

# Branchout

In this edition

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Legal Update... pg. 1





Cover Image
Appledore in
Teignbridge

Branchout is a members e-magazine issued three times of year. After a recent review of content, Branchout will now focus on RTPI member updates, local interest articles and practical guidance on a variety of planning issues.

Branchout is put together by Editor Harry Quartermain RTPI Junior Vice Chair

#### Charlotte Daborn

RTPI South West Regional Coordinator plus the support of many RTPI volunteers

If you would like to prepare an article or provide feedback on what you would like to see in future editions, please contact **southwest@rtpi.org.uk** 

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### Contents

- 01 Legal Update
- 02 Digital Planning Showcase
- 03 Spotlight on Torridge District Council
- 04 How local authorities are providing housing 2023 report
- 05 RTPI South West Awards where are they now?
  - Clyst Valley Masterplan



# Could you be an RTPI Ambassador?

We are looking for RTPI Members who can represent the planning profession at a range of careers fairs and school visits throughout the South West.

If you are willing to relate planning to interesting and everyday issues, and are confident to talk engagingly about your job to young people then please contact southwest@rtpi.org.uk



# 01 Legal Update Caselaw

## Marks and Spencer PLC v SSLUHC [2024] EWHC 452 (Admin)

Marks and Spencer PLC has successfully challenged the Secretary of State's decision to refuse planning permission, in a six-ground claim for judicial review. The planning application requested permission to demolish Mark and Spencer's existing flagship store on Oxford Street and replace it with a larger building. The Secretary of State for Levelling-Up, Housing and Communities called-in the application in order to make his own determination, refusing permission in July 2023, despite the Inspector's recommendation for approval.

In August 2023, Marks and Spencer successfully obtained permission to appeal and issued a claim for judicial review. Amongst the six grounds were claims that: (i) the Secretary of State "erred in respect of the consideration of alternatives" and (ii) "erred in the balance of public benefits as against the heritage impacts".

The High Court quashed the decision in February 2024 on five of the six grounds. The Court concluded that the Secretary of State had misinterpreted the NPPF by introducing a "strong presumption in favour of repurposing and reusing buildings" which is not present in the existing policy, and had become "thoroughly" confused by policy requirements relating to carbon offsetting.

The Secretary of State will now be required to reconsider the application in a lawful manner.

#### Lisle-Mainwaring v Royal Borough of Kensington and Chelsea and Clare James [2024] EWHC 440 (Admin)

Mrs Lisle-Mainwaring ("the Applicant") challenged the legality of RBKC Council's ("the Council") decision to approve a Construction Traffic Management Plan ("CTMP") pursuant to a pre-commencement condition attached to an approved development.

The developer commenced works on site without first discharging the pre-commencement condition, but the CTMP was later approved after the expiry of the permission. The Applicant claimed that the Council had a discretion to decline to determine the application for the discharge of the condition. Further, the Applicant claimed that the Council erred by failing to consider its ability, acting reasonably, to decline to determine the developer's application to discharge the condition. The Court dismissed the Applicant's claim, holding that even assuming that the discretion to decline to determine the application existed, it was not a mandatory material consideration and that as the Applicant had failed to put that consideration to the Council at the time of the CTMP decision it was not unlawful for the Council not to consider that approach. However, in his judgment, Neil Cameron KC also confirmed that no such discretion exists. The general principle that once a valid application has been made a local planning authority has a duty to determine it applies, even where the approval of a pre-commencement condition occurs after the 'base' permission has expired.



#### **Appeal**

## APP/N0410/W/23/3328366 Fourells Paddocks, Richings Way, Iver SL0 9DE

An Inspector has approved outline planning permission for a development in the Buckinghamshire green belt. The outline permission involves the demolition of existing residential properties and equestrian buildings in order to facilitate the construction of up to 30 new homes on a 1.4 hectare site.

The key point of contention in the case was whether the entirety of the site constituted previously developed land and was therefore subject to the green belt exemption under the National Planning Policy Framework.

The Inspector determined that the site was not all previously developed, and that consequently the proposal would be inappropriate development in the green belt, albeit the impact would be limited by the site's enclosure by mature trees and vegetation. However, the public benefits of 30 new dwellings was a very special circumstance when weighed against the significant housing shortfall and this outweighed the identified harms. Given that the development had sustainable access to services and facilities and would deliver public open space, biodiversity and economic benefits, permission was granted.

