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## Appeal Decision

Inquiry held on 3 to 6 December 2024 and also on 16 December 2024

Site visit made on 6 December 2024

**by Mr S Rennie BSc (Hons), BA (Hons), MA, MRTPI**

**an Inspector appointed by the Secretary of State**

**Decision date: 29<sup>th</sup> January 2025**

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**Appeal Ref: APP/K1128/W/24/3347514**

**Land at Pennpark, Modbury, Devon PL21 0TB**

- The appeal is made under section 78 of the Town and Country Planning Act 1990 (as amended) against a refusal to grant outline planning permission.
  - The appeal is made by Baker Estates Limited against the decision of South Hams District Council.
  - The application Ref is 0384/23/OPA.
  - The development proposed is the demolition of existing buildings and a residential redevelopment of up to 40 dwellings, including the formation of access and associated works.
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### Decision

1. The appeal is dismissed.

### Applications for costs

2. At the Inquiry an application for costs was made by Baker Estates Limited against South Hams District Council. This application is the subject of a separate Decision.
3. Also, at the Inquiry an application for costs was made by South Hams Council against Baker Estates Limited. This application is also the subject of a separate Decision.

### Procedural Matters

4. The appeal is for outline planning permission with all matters reserved except for access into the site. In so far as there have been plan details of the proposals submitted other than relating to access, I have considered these as illustrative only.
5. A Case Management Conference was held on the 16 October 2024. The Inquiry then sat for 4 days (3-6 December 2024), with a further virtual session held on the 16 December 2024.
6. A number of additional documents and submissions were made at the Inquiry. These are listed at Annex B. I am satisfied that in all cases the material was directly relevant to, and necessary for, my Decision.
7. Before the Inquiry the appellant submitted 22032-002 Revision F showing amended proposed works to the A379, included at Appendix F of the appellant's Transport Witness (Mr White) submitted Witness Statement. However, this was submitted late in the process, shortly before the Inquiry

itself, and there had not been any public consultation on this updated plan. After discussion with the parties on this matter I decided at the Inquiry that this plan would be omitted from the Inquiry, and consideration only given to 22032-002 Revision D, which was submitted during the planning application process.

8. A completed S106 Agreement accompanies the proposals and was received on 17 December 2024. The Agreement includes obligations relating to affordable housing, open space provision, biodiversity net gain, residential travel packs, and various financial contributions from the developer to the County or District Council. These include contributions towards allotments, off-site play provision, off-site sport and recreation provision, education transport and the European Marine Site Plymouth Sound and Estuaries.
9. The Council's CIL Compliance Statement sets out the detailed background and justification for each of the obligations. I agree with the conclusions of the statement and following discussions at the Inquiry I am satisfied that the provisions of the submitted documents would meet the tests set out in Regulation 122 of the CIL Regulations 2010 (as amended) and the tests at paragraph 58 of the National Planning Policy Framework (the Framework).
10. The views of the main parties were sought following the publication of the revised Framework on 12 December 2024. This included how the Framework of 2024 effected the parties' cases and also the Council's housing land supply status. These comments have been taken into account in this Decision. Paragraph numbers referred to in this Decision reflect the revised Framework.

## **Main Issues**

11. I consider the main issues as being the following:

- Whether pedestrian access to and from the site from the centre of Modbury is sufficiently safe with adequate footways for all users.
- Whether the quantum of affordable housing is sufficient and appropriate when considering site viability, which would contribute towards a suitable, inclusive and mixed rural community.

## **Reasons**

### ***Pedestrian Access***

12. The site is a farm on the western edge of Modbury. The site includes a bungalow and farm buildings, along with some open fields. The site is accessed off the A379. There is also access onto Drovers Lane to the northern edge of the site, which links with the centre of Modbury. However, this is not a formal right of way or in the ownership of the site owners or appellants.
13. As clarified at the Inquiry, the proposed vehicular and pedestrian access would be onto the A379 at the front/south of the site. There is no proposal to use Drovers Lane for pedestrian access. The crux of the issue is whether pedestrians would likely continue along the A379 to the east towards Modbury centre, including following this highway in the section where there is no footway, or whether pedestrians would divert to use the route via Church Lane

and Benedict Way, before returning back to the A379, thereby avoiding the section of the A379 that has no footway.

14. Submitted plan 22032-002 Revision D includes an uncontrolled pedestrian crossing with central island in the A379 near the site entrance with new footways onto Church Lane to connect pedestrians with Benedict Way. It was agreed between the parties that if pedestrians took this route, with the proposed enhancements, then it would be a safe route. The proposed highway works would also be an improvement on the current situation for pedestrians looking to walk from the A379 to Church Lane and Benedict Way. However, the question is whether pedestrians are likely to use this route, with these proposed enhancements, or take the more direct, shorter and therefore quicker route keeping to the A379, even with the section lacking footways.
15. It is the Council's view that the shorter and more direct route between the site entrance as proposed and the centre of Modbury, using just the A379 (referred to as Route 1), is a desire line that would tempt people to use this route, rather than the longer and less direct route via Church Lane and Benedict Way (hereafter referred to as Route 2).
16. There was no disagreement between the parties that the lack of footways for a section of Route 1, on a curved segment of the A379, would be dangerous for pedestrians and possibly vehicles seeking to avoid pedestrians in the carriageway. It is also noted that plan 22032-002 Revision D includes some deterrent paving to the west of the section which has no footway, to try to deter pedestrians taking this route, in favour of Route 2.
17. These are the only two pedestrian options before me as the use of Drovers Lane is not proposed. I shall return to the subject of Drovers Lane later in this Decision.

