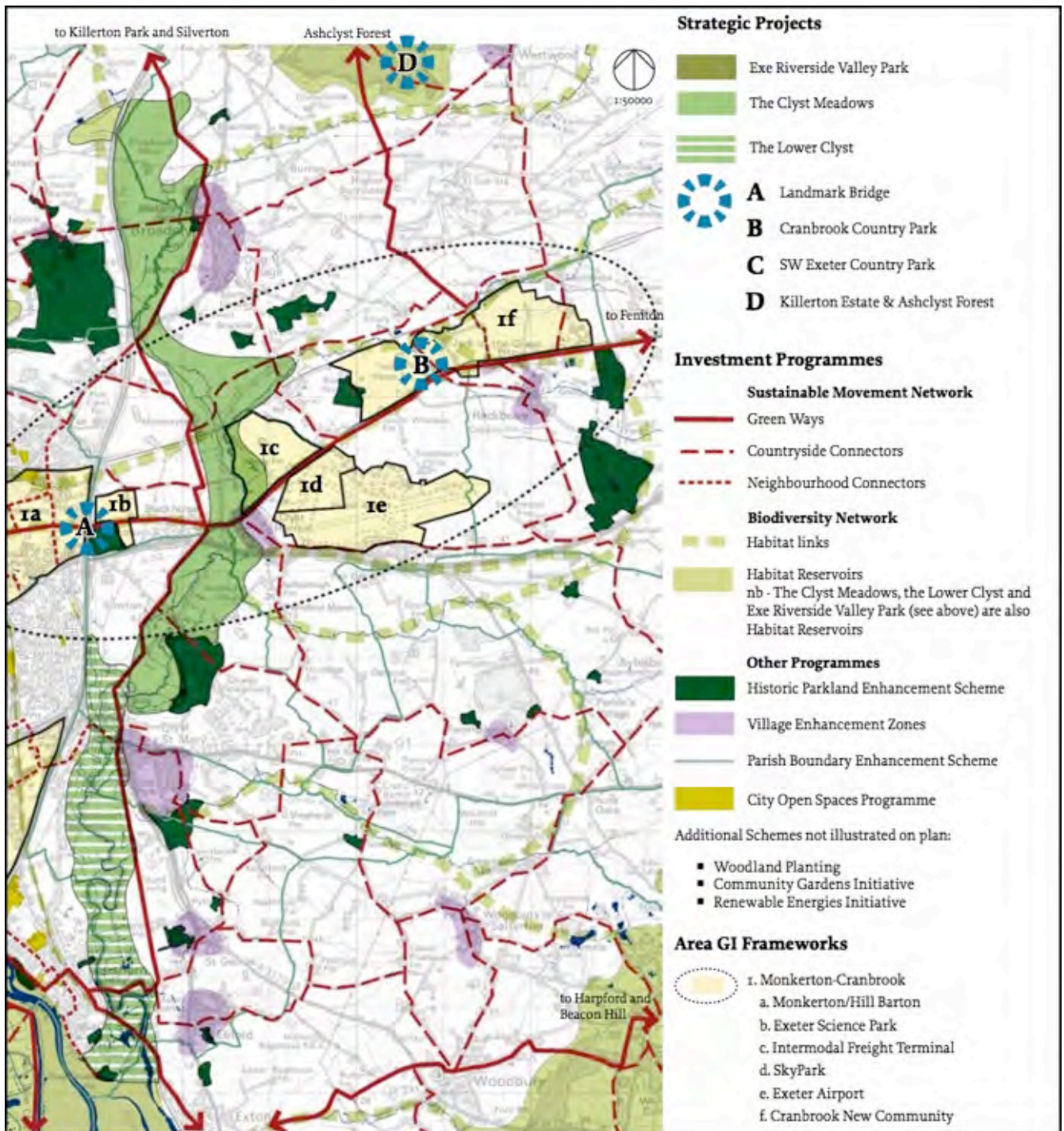


Figure 3. Part of the Green Infrastructure Investment Plan map from the East Devon Green Infrastructure Plan 2009, showing the strategic priorities identified for the Growth Point area.



Source: LDA Design (2009). Exeter Area and East Devon Growth Point Green Infrastructure Strategy. Prepared on behalf of the Exeter Area and East Devon Growth Point Green Infrastructure Advisory Group.

## The relationship of the Killerton Estate with the Growth Point

The Killerton Estate extends to some 2,600 ha. The main visitor destination is the House, Garden and Park which is open 363 days a year and received 205,000 visitors in 2014, many of them day visits from within the South West. The Trust provides open access to Ashclyst Forest and other wooded areas on the Estate and these are popular places for local people to walk but are little known outside the immediate area. There are relatively few public rights of way across the Estate but the Trust provides an extensive network of permissive footpaths and bridleways, around Killerton Park and connecting the Park with Broadclyst and Ashclyst Forest.

The South-East Devon European Site Mitigation Strategy<sup>3</sup>, commissioned as evidence for the Local Plans for East Devon District, Exeter City and Teignbridge District, identifies the National Trust's land within the proposed Clyst Valley Regional Park (42% of which is within the Killerton Estate), as a source of Suitable Alternative Natural Green Space to mitigate the impact of recreation on sites of European importance for nature conservation ('Nature 2000 sites'). In addition, the East Devon Local Plan (as submitted for inspection) recognises the benefits of enhancing the Trust's recreational assets in the Regional Park for existing and new communities<sup>4</sup>.

Research undertaken into visitor use of greenspace by Footprint Ecology (2012)<sup>5</sup> highlights the popularity of Killerton as a regional visitor destination. This research found that Killerton was the second most popular greenspace destination, excluding Natura 2000 sites, amongst residents of East Devon, Exeter and Teignbridge in 2012. It also showed that Killerton was the most popular location mentioned by residents of Exeter City, although less visited than Ludwell Valley Park in the City itself.

<sup>3</sup> Footprint Ecology (2014). South-East Devon European Site Mitigation Strategy.

<sup>4</sup> East Devon District Council (March 2014) Examination of the New East Devon Local Plan 2006-26. Hearing Session Number 18 – West End: East Devon District Council Written Statement

<sup>5</sup> Footprint Ecology (2012) East Devon, Exeter and Teignbridge Household Survey and Prediction of Visitor Use of Green Spaces.

## National Trust perspectives and priorities

### National priorities

The Trust's recently published ten-year strategy<sup>6</sup> sets out four areas of focus for its work, all of which are relevant to the opportunities in the Exeter and East Devon Growth Point. As well as 'playing our part in restoring a healthy, beautiful, natural environment', the Trust will focus on 'helping look after the places where people live'. This theme of the strategy commits the Trust to:

- *"help find innovative new ways to manage local parks and heritage;*
- *explore and give support to local authorities, charities and communities in how to management local heritage and green space;*
- *promote the importance of local heritage and green space."*

Also of particular relevance to the Trust's work in the Growth Point is the commitment under the focus of 'Experiences that move, teach and inspire' to:

- *"make the experience of our outdoor sites easy and exciting for all ages and needs."*

These commitments will guide the Trust's work with the Growth Point.

### Local priorities

The National Trust's perspectives on the specific issues and opportunities for Killerton were explored through a workshop held at the Estate on 22 July 2014. This was attended by ten National Trust staff, including those working at Killerton and those with strategic responsibility for the wider South West area. Key conclusions arising from the workshop were as follows:

- The Growth Point can provide **a catalyst for the Trust's engagement with new audiences** in Exeter, East Devon and surrounding areas (see Box 1 below).
- Specifically there are opportunities to increase and diversify Trust membership, increase the involvement of volunteers supporting the

<sup>6</sup> National Trust (2014). Playing Our Part. What does the nation need from the National Trust in the 21<sup>st</sup> century?

Trust's work and increase engagement with young people through the new schools that are being built.

- The opportunity to provide new green infrastructure for the Growth Point complements the Trust's aim to **diversify the visitor offer at Killerton**, moving away from the current situation where Killerton House is the main attraction.
- **The Middle Clyst Valley** (between Cranbrook, Broadclyst and Ashclyst Forest) is a key area to encourage greater recreational access.
- Careful consideration is needed to **proactively plan the level and type of recreational uses**, particularly at key sites such as Ashclyst Forest.
- A pedestrian / cycle **railway crossing near the new Cranbrook Station** is critical to

connecting Cranbrook with Killerton's natural assets. This needs to be emphasised with planners and other decision-makers.

- **Experience at other National Trust properties** could prove valuable. Examples include the Saltram Estate's involvement in master-planning the Sherford new town and urban extension of Plymouth at Plymstock and the Tyntesfield Estate's engagement with new audiences in Bristol.
- The Trust has much to offer the local authorities, statutory agencies and developer consortium who are involved in delivering the Growth Point. **Great recognition of the Trust's potential role** is required by these partners.

#### Box 1. Existing and potential new audience for the Killerton Estate

The National Trust's analysis of potential audiences living within 40 minutes' drive of Killerton (based on the typology developed with Experian) has identified three social groups, defined as 'Rural solitude', 'Small town diversity' and 'Liberal opinions'. The first group already has a close fit with the Trust's membership profile, whereas the other two groups represent significant new audiences (see Appendix 1).

Most new residents of Cranbrook are young professional families and likely to be classified in social groups such as 'New homemakers', 'Careers and Kids' and 'Suburban Mindset'. Of these, the 'Suburban Mindset' and 'Careers and Kids' groups are target groups for National Trust properties.

Figure 4. Part of the Cranbrook Country Park within the settlement boundary



## 2 Issues and Opportunities

Desk-based research of existing studies and surveys, discussion with National Trust staff and other key stakeholders and site visits, have identified a range of issues and opportunities for the National Trust's relationship with the Growth Point. The key issues and opportunities are listed below, with **Table 1** providing a summary 'SWOT' analysis. **Figure 6** illustrates the location of the opportunities across the Killerton Estate. The potential next steps to explore and achieve these opportunities are outlined in the following Chapter.

### Issues

Issues affecting the use and enjoyment of the Killerton Estate by new audiences in the Growth Point include the following.

- Residents of Cranbrook have expressed high levels of dissatisfaction with the current provision of access to open space available to them (see **Box 2**)
- Access on foot and by bicycle from Cranbrook and other Growth Point sites to surrounding countryside is severely restricted by physical barriers such as the Exeter to Waterloo rail line, the M5, Exeter Airport and A30.
- The Killerton Estate offers a range of high quality green infrastructure (See **Box 3**) but this is concentrated on the northern half of the Estate, making it somewhat remote from the Growth Point.
- Mechanisms for planning and delivery of new or enhanced green infrastructure are complex and not easily understood.
- Analysis of the areas of Accessible Natural Greenspace against the standards set out in Natural England's Accessible Natural Greenspace Standards (ANGSt) reveals adequate provision of the largest sites (100 ha in size) but a deficit of smaller sites (20 ha and less) within the prescribed distances from some or all of the Growth Point sites (See **Appendix 2**).
- There is currently little information on the investment in green infrastructure that needs to take place as part of the next Phase of Cranbrook's development.

#### Box 2. The needs expressed by residents of Cranbrook

East Devon District Council has commissioned two surveys of the views of residents of Cranbrook on a range of issues<sup>7</sup>. The first survey, conducted at the end of 2013 found a very high level of dissatisfaction with the availability of parks, public gardens, play areas and open spaces (65% of respondents were dissatisfied and only 7% were satisfied).

A year later, in December 2014 following the establishment of the Country Park in Cranbrook (see Figure 4), levels of satisfaction amongst residents had improved (37% of respondents expressed satisfaction). However 34% remain dissatisfied mainly because of a lack of managed open space, because the play area is unfinished and there is litter in the play area.

The lack of facilities and amenities, including high quality open space, remains the issue registering the highest levels of concern by residents responding to the survey.

The December 2014 survey shows that the large majority of respondents (82%) spend over an hour a week walking and 28% spend over an hour a week cycling. Higher proportion (94% and 74%) expect to do this after improvements have been made to the Country Park and cycleway.

<sup>7</sup> East Devon District Council and EDVSA Cranbrook Community Questionnaires November/ December 2013 and November/ December 2014.

## Opportunities

Opportunities for forging new and enhanced connections between the Estate and potential audiences include the following:

- Install a railway crossing at the new Cranbrook Station to provide safe and appealing access into Killerton for Cranbrook residents and other visitors via the new Station.
- Create a new Accessible Natural Greenspace site between Cranbrook and Broadclyst with facilities which could also include an activity centre, café and toilets.
- Create a more connected network of footpaths and cycle routes within Killerton Estate to allow access from Cranbrook. This could form part of the Clyst Valley Way.
- Create a safer rail crossing at Crannaford and an off-road route along Crannaford Lane to connect with the existing public footpath.
- Improve connectivity between the Station Road community and Cranbrook.
- Expand the activity of the Community Farm at Broadclyst to involve more Cranbrook residents.
- Establish family cycling trails to encourage use of paths and open space.
- Upgrade the visitor facilities and routes in Ashclyst Forest, including broadening the use of the Trust's site at Caddihoe.