Thrings LLP were instructed in this appeal in relation to the planning obligation.

#### Legislation

#### Class MA changes

Changes have been made to Class MA Permitted Development Rights. Class MA is a right to the change of use of a commercial building to a residential building without seeking full planning permission.

The change to the General Permitted Development Order removes the floorspace limit, enabling larger buildings to be developed. Previously, a property in which the floor space of exceeded 150 square metres was excluded. There has also been the removal of the requirement that the premises must have been vacant for a continued period of at least three months immediately before the application.

The changes came into force on 5 March 2024 and may encourage further regeneration of commercial buildings into dwellings.

**Author:** Fred Quartermain, Partner at Thrings



# THRINGS

SOLICITORS

#### **Thrings' Planning & Environment lawyers**

have extensive experience in navigating complex local and national planning policy legislation and has successfully supported commercial and residential applications through the approval and appeal processes. To find out more and for advice on your development proposals, including how to address enforcement notices, please visit thrings.com or email fquartermain@thrings.com

# **Digital Planning Showcase**

he DLUHC Digital Planning Programme has been supporting Local Planning Authorities (LPAs) through the funding for digital services to improve planning. Digital Planning has a vision of enabling a modern and efficient planning system in England, shifting a documents-based system to one that is data-driven, standards-based and powered by modern user-centred products and services.

In Branchout this year we're going to be highlighting some the case studies from the South West.

# Plymouth, South Hams and West Devon Joint Local Plan

Plymouth City Council, South Hams District Council, and West Devon Borough Council, as part of work on their Joint Local Plan (JLP), wished to improve their understanding of the role of settlements and neighbourhoods throughout their plan area. They received a total of £285,000 in funding for this project from DLUHC.

This work has helped them to form a basis for future conversations about Neighbourhood and Strategic plans ahead of a review of the JLP in 2024, including informing emerging briefs for evidence work to ensure consultation is informing planning policy from the earliest possible stage.

The JLP team worked with a technology provider to run a two-stage process. The first stage involved a consultation across the three partner local authorities using an online engagement platform, while the second stage encompassed a quantitative analysis using data from Open Government Licences and emerging GIS tools (Cadence 360) to benchmark results.

Their aim was to test whether a digital consultation tool could improve representation rates across the JLP when measured at a parish and ward level and engage residents who had not previously participated in consultation on the JLP. To make sure that they reached lower represented areas, in addition to their new consultation platform, the pilot team continued to monitor participation throughout the consultation, using data from previous consultations and parish and ward population estimates to measure participation rates live.

This proactive approach allowed them to adjust their approach during the consultation to capture responses from less represented areas. It also allowed them to capture demographic data for the first time which will now directly inform future targeted work with less represented demographic groups such as adults under the age of 35.





THE CHALLEN

Planning consultations are an important method of gathering public input to sha the future development of communities. However, despite the resources invested consultations are reportedly still difficult to find, access and use, which restricts those that can participate. This is reflected by less than 19% of local people currently engaging in the plan making process and challenges in getting a mor diverse audience to respond to consultation.

Across Round 2 of the PropTech Innovation Fund, local authorities have tried to address this challenge by successfully adopting Property Technology (PropTech tools to increase the number of consultation responses they received. In this case study we will share the approach taken by Harlow & Gliston Garden Town, South West Hertfordshire Joint Strategio Plan (1879), and Plymouth & South West Devo Joint Local Plan to increase their engagement by up to 300% in comparison to previous consultations.