#### *Desire Line Route and Use of Deterrents*

18. After hearing and reading all of the evidence, together with walking the area of the site and Route 2 in full, it is my view that Route 1 would be a desire line that is likely to be used by future occupants of the proposed housing, or visitors to these new dwellings. The time savings would not be substantial, but it is particularly the lack of directness which leads me to doubt that all residents would use Route 2, even with the proposed enhancements to that route. The centre of Modbury is to the east of the site, but the appellant's identified Route 2 would take pedestrians walking from the site in a southerly direction along Church Lane, which has the impression of walking in the wrong direction.
19. I would accept that many of the future residents would take the safer Route 2. Some may also drive to avoid both walking the longer Route 2 whilst also avoiding walking on the road along the A379. However, I also accept that due to the draw of the clear desire line of using the A379 some residents would likely use Route 1. Whilst it is always possible for future occupants of any development to make poor or illogical decisions when it comes to highway or pedestrian safety, in this case the draw of the desire line and the directness of Route 1 would be such that it is likely that numerous people would end up walking along the road carriageway of the A379 due to the lack of footway.

20. It may be that walking Route 1 would be irrational and illogical, but people do make unwise decisions. This could be young people or even children, with less experience of walking on their own or be subject to peer pressure. I also consider it likely that some future residents or visitors to these new properties may walk the A379 Route 1, before realising that it is particularly unsafe for pedestrians and then not attempting this route again. The Residential Travel Pack could help to raise awareness of the safer route, but it could be that many residents do not read this before deciding to walk to Modbury centre or its schools. As such, this could result in numerous pedestrian trips along Route 1 especially when the proposed development is newly built and occupied. Significant and severe consequences could therefore follow due to accidents on this stretch of the A379, in the period where new residents are getting accustomed with the area.
21. The appellant raised the potential of a Traffic Regulation Order to stop pedestrians walking along the A379 where there is no footway. However, there was no substantive evidence of where such an Order had been used to control pedestrians and there are also doubts over how effectively this could be policed.
22. The danger would not be just to the pedestrian, but to drivers of vehicles on what is a busy road. The stretch of the A379 with no footway is on a section with bends in the road which limits forward visibility for drivers. If a vehicle moves across the centre line of the road into the adjacent lane to avoid pedestrians there could be another vehicle approaching around the corner travelling in the opposite direction. This could result in a vehicle collision due to the limited forward visibility.
23. The appellant has highlighted that there have been no highway improvements to address the issues with pedestrian access from this western part of Modbury back to the centre of this settlement. However, currently there are only a small number of dwellings west of the part of the A379 which has no footways. As such, it may not be a current priority for the Highways Authority. A relatively large development as proposed with this appeal increases the risk of future accidents occurring as there would be substantially more residents likely to want to walk between this western part of Modbury to the centre. Furthermore, it is clear from the Council's evidence that the Highway Authority recognise the highway safety issue and have objected to the proposal on this basis.

#### *Existing Permission for Vets House*

24. As discussed at the Inquiry after being raised by the Appellant, there has been planning permission granted by the Council for a 3 bedroom dwelling (log cabin) to accommodate graduate vets/nurses (1505/23/FUL). This was within the New Mills Industrial Estate adjacent to the site of this appeal. No pedestrian improvements were secured as part of this vets dwelling. I acknowledge that this meant an additional dwelling where pedestrians may use the desire line Route 1 which is not a safe route. However, the provision of a single house is very different to the proposal for up to 40 dwellings, as is the case with this appeal. The more dwellings, the more occupants and therefore the greater chance of people risking walking along the A379 where there is no footway. Furthermore, if it is considered that the more direct but dangerous A379 Route 1 would likely be used by some future occupants of the proposed development to walk along, then a previous approval for a dwelling at New Mills Industrial

Estate is not good reason to ignore the potential highway/pedestrian safety issues.

#### *Safety Audits and Accident Records*

25. The appellant has stated that the accident data for the site supports the allocation with the pedestrian access on to the A379 being safe. It is clear that there has been no accidents relating to pedestrians using the A379 where there is no footway in Modbury. However, there is currently only a small amount of dwellings and the New Mills Industrial Estate to the west of the stretch of the A379 where there is no footway. The proposal would add up to 40 new dwellings, increasing the population of this western part of Modbury considerably. This could, therefore, substantially increase the risk of accident in the future.
26. The appellant has submitted a Stage 1 Road Safety Audit from J. Bartlett Consulting Limited for the proposed Highway Access and Improvements, dated October 2024. The proposed site access (22032-001 Rev C) and the proposed A379 pedestrian crossing (22032-002 Rev D) were considered with this audit. Some comments were made by the auditors for what could be some improvements to the scheme as proposed but raised no major concerns. The audit did mention the termination of the footway along the A379 (Para 4.5) and suggested moving the position of the deterrent paving and possible replacement of the footpath beyond the deterrent paving with a verge. However, the audit did not make any substantive comments on whether the proposed deterrents would be sufficient to dissuade people from continuing to walk the route along the A379, presumably as this was outside the set scope of the road safety audit. As such, the audit essentially only indicates that the proposed Route 2 is safe, though this is not an issue in disagreement as confirmed by the Council.