A meeting of Trust staff took place in May 2015 to look in greater detail at the opportunities and actions needed to increase recreational access to the Estate<sup>8</sup>.

This meeting recognised the need to connect the three main 'nodes' of recreational need (the people living in Cranbrook, West Clyst and Broadclyst) with key recreational destinations on the Estate at:

- Killerton House and Garden (existing);
- Ashclyst Forest (enhanced); and
- A 'Nature Park' visitor hub in the southern area of the Killerton Estate (new).

The potential components of the 'Nature Park' between Cranbrook and Broadclyst, which could be offered for designation as a Local Nature Reserve (subject to negotiations with the Trust's agricultural tenants), could include enhancing the

biodiversity management of existing semi-natural habitats and improving public access.

The enhanced access and visitor provision at Ashclyst Forest could include a new visitor centre (information and activity centre, café and toilets) on the south eastern edge of the forest where it is closest to the road and an upgraded multi-user route along the southern fringe of the forest.

**Figure 6** shows a schematic map identifying these potential opportunities.

### Box 3. Green Infrastructure assets and activities on the Killerton Estate

Killerton House, Gardens and Parkland (73 ha and open 363 days a year) are host to a wide range of popular activities including

- The ParkRun – an all-inclusive 5km run route run every Saturday morning
- The Discovery Centre for families
- A children's play area near the House and several play trails
- Theatrical events/concerts/exhibitions held in the grounds
- A variety of walks aimed at different visitor demographics
- School facilities and offers aimed at educational groups

The woodland areas of Ashclyst Forest (272 ha), White Down Copse (51 ha), Paradise Copse (23 ha) and Danes Wood (14 ha) are popular with local walkers, but little known further afield. They are currently suited to 'confident countryside users' but their wildness may discourage people less familiar with semi-natural woodland.

Other sites of biodiversity interest near the Growth Point include the Helling's Park Fen County Wildlife Site at Wishford Farm and semi-natural grassland along the Crannaford Brook.

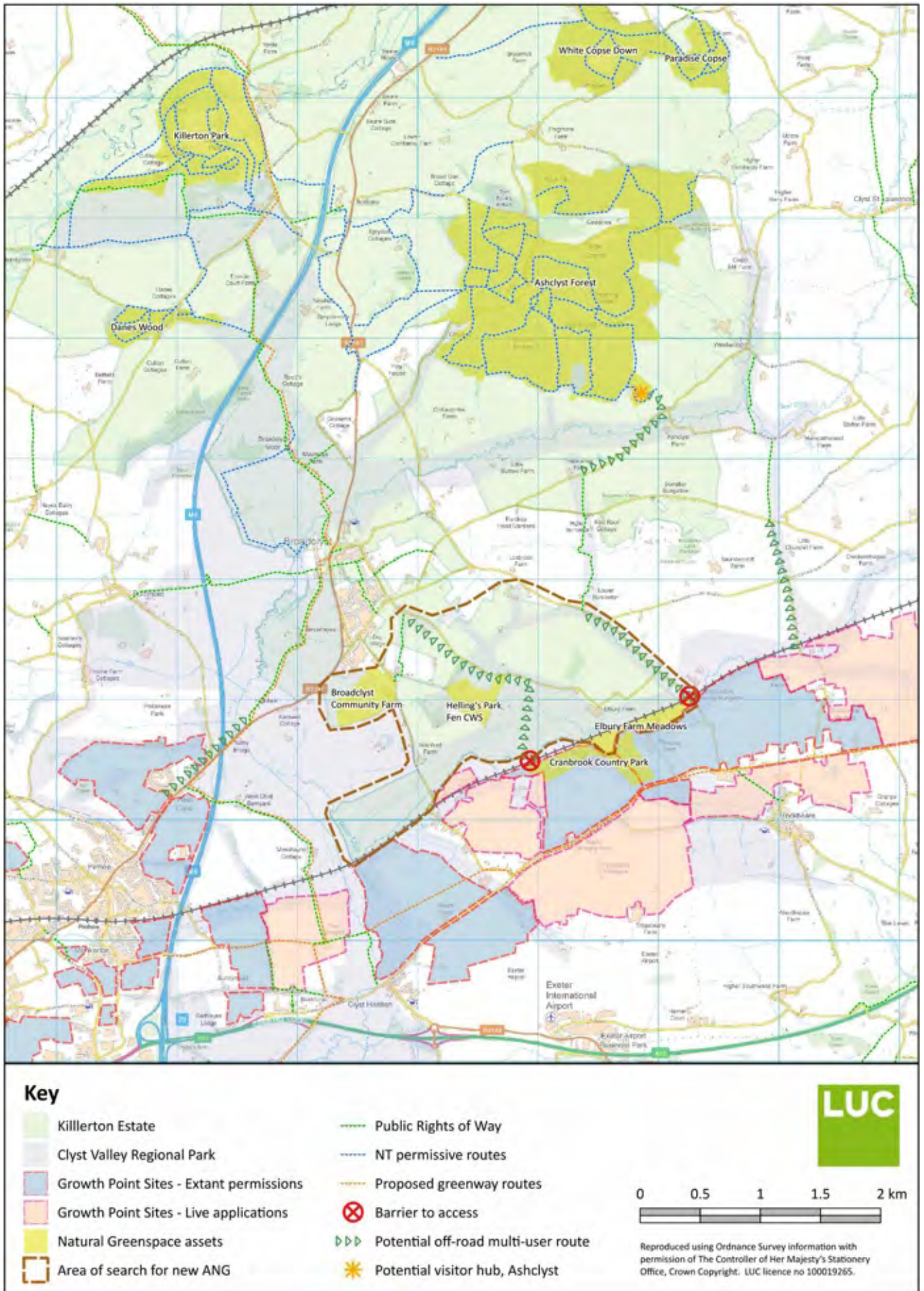
The Trust has established a network of permissive footpaths (25.5 km) and bridleways (22.4 km) connecting the House and Park to Broadclyst and Ashclyst Forest.

The Broadclyst Community Farm (14 ha) is leased by the Trust to local volunteers incorporated as an Industrial Provident Society for the benefit of the community.

Caddihoe in the centre of Ashclyst Forest is currently leased to the Scouts.

<sup>8</sup> National Trust Minutes of 'Access Map Meeting' held at Killerton House, 13 May 2015.

Figure 6. Green infrastructure assets and opportunities north of the Growth Point.



There are two specific policy-driven opportunities for enhancing the provision of natural greenspace on the Killerton Estate that warrant more detailed consideration. These are:

- The provision of Suitable Alternative Natural Green Space (SANGS) to mitigate for the impact of new recreational activity on Natura 2000 sites in East Devon; and
- Making land available for biodiversity offsetting by developers.

## Providing Suitable Alternative Natural Green Space

The need to create Suitable Alternative Natural Green Space (SANGS) in East Devon to alleviate visitor pressure on the Natura 2000 sites (specifically the Pebblebed Heaths SPA and SAC and the Exe Estuary SPA) is well established and is recognised in the East Devon Local Plan.

Research undertaken on behalf of Teignbridge, East Devon and Exeter City Councils<sup>9</sup> has identified the Killerton Estate as one of the most popular recreational destinations in East Devon. The study also defines the type of visitors and use patterns on the Pebblebed Heaths, which should be used to inform the design of any SANGS in the area. The study shows that:

- 80% of visits to Pebblebed Heaths SPA are made by car, therefore car parking at a SANGS would be essential.
- Most visits (83%) came from East Devon residents.
- Most visits were for dog walking (53%), with other popular activities including walking, wildlife watching, horse riding and kids activities.

The potential for up to 16,400 new homes in the Growth Point creates a strong case for investment in SANGS creation at a nearby location such as the Killerton Estate. There is a need to explore the potential for SANGS investment at Cranbrook with Natural England, which has defined a number of

criteria for the creation of SANGS to mitigate pressure at other similar Natura 2000 sites such as Thames Basin Heaths and Dorset Heaths (see **Box 4**).

Killerton has strong potential to provide SANGS offering a range of benefits, including proximity to the existing and new communities; attractive semi-natural countryside; and a landowning body which can guarantee future site protection and ongoing site maintenance and which has expertise in visitor management.

### Box 4. Criteria for the selection of SANGS

Natural England's criteria for the selection of SANGS sites are listed in full in an Appendix to the report prepared for Teignbridge District Council on the provision of SANGS required from developments South West of Exeter.<sup>10</sup>

Essential 'must have' criteria include parking at larger sites (>4ha), the provision of circular routes (2.3-2.5 km in length) from car parking, suitable access points appropriate to the needs of the users the SANGS is designed to cater for, well maintained but unsurfaced paths, and a semi-natural feel free from unpleasant intrusions (e.g. sewage treatment works).

Desirable criteria for site selection include the option of safely letting dogs off leads, gently undulating topography and focal points (e.g. views and monuments) along the route.

SANGS may be created from:

- existing open space of SANGS quality with no existing public access or limited public access, which for the purposes of mitigation could be made fully accessible to the public
- existing open space which is already accessible but which could be changed in character so that it is more attractive to the specific group of visitors who might otherwise visit the SPA
- land in other uses which could be converted into SANGS.

<sup>9</sup> Footprint Ecology on behalf of EDDC, Teignbridge District Council and Exeter City Council (2012): *East Devon, Exeter and Teignbridge Household Survey and Predictions of Visitor Use of Greenspaces*.

<sup>10</sup> Teignbridge District Council (2013). *South West of Exeter: Report of the requirement for Suitable Alternative Natural Green Space to provide mitigation for proposed development at the South West of Exeter and draw visitors away from the Exe Estuary and Dawlish Warren protected European wildlife sites; Analysis of potential site options*.

A Devon-wide Habitat Regulations Board has been established, representing Teignbridge and East Devon District Councils, Devon County Council and Natural England. This Board will be responsible for determining how up to £40 million of developer contributions towards SANGS (based on £749 per home) will be pooled and allocated. The RSPB and Clinton Devon Estates have non-voting seats on this Board, and the National Trust should explore the potential to adopt a similar position.

To inform its position, the Trust should undertake further analysis of areas on the Estate which would meet Natural England's criteria for SANGS and where it would like to see improved public access, mindful of the fit with proposals such as the Clyst Valley Regional Park, and other considerations such as the tenancy of the farms within the estate and areas which may be sensitive to visitor pressure.

## Providing for Biodiversity Offsetting

Devon was one of the six areas which participated in Defra's Biodiversity Offsetting Pilot, which commenced in 2012. The East Devon element of the pilot focussed on whether biodiversity offsetting could contribute to delivery of the 2009 GI Plan. The findings of the East Devon element of the pilot have not yet been published. However, at a national level, an independent review of the initial biodiversity offset pilots was completed in 2013, a summary of which is available online<sup>11</sup>. It noted that the lack of suitable offset sites was a potential challenge of the proposed biodiversity offset scheme. Defra's guidance on the subject also highlighted the difficulty of recreating some types of habitats, including certain types of wetland and waterbodies.

Further consideration of this approach and its practical operation will be necessary. However there is potential for parts of the Killerton Estate, for example hedgerows, orchards and semi-natural grassland, to secure investment through a future biodiversity offset scheme. East Devon District Council has informally agreed to continue support for a biodiversity offset approach, and contributions

will be determined through a simple calculator, based on a model developed in Warwickshire. The approach will require like-for-like habitat replacement, and will include a proximity principle, strengthening the case for investment at Killerton.

This potential mechanism for securing developer contributions could provide small-scale contributions to investing in the Killerton Estate, alongside more significant potential funding sources such as the SANGS mechanism and the Clyst Valley Regional Park.