Read on to find out about the different methods of engagement they use

PropTech Innovation Fund – Case study 1



#### Plymouth, South Hams and West Devon Joint Local Plan





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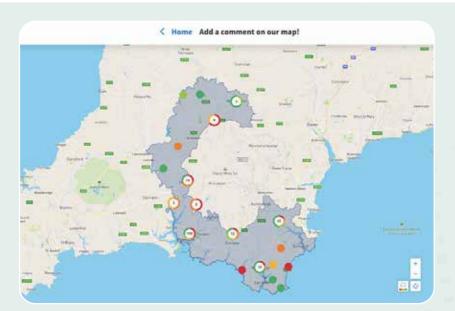
onTech Innovation Fund - Case study 1

Along with increasing the number of visits and responses to the consultation, the JLP learned a number of things, including that:

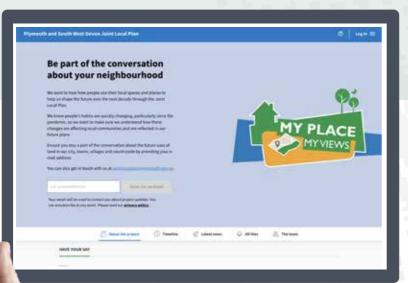
- Spatial analysis indicated a link between low representation and areas of high deprivation in urban areas
- The digital platform allowed for better segmentation analysis than previous platforms
- Despite offering paper surveys, no groups or parish councils requested them in addition to the digital platform.

In total they received 10,471 visitors to the online consultation, which collected 99.9% of all survey responses.

Using new PropTech tools can now help you to increase community engagement by leveraging tools like online consultation platforms, GIS maps, and social media, the pilot projects have all managed to increase responses to their consultations, including from identified hard-to-reach communities. The learnings from these projects will undoubtedly contribute to future advancements in citizen engagement strategies.



The learnings from these projects will undoubtedly contribute to future advancements in citizen engagement strategies.



# 1,224 Comments 7 Reactions to comments

#### For more information visit:

https://media.localdigital.gov.uk/uploads/2023/11/28105757/ PropTech-Innovation-Fund-Combined-case-studies.pdf

To find out how 'Give My View' can help with online consultations please visit: www.givemyview.com

# Torridge District Council

orridge is a District Council in North-West Devon, England. It covers a total area of 380.4 sq. miles and has a growing population of 68,475 people. Torridge District is predominantly rural, with a large proportion of the population living in the coastal area of Bideford, Northam and Westward Ho! Unfortunately, some of the communities with the District are amongst the most deprived in the Country (transport, education, income, etc), and much of the economy is seasonal in nature, albeit there are some excellent entrepreneurial businesses which benefit the locality. The District's Coast is recognised for its natural beauty, forming part of the North Devon Coast Area of Outstanding Natural Beauty. The island of Lundy forms part of the District, however, it is rare that officers get to carry out site visits here!

It is an exciting time to work in Policy within Torridge District Council, as the Councils of Torridge and North Devon have resolved to produce a new joint local plan and as such a new and dynamic body of work is creeping over the horizon for our relatively young team. For many of the team this will be the first time working on a new Local Plan and the diversity of the work ahead is appealing to all of us. It is also an opportunity for our team to enjoy one of the major benefits that our positions offer us, and that is the joint nature of our work with North Devon District Council.

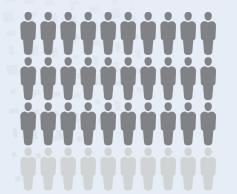
At the 2023 RTPI Regional Awards, TDC received a commendation in the category of Planning Authority of the Year (SW) due to our commitment to invest in staff, and proactive approach in supporting the rural community. The judges gave specific regard towards the department's investment in staff, including a willingness to support training, career progression, as well as mentoring new staff throughout their careers.

The Council has a grow your own policy for developing and retaining talent. The Planning Department currently has two apprentice Planning Officers in their first year of a Degree Level Apprenticeship at the University of the West of England, where they are progressing to become Graduate Planning Officers and will finish their degree as fully chartered Planning Officers. We also have two team members doing their masters degree at Plymouth University, with several of our team having already completed the course. This is a really great opportunity for our staff members where, as a council we have a chance to train and develop our own. This amazing opportunity has given staff the required tools to progress within their career. Both the Apprentices and Graduate officers working through their degree work full time alongside their studies so benefit from on the job learning and mentoring from experienced officers within a culture of supporting staff development.

# Total area 380.4 sq. miles



# **Growing Population 68,475 people**



# 03 Torridge District Council



The Councils 'grow your own' policy has allowed the Council to maintain good staffing levels and build a close-knit team, which is focused on supporting good built development and pragmatic decision making. The team make a conscious effort to reach out and engage with not only developers but private customers and all stakeholders and elected members. In addition, to encourage staff retention the department has focused on building morale and camaraderie. This has been done by encouraging flexible working (to enabling surfing at lunch etc), and the creation of a social committee to organise events in and out of work (lunchtime run club, karaoke, bowling, beach rounders, etc). We consider better planning outcomes are more likely to arise from Team Members who are invested in the area they work.