#### *Site Allocation related to Pedestrian Safety*

27. The development plan for the area includes the South West Devon Joint Local plan 2012 -2033 (the JLP) and the Modbury Neighbourhood Plan. The Framework is also a material consideration.
28. The site is allocated for housing under policy TTV 24 of the JLP. As shown on the Allocations Map of the JLP there is only access to the site indicated from the A379. There is no requirement under this policy for an additional pedestrian route to be provided, such as via Drovers Lane. The appellant stated that the allocation policy is clear that the access that was found to be safe and suitable for pedestrians is the one that comes out on to the A379, and that the policy was not requiring pedestrian enhancements on this site. It is also acknowledged that the Modbury Site Information Pack, which formed part of the evidence base for the JLP, stated that pedestrian connectivity to the site would be along the main road.
29. It is the assertion of the appellant that if there was a problem with access out on to the A379 such that there was an unacceptable risk, it would have come up as an issue at the plan making allocation stage.
30. I would agree that given that the site is allocated there should have been more of an assessment of pedestrian access at the allocation stage. It seems from the Council evidence that there was a high-level assessment with more of a

highway focus on vehicular access. It is likely that pedestrian access was not considered in sufficient detail at that stage (even if it should have been), as suggested to be the case by the Council's Highways Witness during the Inquiry. As such, the fact that the site is allocated for housing in the JLP, with no mention of pedestrian access issues or routes, does not also mean that pedestrian accessibility and safety is necessarily acceptable. It was correct for the Council to undertake a full assessment of this issue, against the full suite of relevant JLP and NP policies, at the Planning Application stage.

31. Further to the JLP, there is also the Modbury Neighbourhood Plan 2022-2034 (NP), which was made after the adoption of the JLP. This included policy MNP6 (Safe Movement and Transport), which at Point 4 requires that there should be good, safe pedestrian access to new housing development. Map 4 of the NP also highlights the curved section of the A379 without footways in Modbury and indicates that it is one of the town's "*Dangerous road junctions, where safe pedestrian road access and better visibility and lighting is needed urgently*". As such, whilst this is not an issue identified in the allocation policy of the JLP, it is an issue raised within the NP.
32. This is an allocated site and the need for housing is recognised, but this is a safety issue which is of paramount importance. The fact that the site is allocated within the JLP does not overcome the pedestrian safety issue.

#### *Drovers Way*

33. Regarding alternatives, there is no alternative to Route 2 proposed by the appellant as a safe route. The Council has raised the possible use of Drovers Way. This would be a more direct route from the site to Modbury centre without the safety issues evident with the use of Route 1. However, it is not within the ownership of the appellant and is not a formal public footpath or right of way of any kind.
34. It may be possible that Drovers Way could provide a safe and direct route from the site for pedestrians, and it is noted that the appellant has investigated this route as a potential link in the past. Following the evidence provided, it is not certain whether it is possible for Drovers Way to become a formal public path which may benefit the proposed development. Nonetheless, Drovers Way was not part of the allocation and more pertinently was not part of the planning proposals for this scheme. The current proposal is unacceptable due to the highway pedestrian reasons with the use of the A379. The existence of Drovers Way with its current form and status does not alter this conclusion.

#### *Pedestrian Access Conclusions*

35. Considering all of the matters raised for this issue with the Inquiry, it is concluded that the desire line of Route 1 would lead to people using this route, even though it is more dangerous than Route 2, which is safe but less direct. The proposed highway enhancements, such as the pedestrian crossing for the A379, would not, in my view, be sufficient to persuade all people to use Route 2. Similarly, if people are of the mind to walk along the A379 the use of deterrent paving or other similar methods would not be sufficient. Indeed, it could just result in people stepping onto the road earlier than they would otherwise need to, to walk around any deterrent paving or barrier for example. I am not convinced that further deterrent works additional to those proposed



with this Inquiry would help matters and be effective in stopping future residents from walking Route 1 along the A379.

36. Policy SPT2 (Sustainable Linked Neighbourhoods and Sustainable Rural Communities) of the JLP sets out the principles for sustainable linked neighbourhoods, which includes the need for development to be well served by public transport, walking and cycling opportunities. Furthermore, policy TTV2 (Delivering sustainable development in the Thriving Towns and Villages Policy Area) is applicable as Modbury is defined as a settlement within this policy area. This policy states that the LPA would support a sustainable pattern of development and also the required provision of sustainable transport accessibility (among other things). The proposed development could not be regarded as sustainable as a pedestrian route from the site to the services and facilities of Modbury, that many people would take due to its directness, would be unsafe.
37. Policy DEV29 (Specific Provisions Relating to Transport) of the JLP is also applicable. This policy requires that development proposals provide for high quality, safe and convenient facilities for walking and other sustainable modes of transport. Furthermore, this policy requires that new homes are located to enable safe secure walking to local services and amenities, among other things. For the reasons set out in this Decision it is concluded that the publicly accessible walking route which is most convenient is unsafe.
38. The proposal is contrary to these JLP policies as the route that is likely to be taken by numerous people to walk from the proposed development would be unsafe due to the lack of continuous footway, even if there would be a safer but less direct pedestrian route available.
39. The Modbury NP requires that future development in and around Modbury should be well connected to the town centre, especially for pedestrians (MNP3) and that development proposals should include, where appropriate, good, safe pedestrian access and links with enhanced opportunities for walking (MNP6). As the pedestrian access route would likely include Route 1 for some residents, the pedestrian access would not be safe for these people. The proposed development would conflict with these NP policies.
40. The proposed development on this issue would also conflict with the NPPF (2024), paragraphs 115 and 116, as there would not be safe and suitable access to the site for all users (pedestrians in this case) and that there would be an unacceptable impact on highway safety.