**Figure 5. Polytunnel at the Broadclyst Community Farm**



<sup>11</sup> CEP for Defra (2013) Evaluation of the Biodiversity Offsetting Pilot Phase, WC 1051. Summary of Interim Report, July 2013 <http://randd.defra.gov.uk/Default.aspx?Menu=Menu&Module=More&Location=None&Completed=0&ProjectID=18229>

**Table 1: SWOT analysis of Killerton and the East Devon and Exeter Growth Point**

Strengths	Weakness
<ul style="list-style-type: none"> <li>• The National Trust’s charitable purposes and its unique powers of inalienability (once declared, land is held in perpetuity), enabling long term protection to be guaranteed.</li> <li>• Position of the Killerton Estate adjacent to many of the Growth Point sites, especially Cranbrook.</li> <li>• The Estate has a range of natural assets and facilities which could support countryside access, including forest, grassland and river valleys (Clyst).</li> <li>• The Trust has valuable experience locally (e.g. through work with Broadclyst School) and regionally (e.g. at Saltram with the Sherford new town).</li> </ul>	<ul style="list-style-type: none"> <li>• Existing activities and facilities are some distance from Cranbrook.</li> <li>• Physical barriers include the railway north of Cranbrook, plus, and tributaries of the River Clyst.</li> <li>• There is currently limited public access in the southern part of the Estate – the public rights of way network has many gaps and the lanes are narrow and/or carry fast traffic.</li> <li>• There is a need for more direct promotion/ involvement of Cranbrook residents in Trust activities and membership.</li> <li>• The Trust currently has insufficient human resources to engage fully with the Growth Point.</li> </ul>
Opportunities	Threats
<ul style="list-style-type: none"> <li>• There is potential to create more of a visitor hub and enhance facilities at a new location on the southern part of the Estate.</li> <li>• Visitors numbers and membership can grow through targeting new audiences including the new Growth Point communities.</li> <li>• Existing Trust initiatives can be adapted and extended, e.g. forest schools, buggy walks, dog walks, school projects, Community Farm, etc.</li> <li>• The Community Infrastructure Levy is a resource that can be used to deliver projects.</li> <li>• Developer contributions could be secured to deliver Section 106 agreements and SANGS funding for the Clyst Valley Regional Park/Accessible Natural Greenspace.</li> <li>• There is the potential to secure funding to invest in habitat creation via the Biodiversity Offsetting Scheme.</li> </ul>	<ul style="list-style-type: none"> <li>• It will be important not to spread the Trust’s offer and resources too thinly across the large estate.</li> <li>• Investment by the developers in the Cranbrook Country Park may be used as an argument not to invest outside the settlement footprint. The Trust will need to demonstrate complementarity with these areas.</li> <li>• The viability of a new visitor hub near Cranbrook is not proven. Further work is required.</li> <li>• The level of capital investment and ongoing management costs by the Trust are likely to be significant. Commitments to support this will be needed both internally and from external partners.</li> </ul>

### 3 Next steps

This final Chapter of the Prospectus highlights the priority actions that can be taken forward by the National Trust, with its partners.

During the last year, the Trust's local staff and regional advisers have considered the issues and opportunities summarised in this Prospectus and there is now a strong consensus on the developments they wish to see implemented.

It is important to emphasise that, while the Trust has much to offer its partners in terms of its natural assets, expertise and powers (particularly its ability to guarantee long term land use through its power to declare the inalienability of land), it has the right to expect high levels of commitment in return. The Trust's involvement in delivering green infrastructure to the Growth Point should be seen as a 'whole package' of integrated measures and not a 'pick and mix' menu.

Although this Chapter is split into a series of themes, there are strong connections between each of them, particularly those concerned with strategic policy requirements and those covering practical implementation projects.

#### Developing a GI Masterplan for the Growth Point

There is an urgent need to develop a Growth Point Green Infrastructure Masterplan which will set out the requirements to be delivered in the next phases of development (including the Clyst Valley Regional Park and Clyst Valley Way), dovetailing with the emerging Cranbrook Masterplan.

This process should be led by the local authorities (East Devon and Exeter) but the National Trust will seek to actively support and shape it, particularly in the delivery of the Regional Park and the Clyst Valley Way.

#### Creating new Accessible Natural Greenspaces and Routes

Key measures that should be addressed by the GI Masterplan include the following:

- There is likely to be a deficit in the provision of Accessible Natural Greenspace (ANG) in the 2 ha to 20 ha size bracket. This can be partly filled by the creation of a new ANG site on Trust land between Cranbrook and Broadclyst (conditional on negotiations with the agricultural tenants). Depending on the site chosen, it could also offer the potential to improve the management and condition of the Helling's Park Fen County Wildlife Site.
- New routes out of Cranbrook and other Growth Point sites to surrounding greenspace are required. Paramount among these is the need for a pedestrian and cycle crossing at the new Cranbrook station. Further requirements are for off-road multi-user routes (by foot, pushchair and cycle) to be created along Elbury Lane from the station crossing to Wishford Farm and from there to Broadclyst; from the Crannaford rail crossing along Crannaford Lane northwards towards Ashclyst Forest (making use of the section of existing public footpath); and north from Southbrook (to meet the footpath to Westwood).
- Ashclyst Forest provides greenspace of the highest quality but lack of facilities and its wild character may be discouraging many potential users. There is a need to upgrade existing facilities (including the surface of some paths) and improve signage. The creation of a new 'low key' visitor facility in the south eastern edge of the Forest will be explored. This could be accompanied by a number of easy access routes such as along the southern border. However a goal will be to avoid 'over-managing' the core of Ashclyst Forest so that its tranquillity and natural character is preserved.

- As the next phase of Cranbrook's development takes place, the Elbury Farm Meadows (the fields on the southern side of the railway bordering Cranbrook) are likely to be more suited to conservation management and informal recreational use than agricultural grazing. The Trust will discuss the future of this land with its agricultural tenants and with the developer consortium.

## Enhancing environmental protection and management

The new focus on green infrastructure in the southern part of the Killerton Estate will be accompanied by a re-examination of Whole Farm and Asset Management Plans. Measures will be identified to enhance environmental protection and management, addressing issues such as:

- habitat connectivity (such as through hedgerow / field margin establishment or enhanced managed);
- flood mitigation (through soil management, creating vegetation buffers beside watercourses and establishing flood storage areas);
- water quality (through segregation, storage and safe spreading of farm wastes); and
- Identification and protection of heritage assets including listed buildings and archaeological features.

## Identifying sites suitable for GI investment

The Killerton Estate has a number of significant advantages which should make it attractive to statutory bodies and developers who are looking to identify new green infrastructure sites, whether they be to meet SANGS requirements, deliver Section 106 obligations, invest the Community Infrastructure Levy or provide for biodiversity offsetting.

These advantages include the Trust's powers to declare inalienability of land use and its expertise in land and visitor management.

To prepare for these opportunities, the Trust will identify sites which meet the appropriate site criteria (for instance those for SANGS) and discuss the required management changes with its agricultural tenants.

## Engaging with new audiences as members, volunteers and visitors

There is potential for the Trust to develop a dialogue with the new residents in the Growth Point communities that it can develop further to engage with similar communities in Exeter and the wider region. Many of the new residents are professional couples with young children who are likely to fit within the Mosaic Experian categories of 'New homemakers', 'Careers and Kids' and 'Suburban mindset'. These people tend to be relatively young and 'asset poor', but with medium to high income potential.

The Trust will develop ideas from this as to the types of activities and events which might engage this new audience. As part of this the Trust will offer its services and expertise to St Martin's Primary School and the Cranbrook Education Campus. Activities and events may include:

- Themed seasonal activity days/weekends;
- Sporting events and competitions;
- Toddler activities and buggy walks;
- Family cycle trails and other events exploring nature; and
- Food themed events, potentially involving Broadclyst Community Farm.

## Bringing in experience from other Properties

In order to determine the best approach to expanding the market for, and enhancing the opportunities at Killerton, the National Trust will learn from the approach taken at other similar properties. Those delivered through the Trust's Cities Programme, including at Saltram and Tyntesfield, are likely to be relevant.

## Holding discussions with partners on the National Trust's offer

Following on from the preparation of this Prospectus, the Trust will take forward discussions with decision-makers and developers in Exeter and East Devon to highlight the package of measures that it can contribute to the sustainable development of the Growth Point.

One element of these discussions will be to seek stronger connections with the District Councils' Green Infrastructure Board, which oversees decisions on where any developer contributions for GI and open space will be invested, and to gain a non-voting seat on the Habitat Regulations Board, which, among other things, will determine the suitability of SANGS sites.

The Councils' Green Infrastructure Officer has prepared a discussion document for the delivery of the Clyst Valley Regional Park which was presented to the GI Board in March 2015. It is suggested that this now needs to be developed into a costed GI Masterplan for the whole Growth Point.

The Trust will actively promote the use of developer contributions through Section 106 agreements to deliver access provision and GI enhancements on the Killerton Estate.

## Resourcing the National Trust's involvement

The capital and revenue costs needed to deliver this Prospectus are considerable. An initial estimate of the capital investment required for the physical GI improvements that could take place on the Killerton Estate is in the order of £4.5 million (excluding bridge(s) across the railway), with an additional £1.0 million (minimum, in addition to commercial income that may be earned) for the ten year costs of maintenance and management.

Although the sources of funding unlocked by the next phases of the Growth Point will also be considerable, there will be competition for this money to deliver other forms of infrastructure and from other people offering to provide the necessary green infrastructure.




The Killerton Estate will fund a dedicated green infrastructure post to develop the Trust's offer and liaise proactively with statutory and private sector partners to develop and implement a delivery plan and secure the necessary investment.

The appointment of this post is the first action which will arise from this Prospectus, providing the human resources needed to take forward the rest of the package of measures.

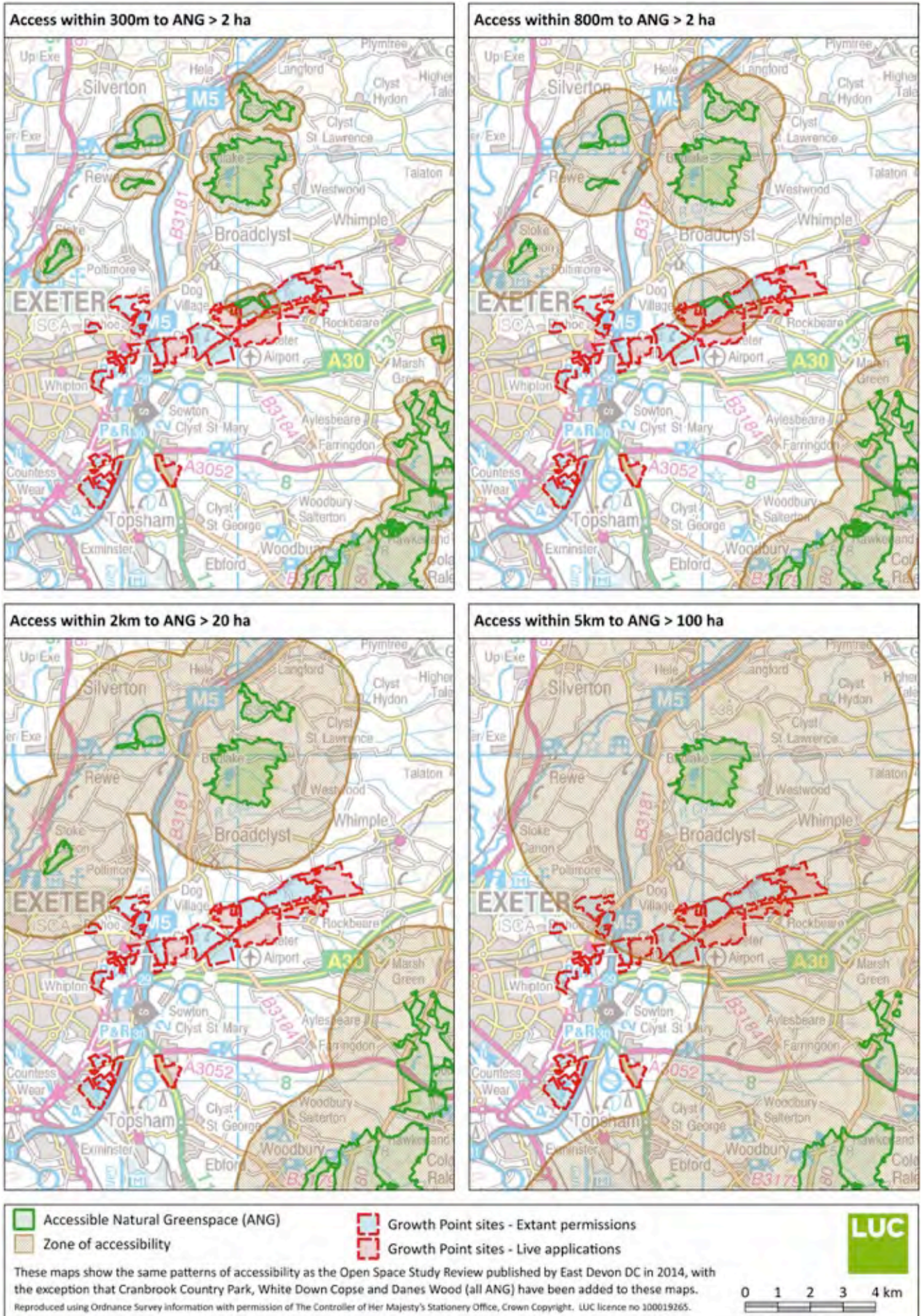
**Figure 7. Dog walking in Ashclyst Forest**



