

## Appeal Decision

Site visit made on 9 February 2016

**by Joanne Jones BSc MA MRTPI**

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

**Decision date: 2 March 2016**

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**Appeal Ref: APP/U1105/W/15/3134519**

**King Alfred Way, Newton Poppleford, Devon EX10 0DG**

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant consent, agreement or approval to details required by a condition of a planning permission.
  - The appeal is made by Cavanna Homes (Devon) Ltd and Pencleave 2 against the decision of East Devon District Council.
  - The application Ref 15/0642/MRES, dated 16 March 2015, sought approval of details pursuant to condition No 1 of a planning permission, granted on 16 May 2014.
  - The application was refused by notice dated 13 August 2015.
  - The development proposed is 40 houses, doctors surgery, associated infrastructure, open space and landscaping. Outline application was not EIA development.
  - The details for which approval is sought are: Appearance, landscaping, layout and scale.
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### Decision

1. The appeal is dismissed.

### Application for costs

2. An application for costs was made by Cavanna Homes (Devon) Ltd and Pencleave 2 against East Devon District Council. This application is the subject of a separate Decision.

### Procedural Matter

3. The Council formally adopted the New East Devon Local Plan on 28 January 2016 (the Local Plan) and the policies contained in the adopted plan are the ones against which this appeal is determined and they carry full weight. The Council and the appellant have referred in their submissions to the policies contained in the now superseded East Devon Local Plan 1995 to 2011 and also to policies in the new plan as it was emerging. The parties have been given the opportunity to respond to the relevant policies in the newly adopted plan so far as it relates to the proposed development and I have had regard to these in my reasons below.
  4. The appellants have submitted a Deed of Variation dated 16 February 2016 pursuant to Section 106 of the Town and Country Planning Act 1990. This is a material consideration which I shall take into account in my decision.
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## Main Issues

5. Outline planning permission for the construction of 40 dwellings on this site has already been granted, so it is not the principle of residential development that lies at the heart of this appeal, but rather the acceptability or otherwise of the details now put forward. From all that I have seen and read I consider the main issues to be whether or not:
  - the proposed layout and mix of the affordable housing is acceptable, having due regard to Development Plan Policies and other material considerations; and
  - the proposed landscaping would mitigate the visual impact of the scheme within the local area and wider East Devon Area of Outstanding Natural Beauty (AONB).

## Reasons

6. The appeal site comprises two fields, currently set to grass, bounded by mature hedgerows, situated within the extensive East Devon AONB. A Public Right of Way (PRoW) runs in an east-west direction adjacent to the northern boundary of the site. To the north are the residential properties associated with King Alfred Way.

### *Affordable housing mix and layout*

7. The appeal site would be accessed from King Alfred Way and would provide forty dwellings including sixteen affordable units. The affordable units would be located within the north western end of the site.
8. The affordable housing mix would be 10 two bed and 6 three bed dwellings. 11 of these would be available for rent and the remaining 5 to be part purchased on a shared ownership basis.
9. The Council contend that whilst figures extrapolated from 'Devon Home Choice' in May 2015 identified a local need for 22 affordable homes, only 1 respondent required a three-bedroom property and 1 respondent a four-bedroom property. This mirrored a housing need survey undertaken in May 2011, which highlighted a local need for smaller houses<sup>1</sup>. Therefore, the Council states that the overwhelming local need is for one and two bedroom accommodation, rather than the mix proposed.
10. Although the affordable housing mix would only partially reflect the various housing surveys, an element of judgement is necessary given that the requirements of the Devon Home Choice database are indicative of these people registered with it, rather than local need as a whole and the May 2011 survey is somewhat dated. In any event, the proposal would go some way to meeting the needs of such housing in this area. Moreover, I am mindful that there is no specific policy requirement regarding affordable housing mix and I note the support of the proposals from three Registered Providers. On this basis, I find the housing mix to be acceptable.
11. Turning to the scheme layout: The appellant states that there are practical reasons for grouping the affordable housing at the north western end of the

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<sup>1</sup> For single people and couples alongside small family homes and units providing ground floor living and sleeping accommodation.

site. It is stated that registered social providers prefer the units to be provided in blocks, as shown on the layout, since more widespread 'pepper-potting' adds to the costs and problems of maintenance and management. The appellant is also concerned that should the affordable dwellings be dispersed across the site it would reduce the viability and therefore the delivery of the number of affordable homes proposed.