### ***Affordable Housing Provision (Viability)***

41. The Framework seeks to boost significantly the supply of homes, including affordable housing. Paragraph 59 states that it is up to the appellant to demonstrate whether particular circumstances justify the need for a viability assessment at the application stage. The weight to be given to a viability assessment is a matter for the decision maker, having regard to all the circumstances in the case. All such assessments should reflect the recommended approach in national guidance, and the Planning Practice Guidance (PPG) provides guidance on standardised inputs.
42. Within the JLP, policy DEV8 (Meeting Local Housing Need in the Thriving Towns and Villages Policy Area) requires that within "the whole policy area a minimum

of at least 30 per cent on-site affordable housing will be sought for all schemes of 11 or more dwellings. Off-site provision or commuted payments in lieu of on-site provision will only be allowed where robustly justified”.

43. The supporting text to DEV9 of the JLP explains further that the requirements of DEV8 for affordable housing are necessary “to boost the supply of affordable housing in the policy area, where there are particular difficulties for younger people and local families looking to remain in the area.”
44. The appellant highlights JLP policy DEL1 (Approach to Development Delivery and Viability, Planning Obligations and the Community Infrastructure Levy) which states under Point 5 that the LPA would require “robust viability evidence to be submitted where a developer contends that planning obligations sought, including for affordable housing, would make a proposal economically unviable.” The appellant’s case is that the robust viability evidence has been submitted to show that the provision of affordable housing would make the development unviable, thereby meaning that the provision of no affordable housing is not contrary to JLP policy.
45. Accordingly, there is a clear policy consensus in the Council policy and indeed nationally for the provision of affordable housing, but allowances can be made for lesser provision where a clear case of lack of viability can be made.
46. For viability reasons, the appellant is not proposing any affordable housing. However, the submitted S106 legal agreement does allow for up to 30% affordable housing. This was included with the legal agreement so that if this Decision found that the full 30% (or any lesser amount) be considered as appropriate then the wording of the legal agreement provides for this. As such, the level of affordable housing, from 0% to 30%, is dependent on the outcome of this Decision.
47. As demonstrated in the Viability Statement of Common Ground, differences in Benchmark Land Value (BLV), Gross Development Value (GDV) and other abnormal cost assumptions results in a purported shortfall calculated by the appellant below the profit threshold if any affordable housing is included within the proposed development. However, the Council figures displayed a surplus above the set profit level with the full 30% of affordable housing included. As such, the appellant is proposing 0% affordable housing, whereas the Council state the policy compliant 30% is financially viable and should be provided.

#### *Benchmark Land Value (BLV)*

48. As set out by PPG, BLV should be based on the existing use value (EUV) of land, plus a premium for the landowner. This approach is often called ‘existing use value plus’ (EUV+).
49. The PPG also notes that alternative use value (AUV), which refers to the value of land for uses other than its existing use can be informative in establishing BLV, but it should be limited to uses which would fully comply with development plan policy (and evidenced as such).
50. The appellant used a local company ‘Stags’ to produce a valuation report on Pennpark Farm, which was included at Appendix C to the appellant’s viability witness’s (Mr Herridge) proof of evidence. This stated that the market value of the property known as Pennparks Farm was £600,000. However, the proof of evidence stated that Stags valuation was £710,000. A subsequent Stags



Valuation Report (INQ7) was submitted at the Inquiry which then also included the £710,000 figure. The Council viability witness (Mr Shelley) stated he had used a figure of £618,000 provided by the appellant before the Inquiry.

51. Clearly, the rise in the value of the property between these Stags reports is substantial, though there was no substantive explanation as to why there had been such a rise, even if it had been a simple error in the Stags report. This led to a difference in the EUV between the Council and appellant, which did not appear to have been fully known about prior to the Inquiry.
52. It is also noted that the Stags report stated that the valuation given in the report assumes that no specialist removal of asbestos is required. Section 19.6 of the Stags report suggests such contamination may affect the valuation. However, it is established that there is asbestos present as costs allowances had been made for the demolition costs involving the removal of asbestos by the appellant. The demolition cost described by the appellant includes the removal and disposal of an asbestos roof, plus a further asbestos demolition survey. As such, it is evident that there is asbestos present, which could have reduced the valuation of the property had Stags been informed of this.
53. The substantial increase in property value from the appellant and also the lack of consideration of asbestos in the Stags valuation does undermine confidence in the accuracy of the appellant's EUV figure of £710,000.
54. The property at Pennpark has an agricultural tie which would be a restriction if sold. Therefore, it is appropriate for this tie to be reflected in the EUV. The appellant has stated that a 15% reduction is appropriate to reflect the tie. The Council has used a 30% reduction and has provided appeal decisions from elsewhere in the UK which have also applied a 30% reduction in such circumstances.
55. The purpose of an agricultural tie is to make the property more affordable for those employed in the agricultural sector. The EUV derived by the appellant of £710,000 does not appear to be particularly affordable for those in agricultural work. The 30% discount applied by the Council to derive at a figure of **£432,600** for the property (not including land and buildings) would certainly be more affordable for agricultural workers.
56. The Stags Valuation Report (Ref: INQ7) does acknowledge that there is an agricultural occupancy condition on the bungalow at the site and this is a factor that would affect value. However, there is no commentary within the report as to the level of affect that the occupancy condition or tie has had on the conclusion that the market value of the existing property is £710,000. It is not clear that there has actually been any discount at all applied to account for the agricultural tie. However, as explained above, I would not consider £710,000 as generally affordable for agricultural workers, which indicates that more of a discount should have been applied by the appellant in deriving this figure.
57. The appellant raises the issue of Alternative Land Value (AUV) linked to a possible increase in the property value to take into account permitted development rights, such as under Class Q. Under the General Permitted Development Order, Class Q permits the change of use from an agricultural building to a dwellinghouse. However, there is no substantive detail as to whether the agricultural buildings on site were suitable for conversion or that