## Appendix 1 Characteristics of key local audiences for the National Trust at Killerton

	<p><b>Small Town Diversity</b> (Non Fit – NT04b)</p> <ul style="list-style-type: none"> <li>• Live in medium sized or smaller towns where there is relatively little change in population</li> <li>• Strong roots in the local community. Likely to live the rest of their lives in the same place</li> <li>• More likely to be in retirement. Significant number are self employed with lower incomes.</li> <li>• The focus for leisure is meeting up with friends and family in homes and gardens, in pubs at meetings of local associations and sharing trips to visit sites of local, historical or environmental interest.</li> </ul>
	<p><b>Rural Solitude</b> (NT Fit – NT03)</p> <ul style="list-style-type: none"> <li>• Live in small villages with a traditional way of life with a sense of community</li> <li>• A high proportion are married or widowed.</li> <li>• Owner occupation is common with spacious, detached houses with gardens.</li> <li>• A strong preference for organic foods grown by local suppliers</li> <li>• Leisure time is spent on country pursuits, fishing, walking, sailing, bird watching and visiting local historic homes and gardens.</li> </ul>
	<p><b>Liberal opinions</b> (Non Fit – NT15b)</p> <ul style="list-style-type: none"> <li>• Young singles and sharers living in urban areas more through renting needs for work, university or financial constraints than a desire to live in the area.</li> <li>• Very transient population.</li> <li>• This group can be split into commuters, students and poor bedsits.</li> <li>• Low car ownership with entertainment focused around pubs and clubs.</li> </ul>

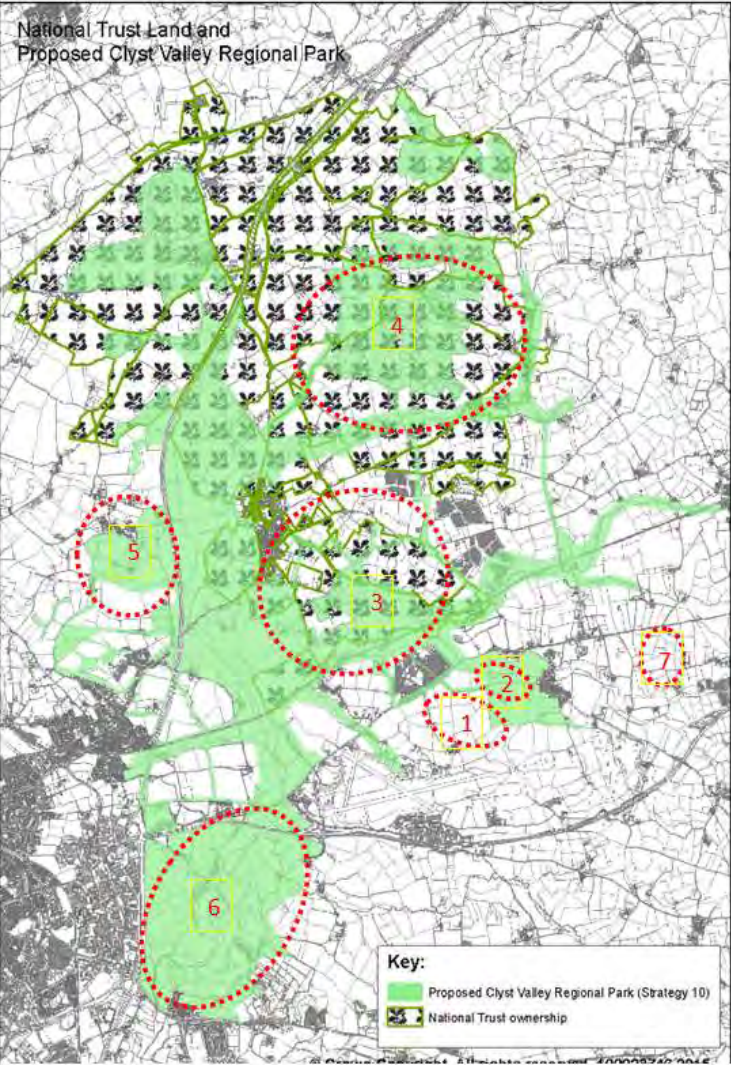
## Appendix 2 Maps applying Natural England's Accessible Natural Greenspace Standards (ANGSt) to the Growth Point



The New East Devon Local Plan Schedule of Main Modifications

MM	Page No.	Policy/Paragraph	<b>PROPOSED MODIFICATIONS</b> New text: <u>underlined</u> Deleted text <del>Struckthrough</del>
			the Proposals Map (West End inset map).  <u>Funding contributions will be sought from all developments in the West End to secure implementation of integrated transport and infrastructure provision.</u>
MM22	53	7.13	<p>The Clyst Valley Regional Park will <del>be a contiguous wildlife corridor and be one part of the solution and is considered necessary to enable</del> <u>and support</u> major development in the West End of East Devon without generating adverse biodiversity impacts <del>that would lead proposals falling foul of habitat regulation requirements</del>. The Habitats Regulations require the Appropriate Assessment of any project where the likelihood of significant effects on European wildlife sites cannot be ruled out. The definition of a project should be taken in its widest sense, including any development that would normally need to have the benefit of planning permission, and could include projects where planning permission is not required. The timely delivery of a suitably sized, appropriately designed Clyst Valley Regional Park needs to be secured within this Plan in order to enable a conclusion that the Plan's housing allocations will not adversely affect the integrity of the Exe Estuary and East Devon Heaths Natura 2000 and Ramsar sites. <u>Suitable Alternative Natural Greenspace (SANGS) will be provided within, adjoining or with appropriate accessibility to the Clyst Valley Regional Park. Only some parts of the overall park will be SANGS.</u></p> <p><u>National Trust Land that will form part of the Clyst Valley Regional Park, and therefore extend its coverage, is shown on the map below.</u></p>

The New East Devon Local Plan Schedule of Main Modifications

MM	Page No.	Policy/Paragraph	PROPOSED MODIFICATIONS New text: <u>underlined</u> Deleted text <del>Struckthrough</del>
MM23	54	New map following paragraph 7.13	<p><b>Areas in/adjoining the Clyst Valley Regional Park with Potential for SANGS</b></p> <ol style="list-style-type: none"> <li>1. Land understood to be in New Community Partners control with limited potential for built development. Site has SANGS potential.</li> <li>2. Land that adjoin/forms part of application 15/0371/MOUT that was not proposed for built development. Site has SANGS potential.</li> <li>3. Land predominantly in National Trust ownership with ongoing discussions with the Trust that through agreement could have SANGS potential.</li> <li>4. Ashclyst Forest, which is in National Trust ownership, and discussions are ongoing in respect of opening up extensive areas as SANGS.</li> <li>5. Land north of Old Park Farm housing development sites will provide extensive open space. Scope for links to SANGS and possible provision.</li> <li>6. Land south of Mosshayne/Tithebarn Green may have open space and SANGS potential.</li> <li>7. Woodland Trust site. Scope for SANGS provision</li> </ol> <p><b>Note all areas and boundaries are indicative only.</b></p>  <p>The map displays the Clyst Valley Regional Park area with seven specific sites highlighted by red dashed circles and numbered 1 through 7. Site 1 is a small area near the bottom right. Site 2 is a larger area to the east. Site 3 is a large central area. Site 4 is a large area at the top. Site 5 is a circular area on the left. Site 6 is a large area at the bottom. Site 7 is a small area on the right. A key in the bottom right corner identifies the green shaded areas as 'Proposed Clyst Valley Regional Park (Strategy 10)' and the areas with a tree icon as 'National Trust ownership'.</p>

The New East Devon Local Plan Schedule of Main Modifications

MM	Page No.	Policy/Paragraph	<b>PROPOSED MODIFICATIONS</b> <b>New text: <u>underlined</u> Deleted text <del>Struckthrough</del></b>
MM24	n/a	Proposals map	Amend West End Inset Map to make it clear the Cranbrook Country Park is part of the Clyst Valley Regional Park. This change is map based and will be included in amendments to the Proposal Map (not text). A note to be put on the West End Inset Map reading – <u>It should be noted that the Cranbrook County Park forms part of the Clyst Valley Regional Park</u> ”
MM25	55	Strategy 10	<p><b>Strategy 10 - Green Infrastructure in East Devon's West End:</b></p> <p>We will ensure that the Green Infrastructure Strategy for East Devon's West End dovetails with comparable work being undertaken in Exeter to provide a green framework within which strategic development occurs. All development proposals of the West End will individually and collectively contribute to the implementation and long-term management of green infrastructure initiatives through appropriate contributions and/or on site provision, and Green Infrastructure initiatives should feature in all developments.</p> <p><b>Clyst Valley Regional Park</b></p> <p>Land to accommodate the Clyst Valley Regional Park is allocated on the Proposals Map. Developer contributions, the Community Infrastructure Levy and other agricultural-environmental funding streams will be used in combination to deliver this 'landscape' scale strategic project. Landowner, developer and multi-agency collaboration will be essential to achieve the broad range of outcomes intended for this area to ensure the planned growth is delivered sustainably over the plan period. The Clyst Valley Regional Park will:</p> <ul style="list-style-type: none"> <li>a) Provide high quality natural green space that is complementary to development and will be a stimulus to encourage commercial and business development of the highest standard.</li> <li>b) Ensure natural ecosystems function in the West End of our District and ensure residents, workers, school children and visitors of all abilities have easy access to high quality open spaces, with linked benefits to health, education and food production.</li> <li>c) Take recreation pressure away from more environmentally sensitive locations thereby overcoming concerns arising from application of the Habitat Regulations that would otherwise prevent development coming forward. Provision of the park could help address need and requirements arising from development in other</li> </ul>

The New East Devon Local Plan Schedule of Main Modifications

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			<p>parts of East Devon, Exeter and potentially Teignbridge. We will encourage a park that ‘reaches into’ the open spaces of our neighbouring authority partners.</p> <p>d) Provide new wildlife corridors that enhance the biodiversity of the West End.</p> <p>e) Provide green corridors, open space and biodiversity enhancement areas. Enhance cycling and walking opportunities to link habitats and sustainable movement networks that promote the overall recreational experience for the West End.</p> <p>f) Conserve and enhance heritage assets <u>and their setting</u> to reflect their intrinsic importance, maximise beneficial outcomes for park users and to encourage use of the park and to enrich the cultural identity of the area.</p> <p>The park will be designed and managed to highest natural green design standards and it will be subject to parkland, open and recreation space and countryside and green infrastructure policies. Development will not be allowed in the designated area unless it will clearly achieve valley park specific objectives for people and wildlife. Countryside policies of the plan will still apply in non-allocated development locations and areas.</p> <p><b>Habitat Regulations and West End Development</b></p> <p>Where the likelihood of significant effects on European wildlife sites cannot be ruled out from developments in the West End, the Council will undertake an appropriate assessment of impacts and will only support and approve proposals where it can be demonstrated that adverse effects on site integrity can be prevented.</p> <p>Of particular relevance to the Habitat Regulations will be the need for continued checks and monitoring to ensure that any mitigation measures for built development, linked to Clyst Valley Regional Park provision, achieve the ends envisaged and offers effective mitigation against adverse impacts that could otherwise occur. Each phase of any development occurring and park provision will be assessed and monitored.</p>

The New East Devon Local Plan Schedule of Main Modifications

MM	Page No.	Policy/Paragraph	PROPOSED MODIFICATIONS New text: <u>underlined</u> Deleted text <del>Struckthrough</del>
			<p><u>Mitigation measures in respect of the West End established as needed to comply with Habitat Regulation assessment will need to accord with measures set out in the 'South-east Devon European Site Mitigation Strategy'. Provision of SANGS will be an essential part of the overall West End development. Where possible SANGS should dovetail with wider Green Infrastructure policies and be compatible with neighbouring authorities' plans. The functionality of any potential SANGS and its contribution to the avoidance of a likely significant effect must be clearly demonstrated.</u></p>
MM26	59	Strategy 11	<p><b>Strategy 11 - Integrated Transport and Infrastructure Provision at East Devon's West End:</b></p> <p>We will promote high quality, <del>affordable and</del> integrated transport provision at East Devon's West End where, working with partner organisations, we will secure a provision based on a hierarchy of;</p> <ol style="list-style-type: none"> <li>1. Walking</li> <li>2. Cycling</li> <li>3. Frequent and high quality Public Transport provision (given priority over other road users)</li> <li>4. Private motor vehicles.</li> </ol> <p>Though transport solutions will take into account site specific needs of a development to secure the most suitable form of sustainable transport provision.</p> <p>Coordinated infrastructure provision will be required to cover:</p> <ol style="list-style-type: none"> <li>1. Low carbon heat and power supply;</li> <li>2. Waste management facilities and waste water treatment;</li> <li>3. Highest quality data service infrastructure provision, especially broadband connections;</li> <li>4. Health and education provision.</li> </ol> <p><del>Funding contributions will be sought from all developments in the West End to secure implementation of integrated transport and infrastructure provision.</del></p>
MM27	59	7.27	<p><del>Identified areas of expansion for Cranbrook are to its east and west and beyond 2026 by indicative notation to the South West. Allocated Development sites, up to 2026, will have minimal encroachment toward Exeter Airport, will not lead to settlement coalescence with Broadclyst, Whimble and Rockbeare and by 2031 will not result in severance of Cranbrook by either the railway or the old A30. Sites for expansion are being promoted by landowners and they are available for development. At net densities in the 30 to 50 dwellings per hectare range the allocated land at Cranbrook will accommodate around 6,000 around 8,000 new homes. This level of provision will still allow for extensive open spaces as part of the overall gross development area. Densities will typically be higher</del></p>