The Development Management Team at Torridge have worked hard to avoid refusals where possible, and in early 2023 had one of the highest approval rates in the Southwest. To achieve this, the team encourage amendments to planning applications to overcome technical issues or improve design, resulting in positive outcomes. It has been important to positively engage with customers, advising them of issues early and being available on the phone or thrashing out issues with a meeting where appropriate. In addition, we have worked closely with 3rd parties such as the NFU and Southwest Water, to try and understand issues and provide guidance to customers and members (most recently producing a guidance document aimed at farmers).

Torridge has become the focus for new opportunities in the renewable energy and clean industry sector. Developments such as the Appledore Clean Maritime Innovation Centre aim to establish Torridge and wider northern Devon as a global-leading research and development destination for innovation in clean maritime technology and supporting industries. The centre, which is expected to open in 2025 (subject to planning permission), is a key early development that will feature cutting-edge research and industry partnerships from the Centre for Future Clean Mobility (CFCM, University of Exeter) and the University of Plymouth offshore renewable and maritime autonomy specialisms. The complex will also incorporate a range of offices and flexibly designed workshops to support businesses to innovate. In support of the project, Torridge District Council was awarded £15.6 million in government funding, which represents a significant inward investment for the District.

Torridge has a young and dynamic team who do their best to deliver the Council's aims of being a 'great place to live, work and visit'.







Authors: Jen Slade Ryan Steppel Beth Hobbs

Chris Power Kris Evely

#### 03 How local authorities are providing housing 2023 report

he Fourth Round of Research on how local authorities are providing homes was undertaken in 2023 with a contribution from the region through a round table. As in previous years, the research has used a range of methods including a direct survey and desk survey which have used the same questions as before together with some topical additions.

The findings from 2023 show that now 94% of local authorities are engaged in some kind of housing provision, including almost all those in the SW and 78% have indicated that the provision of affordable housing is a corporate priority, although there is less available information about how this priority is being implemented in every case. 14% of local authorities, including Cornwall, have now established their own housing association as a means of accessing Homes England funding.

While the research shows that councils are adopting larger programmes for direct delivery than in previous years, the proportion of new council homes being provided through development projects has slowed down as construction costs have risen. Instead, there is an increase in councils acquiring homes in a variety of ways to meet homelessness and mitigate temporary accomodation costs. Councils are acquiring homes from developers through Homes England additionality funding, purchasing secondary street properties or acquiring unsold whole developments directly from developers. One of the main issues here has been potential eviction of existing tenants when acquiring secondary properties and councils are now making provision for this as part of their purchases. Some councils are also seeking to obtain former right to buy properties where this makes sense for asset management and future estate regeneration. Some councils have taken a more active role as letting agents and also taken on buy to let homes on behalf of the owners, providing management and maintenance services to them so that are not lost to rental stock.

Councils are still proactive in their joint venture arrangements with partners that include housing associations, pension funds, other councils and developers. Some of these JVs cover a number of sites in the authority's ownership but other councils prefer to have separate JVs for each site and scheme. The survey in 2023 also demonstrated the extent to which councils are reviewing and using their own land for housing across a range of former uses including police and fire headquarters, technical colleges, depots, car parks, educational buildings and their own municipal

campuses. The role of councils in supporting housing in town centres and through regeneration master planning continues although remains less visible in council discussions on housing provision.

One new finding from the 2023 research is that now 68% of councils have a strategy beyond the use of s106 for the provision of affordable housing.

Some have adopted housing strategies and action plans which draws together delivery activity across the council. Others have taken on s106 properties directly as a positive strategy rather than just when housing associations have refused to take on this stock. Others are working more proactively on enabling schemes with housing associations and other funders. This approach also includes wider acquisition strategies.

A major issue for those with their own housing stock is the condition of the stock with changes in inspection regimes being introduced by the regulator. This is combined with a recognition of the need for more retrofitting across the whole of the housing stock in the council's area which is having an impact on the council's budget for new development as reported by 53% of councils. 41% authorities are now providing homes at enhanced energy and environmental standards in comparison with 27% in 2021.