- prior approval would be granted for such a change of use. As such, I give the matter of AUV very limited weight for this viability exercise.
58. There is agreement between the Council and the appellant on the value of land and buildings at the site and also that a 50% premium should be applied as an incentive for the owner to sell the land for the proposed development. However, for the reasons set out above I am persuaded that the Council BLV of £837,000 is more appropriate.
59. The Council has continued towards what it terms as 'net BLV', by deducting the cost of demolition from the BLV. This has resulted in a net BLV of £589,000. This has been done in response to PPG on Viability which states that BLV should "*reflect the implications of abnormal costs; site-specific infrastructure costs; and professional site fees.*"
60. It is not clear if the appellant has taken any account of abnormal costs (of which the appellant has set out that there would be significant abnormal costs), in the BLV it has used. It is correct that the PPG does not explicitly state that abnormal costs should be deducted from the BLV figure, but it does require that these costs should be reflected in the BLV. To reflect the abnormal costs it is reasonable to deduce that there should be some reduction to BLV as a consequence. If there is no deduction, then it is not clear from the appellant's evidence how any reflection of these costs has been made.
61. It is my view that the choice of demolition costs to be deducted from the BLV is arbitrary from the Council, with no clear reasoning as to why this was the abnormal cost used rather than others possible. To ensure an incentive for the owner of the site to sell for the proposed development, a lesser deduction could have been chosen, so that the net BLV is sufficiently greater than the EUV. However, the Council has reflected abnormal costs in the final net BLV, which I am not persuaded has been sufficiently done, as per the PPG, by the appellant in their BLV figure.
62. On this matter, I would regard a figure of more than the £518,000 net BLV from the Council (to provide more of a suitable incentive for the owner to sell) to be more appropriate. However, I also consider a BLV substantially less than the £1,065,000 set by the appellant to be more appropriate, to show some clear reflection of the numerous and expensive abnormal costs.
63. From all the evidence, it is concluded that the BLV as set out by the appellant is too high, particularly as it does not sufficiently reflect both the agricultural tie on the property and the substantial abnormal costs the appellant states would exist if the site were developed as proposed.

#### *Gross Development Value*

64. There is a substantial difference between the parties on what could realistically be achieved in terms of sales of the proposed housing, calculated as pounds per square foot (psf). The appellant had predicted a £329psf valuation. The Council predicted £400psf valuation.
65. The Council has used the settlements of Dartington and Tavistock, where the appellant Baker Estates have been advertising new build developments for sale. The Council evidence shows that the Baker Estates site in Tavistock is selling at £445psf. For the Baker Estates site at The Sawmills in Dartington the price per square foot for each dwelling in the Council's evidence was at or over

- £400psf. This was the case whether it was for a two, three or four bedroom property. Despite these figures, the Council has used a lower figure of £400psf.
66. It is acknowledged that Tavistock is approximately 26 miles from Modbury. I also recognise that Tavistock is a much larger size town than Modbury. From the evidence provided, the Tavistock development has a different form and type of dwelling than that proposed at Modbury. However, consideration of this scheme at Tavistock for this exercise still has some worth. The bungalows developed at Tavistock appear to be two storey dwellings in some cases and so could be comparable to some extent. Furthermore, Tavistock is in the same wider area as Modbury, within South Devon and under the neighbouring Council area.
67. Dartington is about 14 miles away from Modbury, so a lesser separation distance than Tavistock. It is also of a similar size settlement to Modbury, which I was able to see for myself. Whilst there are some differences between the Modbury proposals and site context from that at Tavistock, the use of the site at Dartington is comparable. Whilst Dartington is 14 miles away from Modbury, this is close enough to consider that for similar house types the price per square foot would be also similar.
68. The appellant has provided an assessment to indicate the GDV of the Modbury proposed development if it were in Dartington. This concluded that if the site were in Dartington the proposed GDV for the development would be significantly higher, due to the location and the higher values which are achievable in Dartington. The assessment by Developer Solutions showed that the average selling price was £411psf in Dartington by comparison with the same scheme in Modbury which was £329psf. However, this mainly serves to highlight that the disagreement between the parties is the GDV possible in Modbury, and whether Dartington is a comparable location.
69. The Council has used asking prices, which may differ from the sales prices eventually achieved, though the appellant's witness confirmed at the Inquiry that these asking prices could be achievable. It is also important to note that the Council has set a lower figure (£400psf) than indicated with the Dartington and Tavistock sites. This could account for sales incentives, for example.
70. It is understood that the Dartington and Tavistock developments by Baker Estates are not likely to be competing directly with the proposed development at Modbury, but an assessment of developments at these locations, particularly that at Dartington, does give a strong indication of the gross development value that could be achieved by the Modbury scheme. There is considerable value in comparing the proposed development to another scheme that the appellant has built.
71. The evidence of sales revenues for the appellant is based on a report appraisal by Developer Solutions. This report concluded that the blended average based on the schedule at Modbury would be £329psf. This assessment used comparator sites, including those by Bloor Homes and Wain Developments in nearby Ivybridge.
72. Ivybridge is much closer than the comparator sites chosen by the Council. However, I am aware that Ivybridge is much larger than Modbury. It is also not clear from the evidence whether Ivybridge is as attractive a location as Modbury for house buyers.