The New East Devon Local Plan Schedule of Main Modifications

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			<p>harm,</p> <p><u>2</u> and then reducing and mitigating any unavoidable harm, to ensure an acceptable balance between harm and benefit.</p> <p>Where schemes are in open countryside there will be a requirement to remove all equipment from the site and restore land to its former, or better, condition if the project ceases in the future. <u>Wind turbines will only be permitted where they are in accordance with a Neighbourhood Plan or Development Plan Document.</u></p>
MM91	133	Strategy 40	<p><b>Strategy 40 - Decentralised Energy Networks:</b></p> <p>Decentralised Energy Networks will be developed and brought forward. New development (either new build or conversion) with a floor space of at least 1,000m<sup>2</sup> or comprising ten or more dwellings should, <u>where viable,</u> connect to any existing, or proposed, Decentralised Energy Network in the locality to bring forward low and zero carbon energy supply and distribution.</p> <p>Where there is no existing Decentralised Energy Network in the locality, proposals for larger developments of 4 hectares (either housing or other buildings) or 200 houses should evaluate the potential for such systems and implement them where they are viable over the life of the developments in the locality. <u>Specific provision should be made at allocated sites at:</u></p> <ul style="list-style-type: none"> <li>a) <u>Axminster – Land to the north and east of the Town;</u></li> <li>b) <u>Exmouth – Land at Goodmores Farm;</u></li> <li>c) <u>Honiton – Land at Reserve site – West of Hayne Lane.</u></li> </ul> <p>Consumer choice of energy sources will be retained when decentralised energy networks are developed. Project level Habitat Regulation assessments may be needed to ensure that any new infrastructure needs are met without adverse impacts on European sites.</p>
MM92	138	18.5	<p>Green Infrastructure is seen as an essential part of our Vision for a long-term sustainable future for East Devon. The Council is committed to developing strategic networks of accessible, multi-functional sites (including parks, woodland, informal open spaces, nature reserves and historic sites) as well as linkages (such as river corridors and flood plains, wildlife corridors and greenways). These contribute to people’s well-being and together comprise a coherent managed resource responsive to evolving conditions. The Axe Estuary wetlands are an example of a</p>

The New East Devon Local Plan Schedule of Main Modifications

MM	Page No.	Policy/Paragraph	PROPOSED MODIFICATIONS New text: <u>underlined</u> Deleted text <del>Struckthrough</del>
			<p>multi-functional green space which is currently an important wildlife habitat but in time will expand in terms of its size and value for recreation, biodiversity and community use.</p> <p><u>We will develop a District wide Green Infrastructure Strategy and will focus on delivery of Strategic Projects and Investment Programmes. The document will produce separate sections for each town (Area Frameworks) linked to the rural parts of the District to ensure that consistency and a comprehensive output is achieved. The Green Infrastructure Strategy will promote the conservation and enjoyment of the natural and historic environment and be consistent with the detailed mitigation and delivery strategy arising from the Habitat Regulations Assessment work (of which Green Infrastructure is part of the solution).</u></p>
MM93	138	Strategy 42	Delete policy
MM94	139	18.10	<p>An Open Space Study has been completed which comprises identification and mapping of open spaces; audits of quantity, quality, and accessibility; Geographic Information Systems analysis to establish current levels of provision and identify needs. <u>The work helps to update work undertaken in 2002 on a Playing Pitch Strategy for East, Mid and West Devon and 2003 in a draft Recreational Areas Strategy. These earlier strategy documents quantify and assess quality of open space provision.</u> Public consultation has helped to establish community aspirations and requirements for open space and has created local standards for both urban and rural areas. This is based on current provision, an assessment of national standards (<del>to include</del> <u>including</u> Fields in Trust, <u>and</u> ANGSt (Natural England's Accessible Natural Greenspace Standards), consultation results, and demographic analysis. <del>The need for a Playing Pitch Strategy is highlighted in the Action Plan. It is anticipated that this will be produced in 2013/14 completed in Summer 2014.</del> The East Devon Playing Pitch Strategy 2015 has been developed to add detail to the sports pitch requirements set out in the Open Space Study. <u>The strategy includes action plans for resolution of key issues and will be a constantly evolving live document.</u></p>
MM95	139	18.11	<p><del>The strategy</del> <u>Open Space Study</u> contains evidence based requirements for developer contributions towards the provision of open space, identified through the above processes. <del>The strategy should be consulted to establish whether on or off site provision should be made.</del></p>
MM96	139	18.12	<p>The recommended open space standards provided by the Open Space Study 2012 will be adopted for the Plan area. Contributions <u>of on-site open space</u> will be <del>directed towards meeting quantity, quality and accessibility required to meet the needs for open space of a particular development where there is an identified shortfalls in the quantity or quality of or accessibility to existing provision.</del> <u>Where on-site provision is not made, money raised through the Community Infrastructure Levy (CIL) will be used to mitigate the impact of a development on existing open space by enhancing existing or providing new facilities.</u> <del>The option will aim to deliver a combination of new facilities and improvements to existing ones, depending on the unique needs of the parish in which contributing development takes place and the availability of land. The work helps to update work undertaken in 2002 on a</del></p>

**Appendix 3**

**FOI Council Response, dated 17<sup>th</sup> April 2019**

Date: 17 April 2019  
Direct phone: 01395 517572  
Direct email: [planningcranbrook@eastdevon.gov.uk](mailto:planningcranbrook@eastdevon.gov.uk)  
Our ref: JB



PCL Planning Ltd  
13a-15a Old Park Avenue  
EXETER  
EX1 3WD

Dear Mr Seaton

### **SANGS delivery**

I refer to your letter dated 4 October 2018 which sought a copy of the Strategy 47 (SANGS) review. I am aware that this request is still awaiting a response and I apologise that I did not provide this earlier.

The review referred to in Strategy 47 of the Local Plan has not been completed and so cannot be provided at this time. It was intended that the 5 year review of the delivery of habitat mitigation would be undertaken as part of the first review of the local plan which is also due after 5 years. However the delivery of habitat mitigation is being undertaken jointly with our partners at Exeter City Council and Teignbridge District Council through the South East Devon Habitats Mitigation Partnership. The partnership was established to oversee the delivery of habitat mitigation across the area of impact on the protected habitats and to co-ordinate delivery across the partner authorities. The review of the delivery of habitat mitigation is therefore a wider piece of work than simply looking at delivery in East Devon and needs to consider the delivery of habitat mitigation across the partnership area.

The partners are also working together on the Greater Exeter Strategic Plan (GESP). This will in effect form part of the first review of the Local Plan and so the review of habitat mitigation envisaged by Strategy 47 is being undertaken as part of the work on the GESP and will be published in due course. In the meantime we are working closely with Natural England and understand that they are content with the progress being made on the delivery

---

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Honiton, EX14 1EJ  
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Download the free East Devon App  
to access council services at  
[eastdevon.gov.uk/app](http://eastdevon.gov.uk/app)

of habitat mitigation across the partnership area which includes a number of on-site measures as well as the delivery of SANGS at Dawlish Warren and South West Exeter.

In recognising that the Cranbrook expansion and its DPD sits within this wider framework of need and assessment covered by the partner Authorities, it is entirely appropriate and in fact necessary for the Cranbrook DPD to demonstrate how it will provide the required mitigation (including SANGS provision) for the development that it is facilitating.

I trust that this provides a helpful response to your enquiry

Yours sincerely

James Brown  
Cranbrook New Community Manager

**Appendix 4      FOI Request, dated 8<sup>th</sup> January 2020**

**Our Ref** DS/PCL/1566  
**Date** 8<sup>th</sup> January 2020



**PCL Planning Ltd**  
13a-15a Old Park Avenue  
Exeter  
Devon  
EX1 3WD  
United Kingdom  
t: +44 (0)1392 363812  
[www.pclplanning.co.uk](http://www.pclplanning.co.uk)

Freedom of Information Officer  
East Devon District Council  
Blackdown House  
Border Road  
Heathpark Industrial Estate  
HONITON  
EX14 1EJ

Dear Sir/Madam

### **FREEDOM OF INFORMATION REQUEST**

I write further to the enclosed letter received from James Brown (dated 17<sup>th</sup> April 2019) confirming that the review referred to in Strategy 47 of the adopted East Devon Local Plan (EDLP) has not been completed.

Since a review has not been carried out by the Council (as required by Strategy 47 of the EDLP) we seek to ensure that our understanding of matters is correct for the benefit of the Cranbrook Plan Examination, to which the below will be pertinent.

We therefore request confirmation of the following:

1. Total value of CIL liability issued since introduction of CIL in East Devon
2. Total value of CIL receipts received since introduction of CIL in East Devon
3. Total CIL receipts spent
4. Total CIL receipts spent on Natura 2000 mitigation measures (with a breakdown of how much on which measures)
5. Total square metres of SANG provided in East Devon with a breakdown and its relationship to which development site impact it seeks to mitigate against (and permission reference).

We look forward to hearing from you within the 20 day prescribed period.

Kind regards,

A handwritten signature in black ink, appearing to read 'D Seaton', written over a light blue horizontal line.

David Seaton, BA (Hons) MRTPI  
**For PCL Planning Ltd**  
e: [d.seaton@pclplanning.co.uk](mailto:d.seaton@pclplanning.co.uk)

**Enc. James Brown Letter, dated 17<sup>th</sup> April 2019**

**Appendix 5      Tesco vs. Dundee Judgement (UKSC 13)**



Hilary Term  
[2012] UKSC 13  
*On appeal from: [2011] CSIH 9*

## **JUDGMENT**

### **Tesco Stores Limited (Appellants) v Dundee City Council (Respondents) (Scotland)**

before

**Lord Hope, Deputy President**  
**Lord Brown**  
**Lord Kerr**  
**Lord Dyson**  
**Lord Reed**

**JUDGMENT GIVEN ON**

**21 March 2012**

**Heard on 15 and 16 February 2012**

*Appellants*  
Martin Kingston QC  
Jane Munro  
(Instructed by Semple  
Fraser LLP)

*Respondents*  
Douglas Armstrong QC  
James Findlay QC  
(Instructed by Gillespie  
Macandrew LLP)

*Interveners (Asda Stores  
Limited and MacDonald  
Estates Group PLC)*  
Malcolm Thomson QC  
Kenny McBrearty  
(Instructed by Brodies  
LLP)

**LORD REED (with whom Lord Brown, Lord Kerr and Lord Dyson agree)**

1. If you drive into Dundee from the west along the A90 (T), you will pass on your left a large industrial site. It was formerly occupied by NCR, one of Dundee's largest employers, but its factory complex closed some years ago and the site has lain derelict ever since. In 2009 Asda Stores Ltd and MacDonald Estates Group plc, the interveners in the present appeal, applied for planning permission to develop a superstore there. Dundee City Council, the respondents, concluded that a decision to grant planning permission would not be in accordance with the development plan, but was nevertheless justified by other material considerations. Their decision to grant the application is challenged in these proceedings by Tesco Stores Ltd, the appellants, on the basis that the respondents proceeded on a misunderstanding of one of the policies in the development plan: a misunderstanding which, it is argued, vitiated their assessment of whether a departure from the plan was justified. In particular, it is argued that the respondents misunderstood a requirement, in the policies concerned with out of centre retailing, that it must be established that no suitable site is available, in the first instance, within and thereafter on the edge of city, town or district centres.

*The legislation*

2. Section 37(2) of the Town and Country Planning (Scotland) Act 1997, as in force at the time of the relevant decision, provides:

“In dealing with [an application for planning permission] the authority shall have regard to the provisions of the development plan, so far as material to the application, and to any other material considerations.”