In addition to construction costs, other barriers to providing new housing stated included a lack of land or suitable sites and an increase in viability concerns. There was less concern about skills this time although this can remain as an issue. Overall, there was an even split between optimism and pessimism for the future from respondents, with those more pessimistic citing the retention of right to buy as a key negative factor.

Councils expressed a position of congested priorities between new build, achieving higher environmental standards, retrofitting and acquisition not least when faced with reducing budgets and rising costs for temporary accomodation. Those councils which



have an 'One Council' approach and are establishing integrated teams to deliver housing are achieving more, as we have found in previous years. Those councils with the largest HRA programmes in the SW are Exeter and Mid-Devon and the councils most active in using a range of delivery methods are Bath and NES, BCP, Bristol, Cornwall, Cotswolds, N Devon, N Somerset, Plymouth and Torridge.

**Author:** Janice Morphet The Bartlett School of Planning

Aston Rise:

www.willmottdixon.co.uk/projects/ashton-rise-bristol

**Local Authority Housebuilding Research:** www.ucl.ac.uk/bartlett/planning/news/2024/jan/ fourth-report-local-authority-housebuilding-launched





Photo top and left, Ashton Rise Development for Bristol City Council. © Willmott Dixon



The Clyst Valley follows the River Clyst from the Exe Estuary at Topsham to its source at Clyst William in East Devon. The Clyst Valley provides a connected green infrastructure network between existing villages and the new community at Cranbrook and a green buffer on the eastern edge of Exeter.

The concept of the Clyst Valley Regional Park originates from a 2009 Green Infrastructure Strategy commissioned by the Exeter & East Devon Growth Point (and joint funded by East Devon, Exeter City and Devon County Councils). With over 20,000 homes and potentially 26,000 jobs being created in this area over the next 20 years the Clyst Valley Regional Park is essential to provide multi-functional ecosystem services, accessible green space and mitigation of the impacts of development on nearby European protected wildlife sites.

The Regional Park is protected from development through Strategy 10 in East Devon District Council's Local Plan. Over 2,000 hectares of land are currently allocated - roughly half the size of Exeter. The majority of this land is in private ownership.

The masterplan sets out aspirations for the Park until 2045 and creates a framework for delivery of green infrastructure and protection from development unless it will clearly achieve specific objectives for people and wildlife.

#### Strategy 10 acknowledges that:

"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 plan involved a number of projects. Including:

• Great Trees in the Clyst Valley, which restored 4.6 hectares of historic parkland, delivered a new woodland, with 2,200 trees planted, 234m of new hedgerow, 2 new orchards and recorded 325 ancient veteran and notable trees within the Clyst Valley. The ancient trees have been recorded on the Woodland Trusts' Ancient Tree Inventory. The project also supported 27 local businesses ranging from web designers, ecologists, nurseries, food & drink suppliers, farm shops, artists and arboriculturalists.



Tree Planting Volunteers - Broadclyst Primary School

- Routes for Roots, which saw the planting of 600 trees (including locally distinctive Black Poplar trees) by 130 volunteers at West Clyst Farm, with school groups from Broadclyst and West Clyst Primary School. Improvements have been made to more than 5km of trails and permissive footpaths have been enhanced with the replacement of stiles with gates, enabling people with health conditions or impairments to enjoy more of the countryside.;
- Clyst Valley Trail, a new 13km active transport route following the River Clyst and connecting Exeter and the Exe Estuary with existing and new communities plus destinations within the Clyst Valley. The path will link 12,000 new homes and 10,000 new jobs potentially benefitting more than 40,000 people.
- Crystal Clear Clyst, which investigated potential to re-naturalise a section of the river north of Clyst Honiton, improving the ecology and water quality through amendments to the channel profile and restoration of river channels.