73. The appellant has also submitted a comparison based on the hypothesis that the proposed development was on an existing Baker Estates site in Dartmouth. However, the appellant states that this is a much larger site and not a comparable location because it is 17 miles from Modbury. The GDV was 12% higher in Dartmouth than would be achievable in Modbury, according to the appellant's evidence, in a settlement which has a stronger housing market.
74. I am aware from the Appellant's evidence that the average sales rate for Dartmouth was £368, less than the £400 used by the Council for Modbury. It is not clear from the evidence why Dartmouth has achieved significantly less GDV for Baker Estates than Dartington. However, given the evidence and details before me, the Dartington scheme is a suitable comparator to Modbury. Dartington is also closer to Modbury than Dartmouth. It is therefore my view, based on all the evidence I have read and heard, that Dartington is the best comparator site to the proposed development at Modbury.
75. For these reasons, I am persuaded that the £400psf as used by the Council for GDV should be used, in favour of the appellant's lower £329psf, and that the Council figure is likely to be conservative to what can be achieved in terms of sales revenue at Modbury. There are differences between all schemes and it may have transpired that the Modbury development would have achieved less than 400psf, maybe similar to that achieved at Dartmouth for example. However, for the purposes of this exercise I would consider the appellant's GDV figure for Modbury of £329psf to be too low, given what has been shown in evidence for other Baker Estate sites in the wider area.

#### Costs

76. The appellant submitted a report from Terrus Consulting to provide an abnormals and infrastructure cost plan for the proposed development. The report was based on additional costs for developing the appeal site over and above what could be considered normal costs for a housing development. A valuation date of 30th September 2024 was adopted in relation to both the infrastructure and build costs associated with the proposed development. The Costs Plan produced by Terrus Consulting totalled circa £3.6m.
77. In contrast to this, the Council through Gates Consultancy had calculated a Cost Plan of circa £2.1m. Not all cost items were disputed by the Council and I have no reason to conclude other than to agree the anticipated costs between the parties is a fair reflection of this. However, there are numerous disputed abnormal cost items, for various reasons, set out by the Council in response to the Terrus Consulting Costs Plan.
78. Following the submitted evidence and the detailed discussions held at the Inquiry on development costs, I am more persuaded by the anticipated costs set out by Gates Consultancy for the Council. I set out below some examples of some of the more substantial costs in dispute and why it is considered that the Council anticipated costs are more persuasive.
79. *Earthworks* – The appellant points to the fact that the site is sloping, meaning that the roads and plots will need some levelling to create more suitable levels, with a relatively limited site area within which to make these changes. The appellant explains that this would require an average cut and fill of 0.5m across the site. However, the Council Witness explains that there are no levels for the development set as yet and that developers would avoid cut and fill (and the

associated disposal costs) where they can. From my site inspection, it is noted that the site is sloping, but not to a significant degree and therefore I would expect that less cut and fill would be needed, in accordance with the comments and calculated cost for this from the Council.

80. *Retaining Walls* – Though the appellant anticipates cut and fill generally across the site, it has included a cost for retaining walls of average 2m in height. However, as stated and also suggested by the Council witness, the site is not sloping to the degree that much in the way of retaining structures would be needed. There may be some retaining walls needed adjacent to the New Mills Industrial Estate due to level differences, however, the lower cost as set out by the Council for earthworks should be sufficient to address this matter.
81. *Foundations* – The appellant explains that the anticipated cut and fill activities, previous site use, disturbed ground and tree influence areas would necessitate nonstandard foundations. This is described as a mixture of additional 1m trench fill and piled foundations, given the geotechnical hazards. This would be a cost over and above the Build Cost Information Service (BCIS) rate given for housing construction for it to be an abnormal cost. However, the Council explain that the BCIS rate for dwellings is calculated from development in all circumstances across the country and not just on flat sites. Therefore, the BCIS rate would account for differing foundations, including those anticipated by the appellant. Based on the evidence, I would conclude that this is not an abnormal cost.
82. It is noted that the Council have allowed for an abnormal cost for piled foundations for the dwellings in Zone D (location of the infilled slurry lagoon), based on the submitted geotechnical report. However, the appellant has costed piled foundations for 20 dwellings at an extra over cost of £9,000 per unit, a total of some £180,000. Again, whilst I acknowledge the trees around the site and the use currently as a farm, which would possibly result in some issues with foundations, there is not the substantive evidence for up to half of the dwellings proposed at the site to use piled foundations.
83. *Commuted Sums* – The appellant states that commuted sums (circa £66k) would likely be needed to be paid to Local Authorities as part of S278 and S38 agreements. The appellant had evidence that these sums have been requested previously for other developments. However, the Council stated that Devon Council do not generally seek commuted sums on the items listed by the appellant. This was confirmed to be typically the case by the Highways Officer at the Inquiry. As such, this is likely to be a cost not needed. The appellant had a response from Devon County Council to suggest that commuted sums would be necessary, but the response to the Freedom of Information request was from 2020 so could be out of date now.
84. *General Enhancements* – The appellant has stated the need for circa £130k in abnormal costs attributed to general enhancements for the proposed dwellings, highlighting the requirements of the design code for example. This is an outline proposal, but developing dwellings to be in keeping to some extent with the local vernacular is typical for most housing developments. I also note that the site is not within a Conservation Area or some other similar designated area. As such, I would expect that the BCIS rates would cover the costs for a range of finishes to the external areas of dwellings. I would therefore agree with the Council that this is not an abnormal cost.