Section 25 provides:

“Where, in making any determination under the planning Acts, regard is to be had to the development plan, the determination is, unless material considerations indicate otherwise –

(a) to be made in accordance with that plan...”

### *The development plan*

3. The development plan in the present case is an “old development plan” within the meaning of paragraph 1 of Schedule 1 to the 1997 Act. As such, it is defined by section 24 of the 1997 Act, as that section applied before the coming into force of section 2 of the Planning Etc. (Scotland) Act 2006, as including the approved structure plan and the adopted or approved local plan. The relevant structure plan in the present case is the Dundee and Angus Structure Plan, which became operative in 2002, at a time when the NCR plant remained in operation. As is explained in the introduction to the structure plan, its purpose is to provide a long term vision for the area and to set out the broad land use planning strategy guiding development and change. It includes a number of strategic planning policies. It sets the context for local plans, which translate the strategy into greater detail. Its preparation took account of national planning policy guidelines.

4. The structure plan includes a chapter on town centres and retailing. The introduction explains that the relevant Government guidance is contained in National Planning Policy Guidance 8, *Town Centres and Retailing* (revised 1998). I note that that document (NPPG 8) was replaced in 2006 by *Scottish Planning Policy: Town Centres and Retailing* (SPP 8), which was in force at the time of the decision under challenge, and which was itself replaced in 2010 by *Scottish Planning Policy* (SPP). The relevant sections of all three documents are in generally similar terms. The structure plan continues, at para 5.2:

“A fundamental principle of NPPG 8 is that of the sequential approach to site selection for new retail developments ... On this basis, town centres should be the first choice for such developments, followed by edge of centre sites and, only after this, out of centre sites which are currently or potentially accessible by different means of transport.”

In relation to out of centre developments, that approach is reflected in Town Centres and Retailing Policy 4: Out of Centre Retailing:

“In keeping with the sequential approach to site selection for new retail developments, proposals for new or expanded out of centre retail developments in excess of 1000 sq m gross will only be acceptable where it can be established that:

- no suitable site is available, in the first instance, within and thereafter on the edge of city, town or district centres;
- individually or cumulatively it would not prejudice the vitality and viability of existing city, town or district centres;
- the proposal would address a deficiency in shopping provision which cannot be met within or on the edge of the above centres;
- the site is readily accessible by modes of transport other than the car;
- the proposal is consistent with other Structure Plan policies.”

5. The relevant local plan is the Dundee Local Plan, which came into operation in 2005, prior to the closure of the NCR plant. Like the structure plan, it notes that national planning policy guidance emphasises the need to protect and enhance the vitality and viability of town centres. It continues, at para 52.2:

“As part of this approach planning authorities should adopt a sequential approach to new shopping developments with first preference being town centres, which in Dundee’s case are the City centre and the District Centres.”

That approach is reflected in Policy 45: Location of New Retail Developments:

“The City Centre and District Centres will be the locations of first choice for new or expanded retail developments not already identified in the Local Plan. Proposals for retail developments outwith these locations will only be acceptable where it can be established that:

- a) no suitable site is available, in the first instance, within and thereafter on the edge of the City Centre or District Centres; and

- b) individually or cumulatively it would not prejudice the vitality and viability of the City Centre or District Centres; and
- c) the proposal would address a deficiency in shopping provision which cannot be met within or on the edge of these centres; and
- d) the site is readily accessible by modes of transport other than the car; and
- e) the proposal is consistent with other Local Plan policies.”

6. It is also relevant to note the guidance given in NPPG 8, as revised in 1998, to which the retailing sections of the structure plan and the local plan referred. Under the heading “Sequential Approach”, the guidance stated:

“12. Planning authorities and developers should adopt a sequential approach to selecting sites for new retail, commercial leisure developments and other key town centre uses ... First preference should be for town centre sites, where sites or buildings suitable for conversion are available, followed by edge-of-centre sites, and only then by out-of-centre sites in locations that are, or can be made easily accessible by a choice of means of transport ...

13. In support of town centres as the first choice, the Government recognises that the application of the sequential approach requires flexibility and realism from developers and retailers as well as planning authorities. In preparing their proposals developers and retailers should have regard to the format, design, scale of the development, and the amount of car parking in relation to the circumstances of the particular town centre. In addition they should also address the need to identify and assemble sites which can meet not only their requirements, but in a manner sympathetic to the town setting. As part of such an approach, they should consider the scope for accommodating the proposed development in a different built form, and where appropriate adjusting or sub-dividing large proposals, in order that their scale might offer a better fit with existing development in the town centre ...

14. Planning authorities should also be responsive to the needs of retailers and other town centre businesses. In consultation with the private sector, they should assist in identifying sites in the town

centre which could be suitable and viable, for example, in terms of size and siting for the proposed use, and are likely to become available in a reasonable time ...

15. Only if it can be demonstrated that all town centre options have been thoroughly addressed and a view taken on availability, should less central sites in out-of-centre locations be considered for key town centre uses. Where development proposals in such locations fall outwith the development plan framework, it is for developers to demonstrate that town centre and edge-of-centre options have been thoroughly assessed. Even where a developer, as part of a sequential approach, demonstrates an out-of-centre location to be the most appropriate, the impact on the vitality and viability of existing centres still has to be shown to be acceptable ...”

### *The consideration of the application*

7. The interveners’ application was for planning permission to develop a foodstore, café and petrol filling station, with associated car parking, landscaping and infrastructure, including access roads. The proposals also involved improvements to the junction with the A90 (T), the upgrading of a pedestrian underpass, the provision of footpaths and cycle ways, and improvements to adjacent roadways. A significant proportion of the former NCR site lay outside the application site. It was envisaged that vehicular access to this land could be achieved using one of the proposed access roads.

8. In his report to the respondents, the Director of City Development advised that the application was contrary to certain aspects of the employment and retailing policies of the development plan. In relation to the employment policies, in particular, the proposal was contrary to policies which required the respondents to safeguard the NCR site for business use. The Director considered however that the application site was unlikely to be re-developed for business uses in the short term, and that its re-development as proposed would improve the development prospects of the remainder of the NCR site. In addition, the infrastructure improvements would provide improved access which would benefit all businesses in an adjacent industrial estate.

9. In relation to the retailing policies, the Director considered the application in the light of the criteria in Retailing Policy 4 of the structure plan. In relation to the first criterion he stated:

“It must be demonstrated, in the first instance, that no suitable site is available for the development either within the city/district centres or, thereafter on the edge of these centres ... While noting that the Lochee District Centre lies within the primary catchment area for the proposal, [the retail statement submitted on behalf of the interveners] examines the potential site opportunities in and on the edge of that centre and also at the Hilltown and Perth Road District Centres. The applicants conclude that there are no sites or premises available in or on the edge of existing centres capable of accommodating the development under consideration. Taking account of the applicant’s argument it is accepted that at present there is no suitable site available to accommodate the proposed development.”

In relation to the remaining criteria, the Director concluded that the proposed development was likely to have a detrimental effect on the vitality and viability of Lochee District Centre, and was therefore in conflict with the second criterion. The potential impact on Lochee could however be minimised by attaching conditions to any permission granted so as to restrict the size of the store, limit the type of goods for sale and prohibit the provision of concessionary units. The proposal was also considered to be in conflict with the third criterion: there was no deficiency in shopping provision which the proposal would address. The fourth criterion, concerned with accessibility by modes of transport other than the car, was considered to be met. Similar conclusions were reached in relation to the corresponding criteria in Policy 45 of the local plan.

10. In view of the conflict with the employment and retailing policies, the Director considered that the proposal did not fully comply with the provisions of the development plan. He identified however two other material considerations of particular significance. First, the proposed development would bring economic benefits to the city. The closure of the NCR factory had been a major blow to the economy, but the re-development of the application site would create more jobs than had been lost when the factory finally closed. The creation of additional employment opportunities within the city was considered to be a strong material consideration. Secondly, the development would also provide a number of planning benefits. There would be improvements to the strategic road network which would assist in the free flow of traffic along the A90 (T). The development would also assist in the re-development of the whole of the former NCR site through the provision of enhanced road access and the clearance of buildings from the site. The access improvements would also assist in the development of an economic development area to the west. These benefits were considered to be another strong material consideration.

11. The Director concluded that the proposal was not in accordance with the development plan, particularly with regard to the employment and retailing

policies. There were however other material considerations of sufficient weight to justify setting aside those policies and offering support for the development, subject to suitable conditions. He accordingly recommended that consent should be granted, subject to specified conditions.

12. The application was considered by the respondents' entire council sitting as the respondents' Development Quality Committee. After hearing submissions on behalf of the interveners and also on behalf of the appellants, the respondents decided to follow the Director's recommendation. The reasons which they gave for their decision repeated the Director's conclusions:

“It is concluded that the proposal does not undermine the core land use and environmental strategies of the development plan. The planning and economic benefits that would accrue from the proposed development would be important to the future development and viability of the city as a regional centre. These benefits are considered to be of a significant weight and sufficient to set aside the relevant provisions of the development plan.”

#### *The present proceedings*

13. The submissions on behalf of the appellants focused primarily upon an alleged error of interpretation of the first criterion in Retailing Policy 4 of the structure plan, and of the equivalent criterion in Policy 45 of the local plan. If there was a dispute about the meaning of a development plan policy which the planning authority was bound to take into account, it was for the court to determine what the words were capable of meaning. If the planning authority attached a meaning to the words which they were not properly capable of bearing, then it made an error of law, and failed properly to understand the policy. In the present case, the Director had interpreted “suitable” as meaning “suitable for the development proposed by the applicant”; and the respondents had proceeded on the same basis. That was not however a tenable meaning. Properly interpreted, “suitable” meant “suitable for meeting identified deficiencies in retail provision in the area”. Since no such deficiency had been identified, it followed on a proper interpretation of the plan that the first criterion did not require to be considered: it was inappropriate to undertake the sequential approach. The Director's report had however implied that the first criterion was satisfied, and that the proposal was to that extent in conformity with the sequential approach. The respondents had proceeded on that erroneous basis. They had thus failed to identify correctly the extent of the conflict between the proposal and the development plan. In consequence, their assessment of whether other material considerations justified a departure from the plan was inherently flawed.

14. The respondents had compounded their error, it was submitted, by treating the proposed development as definitive when assessing whether a “suitable” site was available. That approach permitted developers to drive a coach and horses through the sequential approach: they could render the policy nugatory by the simple expedient of putting forward proposals which were so large that they could only be accommodated outside town and district centres. In the present case, there was a site available in Lochee which was suitable for food retailing and which was sequentially preferable to the application site. The Lochee site had been considered as part of the assessment of the proposal, but had been found to be unsuitable because it could not accommodate the scale of development to which the interveners aspired.

15. In response, counsel for the respondents submitted that it was for the planning authority to interpret the relevant policy, exercising its planning judgment. Counsel accepted that, if there was a dispute about the meaning of the words in a policy document, it was for the court to determine as a matter of law what the words were capable of meaning. The planning authority would only make an error of law if it attached a meaning to the words which they were not capable of bearing. In the present case, the relevant policies required all the specified criteria to be satisfied. The respondents had proceeded on the basis that the proposal failed to accord with the second and third criteria. In those circumstances, the respondents had correctly concluded that the proposal was contrary to the policies in question. How the proposal had been assessed against the first criterion was immaterial.

16. So far as concerned the assessment of “suitable” sites, the interveners’ retail statement reflected a degree of flexibility. There had been a consideration of all sites of at least 2.5 ha, whereas the application site extended to 6.68 ha. The interveners had also examined sites which could accommodate only food retailing, whereas their application had been for both food and non-food retailing. The Lochee site extended to only 1.45 ha, and could accommodate a store of only half the size proposed. It also had inadequate car parking. The Director, and the respondents, had accepted that it was not a suitable site for these reasons.

### *Discussion*

17. It has long been established that a planning authority must proceed upon a proper understanding of the development plan: see, for example, *Gransden & Co Ltd v Secretary of State for the Environment* (1985) 54 P & CR 86, 94 per Woolf J, affd (1986) 54 P & CR 361; *Horsham DC v Secretary of State for the Environment* (1991) 63 P & CR 219, 225-226 per Nolan LJ. The need for a proper understanding follows, in the first place, from the fact that the planning authority is required by statute to have regard to the provisions of the development plan: it

cannot have regard to the provisions of the plan if it fails to understand them. It also follows from the legal status given to the development plan by section 25 of the 1997 Act. The effect of the predecessor of section 25, namely section 18A of the Town and Country (Planning) Scotland Act 1972 (as inserted by section 58 of the Planning and Compensation Act 1991), was considered by the House of Lords in the case of *City of Edinburgh Council v Secretary of State for Scotland* 1998 SC (HL) 33, [1997] 1 WLR 1447. It is sufficient for present purposes to cite a passage from the speech of Lord Clyde, with which the other members of the House expressed their agreement. At p 44, 1459, his Lordship observed:

“In the practical application of sec 18A it will obviously be necessary for the decision-maker to consider the development plan, identify any provisions in it which are relevant to the question before him and make a proper interpretation of them. His decision will be open to challenge if he fails to have regard to a policy in the development plan which is relevant to the application or fails properly to interpret it.”