#### 05 Clyst Valley Regional **Park Masterplan**

- Clyst Canopy; which explored the opportunities and barriers to increasing tree cover in the Clyst river catchment from 10%, as it is at present, to 30% - a key objective of the Clyst Valley Masterplan and also of East Devon District Council's Council Plan and Climate Strategy. The project identified a number of opportunities - landowners were willing to increase tree cover in principle and there is significant potential for woodland to generate value through carbon credits. The value of increasing tree cover in the Clyst Valley was predicted to provide annual benefits as follows:
  - recreation and tourism £167,000
  - water quality £385,000
  - flood amelioration £53,000
- A new Green Space at Broadclyst Station, a 10 Ha site at Station Road, Broadclyst, which will be the first SANG to be delivered by East Devon District Council. The site is located in an accessible location on the western edge of Cranbrook and close to existing communities at Broadclyst and the eastern edge of Exeter. It is also adjacent to the Exeter & East Devon Enterprise Zone - providing opportunities for integrated Green Infrastructure as part of our focus on Clean Growth and Sustainable Development.







#### For more information please contact:

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#### **Next Steps and Challenges**

Since winning the RTPI Award delivery of the Clyst Valley Regional Park Masterplan has progressed on a number of fronts, with the foundation work undertaken to facilitate projects such as Clyst Canopy and Crystal Clear Clyst.

Our focus now is to develop 'spade ready' projects which can be aligned with funding opportunities and resource availability. Projects such as National Trust Killerton's Three Rivers Landscape Recovery project demonstrates the potential for landscape scale change - especially when land ownership and funding align.

We're also looking forward to a new engagement programme to bring new people into the Clyst Valley, especially new residents of the growing communities of Cranbrook and Monkerton/Tithebarn/West Clyst on the edge of Exeter.

A review of the Clyst Valley boundaries and planning policy as part of the Emerging Local Plan is currently progressing to ensure that policy is robust and facilitates delivery of the Masterplan. It will help to strengthen Green Infrastructure links to existing and proposed communities, and links between key natural landscape features and river corridors. We're working with Parish Council's to ensure that CVRP objectives are embodied in Neighbourhood Plans - such as the specific alignment of the Clyst Valley Trail through village centres.



Clyst Valley Regional Park (clystvalleypark.org.uk)

Clyst Valley Regional Park Masterplan cvrp-masterplan.pdf (eastdevon.gov.uk)

Routes for Roots Celebratory Video -(clystvalleypark.org.uk)

Woodland Trust Ancient Tree Inventory woodlandtrust.org.uk

Clyst Valley Trail and LCWIP consultation -Clyst Valley and New Communities Local Cycling and Walking Infrastructure Plan - Have Your Say (devon.gov.uk)

Killerton Estate 'Three Rivers' Landscape Recovery Project -Landscape Devon | National Trust

Saving Devon's Treescapes
Devon Wildlife Trust

Exeter and East Devon Enterprise Zone - www.eedez.com





Rainbow - Station Road, Broadclyst

# **External Partner Projects**

Key partners within East Devon are delivering significant projects which align and contribute to the objectives of the Clyst Valley Masterplan.

#### **National Trust Killerton**

The 2,500 ha site at National Trust Killerton comprises much of the northern part of Clyst Valley. The team there are undertaking an exciting DEFRA funded project to restore nature and the natural landscape, with a focus on improving habitats for the future.

The 'Three Rivers' Landscape Recovery project is named after the Clyst, Culm and Cranny Brook Rivers which flow through the estate. The Trust aims to restore and create even more areas of priority natural habitat on the estate to benefit wildlife and nature, ensuring that the land achieves High Nature Status (meaning the majority of the landscape provides high quality habitat) and Priority Habitat.

The project will include conservation action to improve existing Priority Habitats, planting 600,000 trees and planting 20km of hedgerows to help tackle climate change by increasing carbon storage and water quality. All of this work will benefit the estate and the Clyst Valley, as well as a major contributor to the National Trust's ambition to tackle climate change.

# Saving Devon's Treescapes

Devon Wildlife Trust's 'Saving Devon's Treescapes' project, which is supported by East Devon, started in March 2020 and aims to increase knowledge about the importance of our treescapes and to plant and nurture 250,000 trees outside of woodlands across Devon, including in the Clyst Valley, by 2025.

Native tree nurseries have been created, including in Broadclyst, to provide trees to schools, community groups and individuals. Over 25,000 trees have been planted in the last year, and as well as creating 15 new community orchards, the Wildlife Trust have supported landowners, providing advice on the benefits and support available for tree planting on their land.