85. *Future Homes Standard* – The appellant explains that it is anticipated that any future development will be required to adhere to the Future Homes Fabric requirements, which is scheduled to become mandatory in 2025. The appellant has made an allowance of £8,000 per dwelling, or £320,000 in total. However, as pointed out by the Council, this is not an existing cost. Nor is it a cost that was in place at the agreed base date for the assessment of 30th September 2024. As such, this is a cost that should not be considered with this assessment.
86. Overall, it is my view that the appellant has an abnormal costs amount which is overly inflated, such as by including extensive cut and fill and additional foundation costs which the evidence and the site topography do not suggest would be necessary to the degree anticipated by the appellant. Furthermore, there are costs set out by the appellant which I would not consider to be abnormal and so should not be included.
87. I have not described in detail all of the different costs which were assessed by both parties. However, I am persuaded for reasons such as those set out in this Decision, that the overall abnormal costs amount as set out by the Council, which is still a substantial figure, is likely to be more accurate for this viability exercise.

#### *Viability Conclusions*

88. As JLP policy DEL1 states under Point 5, the LPA would require “*robust viability evidence to be submitted where a developer contends that planning obligations sought, including for affordable housing, would make a proposal economically unviable.*” The onus is therefore on the applicant/appellant to provide that robust evidence if it seeks to contend planning obligations, such as for 30% affordable housing to be provided on site. For the reasons set out above, the appellant’s evidence is not sufficiently robust, and I have disagreed with the conclusions on the viability assessment on the BLV, GDV and on abnormal costs. It is also important to say that I have not agreed with the Council calculations on all matters, such as with the BLV stage, but overall I find that the Council’s assessment is more robust and persuasive in its evidence than that of the appellant’s assessment and evidence.
89. Another issue raised at the Inquiry was the fact that the appellant’s figures on viability showed that even with no affordable housing (and therefore only market housing to be delivered on site) the development would not turn any profit. Actually, the figures show that the proposed development would make a substantial loss. The appellant’s calculations show that there would be more of a financial loss if there was to be any affordable housing, but there would still be a loss even without any affordable housing. The appellant suggested that they had invested time and money into the proposal so far and would not want to abandon the proposal and site. Also, the housing market may improve.
90. Even if a developer had committed some money towards a proposal, it does not make sense that a developer would build a scheme knowing that they would likely lose more money. Also, based on the appellant’s calculations, the gap between the forecasted loss that the development would result in and the appellant’s set profit level of 17.5% is substantial and it is doubtful that any positive change in the housing market would bridge this gap. As such, the fact that the appellant is still seeking to develop this site indicates that the financial rewards in doing so would be better than set out in the appellant’s figures in



the viability exercise. As such, this weighs in favour of the Council's position that the development would generate much more revenue than the appellant has indicated. This issue further undermines the robustness of the financial evidence submitted by the appellant.

91. I acknowledge the deteriorating housing market and the rise in materials and labour. I also accept that the appellant has provided affordable housing on other sites. However, the onus is on the appellant to provide the robust viability evidence for this proposed development, but I have concluded that the evidence is not sufficiently robust. Without such robust viability evidence, I conclude that the full policy compliant 30% affordable housing should be provided on site so that the proposals would accord with policies SPT2, TTV2 and DEV8 of the Plymouth and South West Devon Joint Local Plan, and Policy MNP5 of the Modbury Neighbourhood Plan. This full provision of affordable housing would also be in accordance with the policies of the Framework.
92. Taking the above into account, if I were to approve the development, then the Planning Obligation within the submitted legal agreement should require a 30% provision of affordable housing on site. However, this Decision is to dismiss the appeal for other reasons and so there is no need for a legal agreement or any planning obligations to accompany this Decision.

### **Other Matters**

93. The application site is within the buffer zone of influence for the South Hams Special Area of Conservation (SAC) and the Plymouth Sound and Estuaries SAC and Tamar Estuaries Complex Special Protection Area (SPA). It is noted that the legal agreement would secure obligations for mitigation of the recreational pressures from additional future residents upon the Plymouth Sound and Estuaries European Marine Site. If I were minded to allow the appeal, the Conservation of Habitats and Species Regulations 2017 (as amended) would require that I should carry out an assessment of the effects upon these features. Given my overall conclusion in this case it is unnecessary for me to carry out an appropriate assessment under these regulations.