18. In the present case, the planning authority was required by section 25 to consider whether the proposed development was in accordance with the development plan and, if not, whether material considerations justified departing from the plan. In order to carry out that exercise, the planning authority required to proceed on the basis of what Lord Clyde described as “a proper interpretation” of the relevant provisions of the plan. We were however referred by counsel to a number of judicial dicta which were said to support the proposition that the meaning of the development plan was a matter to be determined by the planning authority: the court, it was submitted, had no role in determining the meaning of the plan unless the view taken by the planning authority could be characterised as perverse or irrational. That submission, if correct, would deprive sections 25 and 37(2) of the 1997 Act of much of their effect, and would drain the need for a “proper interpretation” of the plan of much of its meaning and purpose. It would also make little practical sense. The development plan is a carefully drafted and considered statement of policy, published in order to inform the public of the approach which will be followed by planning authorities in decision-making unless there is good reason to depart from it. It is intended to guide the behaviour of developers and planning authorities. As in other areas of administrative law, the policies which it sets out are designed to secure consistency and direction in the exercise of discretionary powers, while allowing a measure of flexibility to be retained. Those considerations point away from the view that the meaning of the plan is in principle a matter which each planning authority is entitled to determine from time to time as it pleases, within the limits of rationality. On the contrary, these considerations suggest that in principle, in this area of public administration as in others (as discussed, for example, in *R (Raissi) v Secretary of State for the Home Department* [2008] QB 836), policy statements should be interpreted

objectively in accordance with the language used, read as always in its proper context.

19. That is not to say that such statements should be construed as if they were statutory or contractual provisions. Although a development plan has a legal status and legal effects, it is not analogous in its nature or purpose to a statute or a contract. As has often been observed, development plans are full of broad statements of policy, many of which may be mutually irreconcilable, so that in a particular case one must give way to another. In addition, many of the provisions of development plans are framed in language whose application to a given set of facts requires the exercise of judgment. Such matters fall within the jurisdiction of planning authorities, and their exercise of their judgment can only be challenged on the ground that it is irrational or perverse (*Tesco Stores Ltd v Secretary of State for the Environment* [1995] 1 WLR 759, 780 per Lord Hoffmann). Nevertheless, planning authorities do not live in the world of Humpty Dumpty: they cannot make the development plan mean whatever they would like it to mean.

20. The principal authority referred to in relation to this matter was the judgment of Brooke LJ in *R v Derbyshire County Council, Ex p Woods* [1997] JPL 958 at 967. Properly understood, however, what was said there is not inconsistent with the approach which I have described. In the passage in question, Brooke LJ stated:

“If there is a dispute about the meaning of the words included in a policy document which a planning authority is bound to take into account, it is of course for the court to determine as a matter of law what the words are capable of meaning. If the decision maker attaches a meaning to the words they are not properly capable of bearing, then it will have made an error of law, and it will have failed properly to understand the policy.”

By way of illustration, Brooke LJ referred to the earlier case of *Northavon DC v Secretary of State for the Environment* [1993] JPL 761, which concerned a policy applicable to “institutions standing in extensive grounds”. As was observed, the words spoke for themselves, but their application to particular factual situations would often be a matter of judgment for the planning authority. That exercise of judgment would only be susceptible to review in the event that it was unreasonable. The latter case might be contrasted with the case of *R (Heath and Hampstead Society) v Camden LBC* [2008] 2 P & CR 233, where a planning authority’s decision that a replacement dwelling was not “materially larger” than its predecessor, within the meaning of a policy, was vitiated by its failure to understand the policy correctly: read in its context, the phrase “materially larger” referred to the size of the new building compared with its predecessor, rather than

requiring a broader comparison of their relative impact, as the planning authority had supposed. Similarly in *City of Edinburgh Council v Scottish Ministers* 2001 SC 957 the reporter's decision that a licensed restaurant constituted "similar licensed premises" to a public house, within the meaning of a policy, was vitiated by her misunderstanding of the policy: the context was one in which a distinction was drawn between public houses, wine bars and the like, on the one hand, and restaurants, on the other.

21. A provision in the development plan which requires an assessment of whether a site is "suitable" for a particular purpose calls for judgment in its application. But the question whether such a provision is concerned with suitability for one purpose or another is not a question of planning judgment: it is a question of textual interpretation, which can only be answered by construing the language used in its context. In the present case, in particular, the question whether the word "suitable", in the policies in question, means "suitable for the development proposed by the applicant", or "suitable for meeting identified deficiencies in retail provision in the area", is not a question which can be answered by the exercise of planning judgment: it is a logically prior question as to the issue to which planning judgment requires to be directed.

22. It is of course true, as counsel for the respondents submitted, that a planning authority might misconstrue part of a policy but nevertheless reach the same conclusion, on the question whether the proposal was in accordance with the policy, as it would have reached if it had construed the policy correctly. That is not however a complete answer to a challenge to the planning authority's decision. An error in relation to one part of a policy might affect the overall conclusion as to whether a proposal was in accordance with the development plan even if the question whether the proposal was in conformity with the policy would have been answered in the same way. The policy criteria with which the proposal was considered to be incompatible might, for example, be of less weight than the criteria which were mistakenly thought to be fulfilled. Equally, a planning authority might misconstrue part of a policy but nevertheless reach the same conclusion as it would otherwise have reached on the question whether the proposal was in accordance with the development plan. Again, however, that is not a complete answer. Where it is concluded that the proposal is not in accordance with the development plan, it is necessary to understand the nature and extent of the departure from the plan which the grant of consent would involve in order to consider on a proper basis whether such a departure is justified by other material considerations.

23. In the present case, the Lord Ordinary rejected the appellants' submissions on the basis that the interpretation of planning policy was always primarily a matter for the planning authority, whose assessment could be challenged only on the basis of unreasonableness: there was, in particular, more than one way in

which the sequential approach could reasonably be applied ([2010] CSOH 128, para 23). For the reasons I have explained, that approach does not correctly reflect the role which the court has to play in the determination of the meaning of the development plan. A different approach was adopted by the Second Division: since, it was said, the proposal was in head-on conflict with the retail and employment policies of the development plan, and the sequential approach offered no justification for it, a challenge based upon an alleged misapplication of the sequential approach was entirely beside the point (2011 SC 457, [2011] CSIH 9, para 38). For the reasons I have explained, however, even where a proposal is plainly in breach of policy and contrary to the development plan, a failure properly to understand the policy in question may result in a failure to appreciate the full extent or significance of the departure from the development plan which the grant of consent would involve, and may consequently vitiate the planning authority's determination. Whether there has in fact been a misunderstanding of the policy, and whether any such misunderstanding may have led to a flawed decision, has therefore to be considered.

24. I turn then to the question whether the respondents misconstrued the policies in question in the present case. As I have explained, the appellants' primary contention is that the word "suitable", in the first criterion of Retailing Policy 4 of the structure plan and the corresponding Policy 45 of the local plan, means "suitable for meeting identified deficiencies in retail provision in the area", whereas the respondents proceeded on the basis of the construction placed upon the word by the Director of City Development, namely "suitable for the development proposed by the applicant". I accept, subject to a qualification which I shall shortly explain, that the Director and the respondents proceeded on the latter basis. Subject to that qualification, it appears to me that they were correct to do so, for the following reasons.

25. First, that interpretation appears to me to be the natural reading of the policies in question. They have been set out in paras 4 and 5 above. Read short, Retailing Policy 4 of the structure plan states that proposals for new or expanded out of centre retail developments will only be acceptable where it can be established that a number of criteria are satisfied, the first of which is that "no suitable site is available" in a sequentially preferable location. Policy 45 of the local plan is expressed in slightly different language, but it was not suggested that the differences were of any significance in the present context. The natural reading of each policy is that the word "suitable", in the first criterion, refers to the suitability of sites for the proposed development: it is the proposed development which will only be acceptable at an out of centre location if no suitable site is available more centrally. That first reason for accepting the respondents' interpretation of the policy does not permit of further elaboration.

26. Secondly, the interpretation favoured by the appellants appears to me to conflate the first and third criteria of the policies in question. The first criterion concerns the availability of a “suitable” site in a sequentially preferable location. The third criterion is that the proposal would address a deficiency in shopping provision which cannot be met in a sequentially preferable location. If “suitable” meant “suitable for meeting identified deficiencies in retail provision”, as the appellants contend, then there would be no distinction between those two criteria, and no purpose in their both being included.

27. Thirdly, since it is apparent from the structure and local plans that the policies in question were intended to implement the guidance given in NPPG 8 in relation to the sequential approach, that guidance forms part of the relevant context to which regard can be had when interpreting the policies. The material parts of the guidance are set out in para 6 above. They provide further support for the respondents’ interpretation of the policies. Paragraph 13 refers to the need to identify sites which can meet the requirements of developers and retailers, and to the scope for accommodating the proposed development. Paragraph 14 advises planning authorities to assist the private sector in identifying sites which could be suitable for the proposed use. Throughout the relevant section of the guidance, the focus is upon the availability of sites which might accommodate the proposed development and the requirements of the developer, rather than upon addressing an identified deficiency in shopping provision. The latter is of course also relevant to retailing policy, but it is not the issue with which the specific question of the suitability of sites is concerned.

28. I said earlier that it was necessary to qualify the statement that the Director and the respondents proceeded, and were correct to proceed, on the basis that “suitable” meant “suitable for the development proposed by the applicant”. As paragraph 13 of NPPG 8 makes clear, the application of the sequential approach requires flexibility and realism from developers and retailers as well as planning authorities. The need for flexibility and realism reflects an inbuilt difficulty about the sequential approach. On the one hand, the policy could be defeated by developers’ and retailers’ taking an inflexible approach to their requirements. On the other hand, as Sedley J remarked in *R v Teesside Development Corporation, Ex p William Morrison Supermarket plc and Redcar and Cleveland BC* [1998] JPL 23, 43, to refuse an out-of-centre planning consent on the ground that an admittedly smaller site is available within the town centre may be to take an entirely inappropriate business decision on behalf of the developer. The guidance seeks to address this problem. It advises that developers and retailers should have regard to the circumstances of the particular town centre when preparing their proposals, as regards the format, design and scale of the development. As part of such an approach, they are expected to consider the scope for accommodating the proposed development in a different built form, and where appropriate adjusting or sub-dividing large proposals, in order that their scale may fit better with existing

development in the town centre. The guidance also advises that planning authorities should be responsive to the needs of retailers. Where development proposals in out-of-centre locations fall outside the development plan framework, developers are expected to demonstrate that town centre and edge-of-centre options have been thoroughly assessed. That advice is not repeated in the structure plan or the local plan, but the same approach must be implicit: otherwise, the policies would in practice be inoperable.

29. It follows from the foregoing that it would be an over-simplification to say that the characteristics of the proposed development, such as its scale, are necessarily definitive for the purposes of the sequential test. That statement has to be qualified to the extent that the applicant is expected to have prepared his proposals in accordance with the recommended approach: he is, for example, expected to have had regard to the circumstances of the particular town centre, to have given consideration to the scope for accommodating the development in a different form, and to have thoroughly assessed sequentially preferable locations on that footing. Provided the applicant has done so, however, the question remains, as Lord Glennie observed in *Lidl UK GmbH v Scottish Ministers* [2006] CSOH 165, para 14, whether an alternative site is suitable for the proposed development, not whether the proposed development can be altered or reduced so that it can be made to fit an alternative site.

30. In the present case, it is apparent that a flexible approach was adopted. The interveners did not confine their assessment to sites which could accommodate the development in the precise form in which it had been designed, but examined sites which could accommodate a smaller development and a more restricted range of retailing. Even taking that approach, however, they did not regard the Lochee site vacated by the appellants as being suitable for their needs: it was far smaller than they required, and its car parking facilities were inadequate. In accepting that assessment, the respondents exercised their judgment as to how the policy should be applied to the facts: they did not proceed on an erroneous understanding of the policy.

31. Finally, I would observe that an error by the respondents in interpreting their policies would be material only if there was a real possibility that their determination might otherwise have been different. In the particular circumstances of the present case, I am not persuaded that there was any such possibility. The considerations in favour of the proposed development were very powerful. They were also specific to the particular development proposed: on the information before the respondents, there was no prospect of any other development of the application site, or of any development elsewhere which could deliver equivalent planning and economic benefits. Against that background, the argument that a different decision might have been taken if the respondents had been advised that

the first criterion in the policies in question did not arise, rather than that criterion had been met, appears to me to be implausible.