12. Notwithstanding the viability assessment (dated 18 July 2013) which in summary stated that the scheme with 35% affordable housing would be financially viable, I have no up-to-date evidence before me to establish that the 'pepper-potting' of affordable homes throughout this compact site would be financially unviable. Furthermore, the requirement for 40% affordable housing was established at outline stage and set out in a S106 agreement.
13. I have considered the appellant's comments that the development would be 'tenure blind'. However, the affordable housing would be different in design and layout to the open market housing and therefore would appear somewhat marginalised. In any event, given the palette of external materials to be used, the affordable units could be dispersed throughout the site without material harm to the character and appearance of the area.
14. Section 70(2) of the Town and Country Planning Act 1990 provides that in dealing with planning applications the planning authority shall have regard to the provisions of the development plan, so far as material to the application, and to other material considerations. This is reflected in section 38(6) of the Planning and Compulsory Purchase Act 2004, which provides that determination must be made in accordance with the development plan unless material considerations indicate otherwise.
15. The objective should be to achieve the creation of inclusive and mixed communities<sup>2</sup> and the Planning Practice Guidance<sup>3</sup> refers to the achievement of greater social integration. The layout would not achieve a high level of integration. Local Plan Strategy 34 states that 'affordable housing should be pepper-potted or dispersed throughout the scheme'. I do not interpret 'dispersed' as meaning situated in only one location on the site and therefore the requirements of Local Plan Strategy 34 would not be met.
16. I note the appellant's argument that Strategy 34 states 'should' rather than 'must', 'will' or 'shall' in terms of 'pepper-potting'. However, the Local Plan has a clear expectation for affordable housing integration and I am not satisfied that material circumstances prevail in this case to indicate that this development, whose layout would be clearly contrary to the newly adopted development plan, should be permitted.
17. To conclude on this first main issue, I acknowledge that there is a need for affordable housing in the local area. However, among the principles of the Framework and the Local Plan is the creation of inclusive and mixed communities. This principle has not been satisfactorily embodied in the proposal before me. Therefore the development is contrary to Local Plan Strategy 34 and the Framework.

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<sup>2</sup> Paragraph 50 of the National Planning Policy Framework (the Framework)

<sup>3</sup> Paragraph 017 under Design

### *Landscaping*

18. The appeal site is located within the AONB. The Framework confirms that great weight should be given to conserving landscape and scenic beauty in the AONB<sup>4</sup>, which has the highest status of protection in this regard.
19. The Council are concerned that the landscaping fails to provide tree planting along the length of the estate road, which would soften the impact of the development and to assimilate it into the AONB.
20. Nevertheless, the submitted landscaping details includes hedges to the front of many of the properties which would compensate, to some extent, for the lack of tree planting and would help to 'soften' the hard edges of the street scene. Furthermore, tree planting along the wider site boundaries would reflect the character of the surrounding village and assist in integrating the site within the AONB.
21. To conclude on this main issue, the proposed landscaping details are suitable for the site and its context. The development would therefore comply with Local Plan Strategy 46 and Policy D2, which require developments to, amongst other matters: conserve and enhance the landscape character of the area; provide for the planting of trees and hedgerows and make a positive contribution to the street scene.

### *Other matters*

22. A Deed of Variation dated 16 February 2016 has been provided to confirm the composition of affordable housing units. The Deed of Variation achieves the purely administrative task of varying the original S106 Agreement were I to allow the appeal.
23. Several appeal decision letters<sup>5</sup> have been brought to my attention by the appellant. However, these relate to decisions made prior to the adoption of the Local Plan and the associated lack of a 5 year housing land supply. Therefore the Inspectors' comments relating to the weight to be apportioned to emerging policies and issues surrounding 5 year land supply are not relevant to this case. In any event, every planning appeal must be determined on its own merits as I have done here.

### **Conclusion**

24. Whilst I have found no material harm to landscape character of the AONB or the surrounding village, and I have found the mix of affordable housing provided to be acceptable, such factors would not outweigh the clear Policy conflict, which requires affordable housing to be pepper-potted or dispersed throughout the scheme.
25. For the reasons stated above and taking into account all other matters raised, I conclude that the appeal should be dismissed.

*Joanne Jones*

INSPECTOR

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<sup>4</sup> Paragraph 115

<sup>5</sup> APP/U1105/A/13/2208393; APP/U1105/W/15/3003548; APP/U1105/A/14/2223944; and APP/F1230/W/14/3002790