### **Planning Balance**

94. Following the publication of the revised Framework in December 2024, the appellant has stated that the Council can now only demonstrate a 2.5 year housing land supply. However, the Council responded that to undertake a new housing land supply assessment accurately as of now is beyond the scope of an appeal where the Inquiry is now closed. As such there was no agreement on the current housing land supply position for the Council.
95. If a sufficient housing land supply could not be demonstrated then the Frameworks presumption in favour of sustainable development and the application of paragraph 11(d) would apply, as the policies most important for determining the application would be out of date. The Framework sets out that in these circumstances permission should be granted unless any adverse impacts would significantly and demonstrably outweigh the benefits, when assessed against the Policies in the Framework taken as a whole.
96. In terms of benefits, the proposal would provide for up to 40 dwellings in a town with adequate services and facilities, in an area described by both main parties as being in a housing crisis. Furthermore, as I have concluded from the

evidence that the proposed development should provide 30% affordable housing through planning obligation, this would also be an important benefit. The proposal would represent an efficient use of land, and a redevelopment over part of the site which is already built on. I give the provision of housing, and particularly affordable housing, significant weight in support of the proposal in my decision.

97. Other benefits include the provision of public open space, allotment contributions, and contributions towards sports and recreation provision, through planning obligations, which could all have wider public benefits for the Modbury community. The provision of biodiversity net gain would be a benefit as this would provide for biodiversity above the existing levels at the site. There would be economic benefits, such as from the construction work and also the contribution the additional residents could make to the viability of local businesses. Given the modest scale of the proposed development, these associated benefits would contribute modest weight to support the proposals.
98. The proposed improvements with the pedestrian crossing over the A379 would also be a clear benefit for highway safety for people that already live and work in this western part of Modbury. I would give the benefits of this modest weight.
99. Whilst acknowledging these benefits, the Framework states that development should only be prevented or refused on highways grounds if there would be an unacceptable impact on highway safety (Para 116). In this case there would be an unacceptable risk to highway/pedestrian safety and so, as indicated by the Framework, the development should be refused.
100. When considering the Framework policies as a whole, the harm that would be caused would significantly and demonstrably outweigh the benefits of the scheme. Consequently, I find insufficient justification to grant planning permission contrary to the JLP and NP, with the proposed development concluded to be contrary to JLP policies SPT2, TTV2 and DEV29, and Modbury NP policies MNP3 and MNP6.

## **Conclusion**

101. For the reasons given above, in relation to pedestrian safety, the proposal is contrary to both national and local policy, and after considering the benefits the proposals would bring to Modbury in the planning balance it is concluded that the appeal should be dismissed.

*Mr S Rennie*

INSPECTOR

## **Appendix A - APPEARANCES**

### FOR THE APPELLANT:

Mr Richard Ground KC and Mr Ben Du Feu.

They called:

Mr Richard White BSc (Hons), MSc, Member of the Chartered Institute of Logistics and Transport (Director of Miles White Transport) – Pedestrian Access Issue

Mr Andrew Herridge BA MRICS (Director/Proprietor of Herridge Property Consulting Ltd) – Viability Issue

Mr Jonathan White BSc (Hons) and Chartered Surveyor (Terrus) – Viability (Costs) Issue

Mr Simon Collier BA (Hons) Dip TP MRTPI (Collier Planning) – Planning Matters

Also spoke on behalf of Appellant:

Mr Graham Cridland (Solicitor) – On the Legal Agreement

### FOR THE LOCAL PLANNING AUTHORITY:

Mr Tom Cosgrove KC and Mr Rowan Clapp.

They called:

Mr Richard Jackson BSc RRM HNC Civil Engineering (Principal Highway Development Management Officer at Devon County Council) – Pedestrian Access Issue

Mr Lionel Shelley, Dip TP, MRTPI (William Lean) – Viability Issue

Mr David Martin FRICS BSc(Hons)QS CMAPS MIVM (Director of Gates Construction Consultants Limited) – Viability (Costs) Issue

Mr Steven Stroud BA(Hons) LLB(Hons) MA MRes MSc MRTPI (South Hams District Council)

Also spoke on behalf of the Council:

Mr David Fairbairn (Head of Legal Services at South Hams District Council) – On the Legal Agreement

### INTERESTED PARTIES:

Councillor Turner – Modbury Parish Council

Dr Michael Hopkins – Local Resident

## **Appendix B: DOCUMENTS SUBMITTED TO THE INQUIRY**

- INQ1 – Secured by Design Homes Guide 2024
- INQ2 – Emails from Mr Richard Jackson (Principal Highways Development Management Officer)
- INQ3 – Costs Claim – Baker Estates submission
- INQ4 – Appellant Opening Submission
- INQ5 – Council’s Opening Submission
- INQ6 – Dr Hopkins Representation
- INQ7 – Stags Valuation Report – 1 October 2024
- INQ8 – Email from Mr Matthew Davey – Principal Ecologist
- INQ9 – Modbury viability input Comparison v.4a (29.11.24)
- INQ10 – Lighting Column Evidence
- INQ11 – Streetlighting and Telecom costs
- INQ12 – Appellant’s Update on national policy following the publication of the revised National Planning Policy Framework on 12 December 2024
- INQ13 – LPA Response to HLS1 Note of Mr Collier
- INQ14 – Appellant’s comments on LPA Response (dated 20/12/24) to HLS Note
- INQ15 – Council’s Closing Statement
- INQ16 – Appellant’s Closing Statement