### *Conclusion*

32. For these reasons, and those given by Lord Hope, with which I am in entire agreement, I would dismiss the appeal.

### **LORD HOPE**

33. The question that lies at the heart of this case is whether the respondents acted unlawfully in their interpretation of the sequential approach which both the structure plan and the relevant local plan required them to adopt to new retail developments within their area. According to that approach, proposals for new or expanded out of centre developments of this kind are acceptable only where it can be established, among other things, that no suitable site is available, in the first instance, within and thereafter on the edge of city, town or district centres. Is the test as to whether no suitable site is available in these locations, when looked at sequentially, to be addressed by asking whether there is a site in each of them in turn which is suitable for the proposed development? Or does it direct attention to the question whether the proposed development could be altered or reduced so as to fit into a site which is available there as a location for this kind of development?

34. The sequential approach is described in National Planning Policy Guidance Policy 8, *Town Centres and Retailing*, para 5.2 as a fundamental principle of NPPG 8. In *R v Rochdale Metropolitan Borough Council, Ex p Milne*, 31 July 2000, not reported, paras 48-49, Sullivan J said that it was not unusual for development plan policies to pull in different directions and, having regard to what Lord Clyde said about the practical application of the statutory rule in *City of Edinburgh v Secretary of State for Scotland* 1998 SC (HL) 33 at p 44, that he regarded as untenable the proposition that if there was a breach of any one policy in a development plan a proposed development could not be said to be “in accordance with the plan”. In para 52 he said that the relative importance of a given policy to the overall objectives of the development plan was essentially a matter for the judgment of the local planning authority and that a legalistic approach to the interpretation of development plan policies was to be avoided.

35. I see no reason to question these propositions, to which Mr Kingston QC for the appellants drew our attention in his reply to Mr Armstrong’s submissions for the respondents. But I do not think that they are in point in this case. We are concerned here with a particular provision in the planning documents to which the

respondents are required to have regard by the statute. The meaning to be given to the crucial phrase is not a matter that can be left to the judgment of the planning authority. Nor, as the Lord Ordinary put it in his opinion at [2010] CSOH 128, para 23, is the interpretation of the policy which it sets out primarily a matter for the decision maker. As Mr Thomson for the interveners pointed out, the challenge to the respondents' decision to follow the Director's recommendation and approve the proposed development is not that it was *Wednesbury* unreasonable but that it was unlawful. I agree with Lord Reed that the issue is one of law, reading the words used objectively in their proper context.

36. In *Lidl UK GmbH v The Scottish Ministers* [2006] CSOH 165 the appellants appealed against a decision of the Scottish Ministers to refuse planning permission for a retail unit to be developed on a site outwith Irvine town centre. The relevant provision in the local plan required the sequential approach to be adopted to proposals for new retail development out with the town centre boundaries. Among the criteria that had to be satisfied was the requirement that no suitable sites were available, or could reasonably be made available, in or on the edge of existing town centres. In other words, town centre sites were to be considered first before edge of centre or out of town sites. The reporter held that the existing but soon to be vacated Lidl town centre site was suitable for the proposed development, although it was clear as a matter of fact that this site could not accommodate it. In para 13 Lord Glennie noted that counsel for the Scottish Ministers accepted that a site would be "suitable" in terms of the policy only if it was suitable for, or could accommodate, the development as proposed by the developer. In para 14 he said that the question was whether the alternative town centre site was suitable for the proposed development, not whether the proposed development could be altered or reduced so that it could fit in to it.

37. Mr Kingston submitted that Lord Glennie's approach would rob the sequential approach of all its force, and in the Inner House it was submitted that his decision proceeded on a concession by counsel which ought not to have been made: [2011] CSIH 9, 2011 SC 457, para 31. But I think that Lord Glennie's interpretation of the phrase was sound and that counsel was right to accept that it had the meaning which she was prepared to give to it. The wording of the relevant provision in the local plan in that case differed slightly from that with which we are concerned in this case, as it included the phrase "or can reasonably be made available". But the question to which it directs attention is the same. It is the proposal for which the developer seeks permission that has to be considered when the question is asked whether no suitable site is available within or on the edge of the town centre.

38. The context in which the word "suitable" appears supports this interpretation. It is identified by the opening words of the policy, which refer to "proposals for new or expanded out of centre retail developments" and then set out

the only circumstances in which developments outwith the specified locations will be acceptable. The words “the proposal” which appear in the third and fifth of the list of the criteria which must be satisfied serve to reinforce the point that the whole exercise is directed to what the developer is proposing, not some other proposal which the planning authority might seek to substitute for it which is for something less than that sought by the developer. It is worth noting too that the phrase “no suitable site is available” appears in Policy 46 of the local plan relating to commercial developments. Here too the context indicates that the issue of suitability is directed to the developer’s proposals, not some alternative scheme which might be suggested by the planning authority. I do not think that this is in the least surprising, as developments of this kind are generated by the developer’s assessment of the market that he seeks to serve. If they do not meet the sequential approach criteria, bearing in mind the need for flexibility and realism to which Lord Reed refers in para 28, above, they will be rejected. But these criteria are designed for use in the real world in which developers wish to operate, not some artificial world in which they have no interest doing so.

39. For these reasons which I add merely as a footnote I agree with Lord Reed, for all the reasons he gives, that this appeal should be dismissed. I would affirm the Second Division’s interlocutor.

**Appendix 6**

**SPC Agenda Extracts, dated 20<sup>th</sup> March 2018**

# Agenda for Strategic Planning Committee

## Tuesday, 20 March 2018, 10am



### [Members of the Strategic Planning Committee](#)

**Venue:** Council Chamber, Knowle, Sidmouth, EX10 8HL

[View directions](#)

**Contact:** Tabitha Whitcombe, 01395 517542 (or group number 01395 517546): Issued 9 March 2018

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- 1 [Public speaking](#)
- 2 Minutes of the Strategic Planning Committee meeting held on 14 December 2017 (pages 3-7)
- 3 Apologies
- 4 Declarations of interest - Guidance is available online to Councillors and co-opted members on making [declarations of interest](#).
- 5 [Matters of urgency](#) – none identified
- 6 To agree any items to be dealt with after the public (including press) have been excluded. There are no items that officers recommend should be dealt with in this way.

### **Matters for Debate**

- 7 **Housing Monitoring Report to Year Ending 31 March 2017** (pages 8-13)  
This report provides a summary of house building monitoring data to the year ending 31 March 2017.
- 8 **Cranbrook Development Plan Document** (pages 14-35)  
The report provides feedback on the recent Cranbrook Development Plan Document Preferred Approach consultation.
- 9 **East Devon Self-build and Custom Build – Register, Monitoring of Plot Delivery and Options for Additional Support** (pages 36-51)  
The report outlines the level of interest in self-build in East Devon as demonstrated through the self and custom build register and sets out the requirements to grant planning permissions to meet the level of demand shown.
- 10 **Protocol for the production of Supplementary Planning Documents** (pages 52-59)  
The protocol sets out a consistent process to be followed to ensure that each SPD is produced in a clear manner and meets legislative requirements.
- 11 **Clyst Valley Trail (CVT)** (pages 60-62)  
This report presents a delivery plan for construction of the Clyst Valley Trail.

The consultation documentation and the associated questionnaire split the document into a series of different topics on which feedback was sought. The table at appendix 1 of this report sets out the main issues arising from the consultation responses and intended actions to address the specific matter raised, where appropriate. The table at appendix 1 is not a comprehensive list of all individual matters raised; any matters not set out in the table at appendix 1 will nevertheless be considered and used to inform the refinement of the Cranbrook Plan DPD.

## **5. Relationship with Parish Neighbourhood Plans**

One matter of particular note arising from the Cranbrook Plan Preferred Approach document and consultation is the relationship of the proposed plan with the Neighbourhood Plans and Plan Areas of adjoining parishes. Strategy 12 of the Local Plan states that the required additional 1,550 homes and associated jobs and infrastructure will be accommodated within the Cranbrook Plan area but outside the designated Neighbourhood Plan Areas of Rockbeare, Broadclyst and Clyst Honiton. The preferred approach document indicates development occurring within parts of the Rockbeare and Broadclyst Neighbourhood Plan Areas.

In the Broadclyst Neighbourhood Plan Area the encroachment is a small area of land adjacent to Station Road. During consultation Broadclyst Parish Council did not raise specific objection to the inclusion of a small parcel of land within their Neighbourhood Plan Area as part of the Cranbrook Plan, although they are concerned more generally with the relationship between Cranbrook and Broadclyst Station, the residents of which are very keen to retain a buffer between the two.

In the Rockbeare Neighbourhood Plan Area the encroachment is of a larger parcel of land to the South of London Road (B3174), encompassing land for a range of uses, including housing development and Suitable Alternative Natural Green Space (SANGS). The decision to propose to allocate land within these areas for development at Cranbrook arises from careful consideration of the evidence documents which support the preferred approach and the consensus of responses to the Issues and Options Consultation in 2016.

It should be noted that since the end of the preferred options consultation, Rockbeare Parish Council has submitted its Neighbourhood Development Plan to East Devon District Council and a period of consultation on the plan is being undertaken at the time of writing and closes on 16 March 2018. The Rockbeare Neighbourhood Plan includes policies to further restrict the types of development which are acceptable in the Green Wedge defined in policy S8 of the Local Plan and seeks to resist development of the type proposed by the Cranbrook Plan that is within the Green Wedge in Rockbeare Parish (within the area named Grange).

The inclusion of land in the Rockbeare Neighbourhood Plan Area as part of the Cranbrook Plan, including within the green wedge, would allow for a more coherent pattern of development when assessing Cranbrook and its relationship with London Road whilst still retaining the character of Rockbeare and preserving views out of the village. Work on landscape impacts carried out on behalf of the Council identifies that the land proposed to be allocated for built development would have an acceptable impact upon the character and setting of the village as development would be obscured from Rockbeare due to land form.

Legislation allows for there to be discrepancies between two plans, with section 38 of the Planning and Compulsory Purchase Act 2004 stating that where there is conflict between two plans, it must be resolved in favour of the policy which was last adopted, approved or published. On this basis,

were the land allocations identified in the preferred approach document adopted, they would supersede the part of Strategy 12 that refers to the exclusion of development in the Broadclyst and Rockbeare Neighbourhood Plan Areas. Equally, should the Rockbeare Neighbourhood Plan be found sound and adopted in advance of the Cranbrook Plan, this would not preclude an Inspector from finding the Cranbrook Plan sound and it therefore superseding elements on the Rockbeare Neighbourhood Plan in respect of allocations within the Rockbeare Neighbourhood Plan Area.

As part of the Preferred Approach consultation, Officers attended meetings with both Rockbeare Parish Council and the Rockbeare Neighbourhood Plan Steering Group but unfortunately, common ground was not found in respect of the extent of development proposed within the Parish. It is recommended that the Cranbrook Plan DPD progresses with an allocation within the Rockbeare Parish and Neighbourhood Plan Area, with the precise boundaries of development to be further considered and refined following the preferred options consultation and the matters set out in appendix 1.

## **6 Next steps**

Work continues in respect of the refinement of the Cranbrook Plan DPD, informed by the representations made during the preferred options consultation and of the gathering of additional evidence and information in order to inform such refinement. Once this process is complete, viability testing of the plan will be carried out, followed by any necessary further amendments which are required to deliver a viable plan. Alongside production of the publication version of the Cranbrook Plan, work is being progressed on accompanying statutory documentation such as Sustainability Appraisal and Strategic Environmental Assessment as well as non-statutory supporting documentation and evidence to include a Health Impact Assessment.

The proposed publication draft of the Cranbrook Plan will be reported to Strategic Planning Committee and Full Council for endorsement to submit to the Planning Inspectorate for examination in public. The publication draft of the Cranbrook Plan will be published for consultation purposes for not less than 6 weeks before submission. Following this final period of consultation the DPD and associated documents and supporting evidence, including comments received during the consultation, will be submitted for examination. A government appointed planning inspector will assess the plan and come to final conclusions on whether it can be formally approved and adopted under plan making processes and regulations. The inspector may recommend a number of changes to the plan and it may also be that further consultation, on these, is required. On final adoption by the Council the plan will, however, carry its full statutory weight in decision making processes. It will be the primary document that is turned to and used in determining future planning applications at Cranbrook.

At this stage, precise timings for the finalisation of a publication version of the Cranbrook Plan DPD are uncertain, however submission in Autumn to early Winter 2018 is envisaged.