
Appeal Decision

Site visit made on 22 September 2015

by **G J Rollings BA(Hons) MA(UD) MRTPI**

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

Decision date: 29 March 2016

Appeal Ref: APP/U1105/W/15/3067589

Land at Dukes Way, Axminster, Devon, EX13 5QP

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant planning permission.
 - The appeal is made by Betterment Properties (Weymouth) Ltd against the decision of East Devon District Council.
 - The application Ref 14/0912/MFUL, dated 10 April 2014, was refused by notice dated 23 April 2015.
 - The development proposed is 18 residential dwellings and garages, associated estate road, sewers, swales and landscaping.
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Decision

1. The appeal is dismissed.

Application for Costs

2. An application for costs was made by Betterment Properties (Wey) Ltd against the decision of East Devon District Council. This application is the subject of a separate Decision.

Procedural Matter

3. The Council adopted the *East Devon Local Plan 2013 to 2031* ('the new Local Plan') on 28 January 2016, during the course of my determination of this appeal. The new Local Plan supersedes the previous *East Devon Local Plan (2006)*, ('the previous Local Plan'). The new Local Plan was tested at an Examination in Public and was found to be sound by an Inspector, subject to alterations which were incorporated upon adoption. The new Local Plan is therefore a material consideration in my decision and the parties have had the opportunity to comment.

Main Issues

4. The main issues are:
 - The effect of the proposed development on the character and appearance of the area; with particular regard to the relevance of the Land of Local Amenity Importance designation; and
 - Whether it can be demonstrated that there would be a clear community need for the proposal.
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Reasons

Background

5. The appeal site is on land which is currently vacant and undeveloped. It runs alongside a stream and is accessed from Dukes Way via a bridge. This is ungated, although access within the site was difficult at the time of my visit due to the naturalised vegetation. A Tree Preservation Order (TPO) applies to mature trees along the stream around the site's northern edge. Although the site is generally flat, it lies within a shallow valley between older residential development which rises upwards from the site's southern boundary, and new housing developments which sit on higher land to its north. The development would be laid out in a linear form, and consist of one and two-storey dwellings arranged along a road, with the road joining Dukes Way at the location of the current bridge.
6. The site is designated as Land of Local Amenity Importance (LLAI), and shown as such on the Council's new Local Plan map. Policy EN1 of the new Local Plan, which has a similar intent to Policy EN3 of the previous Local Plan, states that development of such land will not be permitted unless particular circumstances can be demonstrated. These relate to need and its impact on character. The Council advises that there are 14 such designated spaces within its jurisdiction.

Character and appearance

7. The site acts as a green, undeveloped buffer between the separate areas of development to its north and south. These areas have different characters, primarily resulting from their ages. Although the development would adjoin the older residential area to the south, there would be no access to the site from this area, and it would be separated from the newer development around Dukes Way by the retained trees and stream. The site's location in a valley renders it visible from both areas, with clear views from multiple vantage points around the site, which contribute to the character of the areas from which it is viewed.
8. New Local Plan Policy EN1 requires proposals for development on LLAIs to demonstrate that they would either complement or not undermine the open character of the area. I have taken into account the appellant's comments on the value of the land for local recreational purposes, with regard to its contribution to the character and appearance of the area. It is one of the few designated green spaces within the immediate area. Paragraphs 76 to 78 of the National Planning Policy Framework ('the Framework') afford special protection to designated Local Green Spaces. The Council notes that it has no designated Local Green Spaces within the district, but that LLAIs perform a similar purpose. Given that the LLAIs designation has been subject to a significant level of recent consultation in connection with the new Local Plan, I do not dispute its 'amenity value' in contributing to the area's character.
9. The Framework (at paragraph 78) compares Local Green Spaces with Green Belt land, in terms of the level of protection which it should be afforded. Policy EN1 does not apply the Framework's level of protection for Green Belt Land to LLAIs sites, but does require an assessment of development's impacts on its open character. Built development, by its very nature, reduces the openness of land, and therefore, its open character.

10. Whilst it appears that some parts of the site might have been cleared and there is evidence of public access onto the land, as well as previous development such as the bridge access, the land does retain an open character. The proposed development would reduce the level of openness. Due to the site's visibility, the new buildings would appear obvious in views, and despite the retention of trees and provision for landscaping across the site, the development would undermine and fail to complement its openness.
11. I have noted the appellant's comments that the LLAI sites are not mentioned in the strategic policies of the New Local Plan, with particular regard to the Axminster-area strategies, but neither is the appeal site specifically identified for development, as others in the area are within these strategies. I do not consider that the site's designation as LLAI or Policy EN1 conflicts with these strategic policies.
12. I therefore conclude that the development would have a harmful impact on the character and appearance of the surrounding area. It would conflict with new Local Plan Policy EN1, for the reasons set out above.

Community need

13. New Local Plan Policy EN1 also states that development of LLAI land will not be permitted unless a clear community need has been identified and where the development cannot be accommodated elsewhere. The proposal does not include an assessment of alternative sites that could accommodate the proposed housing provision, nor an assessment of whether there is a clear community need for the development on the appeal site.
14. The parties have referred to the overall need for housing within the district. The issue of whether the Council could demonstrate whether it had an adequate five-year land supply for residential development was considered during the Examination in Public (EiP) of the New Local Plan. In his report¹, the EiP Inspector considered that the Council's estimated delivery of 950 homes per year during the plan period would be sufficient to meet the objectively assessed housing needs for the district, with regard to both market and affordable housing.
15. Strategy 20 of the new Local Plan states that "substantial numbers of new homes" will be supported within Axminster, and Strategy 2 outlines the specific distribution of housing allocations within the district. Taking into account the previous under-delivery of housing against its five-year housing land supply target, he found that the Council's delivery plan is appropriate, and that the Council was able to demonstrate a five year housing land supply. Taking into account the very recent adoption of the new Local Plan and the absence of updated information to demonstrate otherwise, I consider that the Council is able to demonstrate that it has an up-to-date five year housing land supply.
16. Strategy 2 and the Proposals Map indicate that the proposed housing demand within Axminster can be accommodated to 2031. This does not appear to include the appeal site. As such, I am unable to find that there is a clear community need for the delivery of housing specifically on the appeal site.
17. I have considered whether the proposed delivery of affordable housing would contribute to satisfying a clear community need. The development would

¹ Dated 15 January 2016

provide five affordable dwellings. No planning obligation has been provided; instead, the appellant contends that should the appeal be allowed, a condition would be sufficient to ensure the delivery of the affordable housing element. Although the Planning Practice Guidance states that it is possible for a negatively worded condition to restrict development when a planning obligation or other agreement has not been entered into, it states that this is only suitable in exceptional circumstances. Such circumstances are defined as more complex and strategically important development where there is clear evidence that the delivery of the development would otherwise be at serious risk. I do not consider that the scale or nature of the proposed development warrants its consideration as more complex and strategically important development. As such, there is no clear mechanism under which the proposed affordable housing element would be delivered, and as such, I can only give given this limited weight in my consideration of this issue.

18. I therefore conclude that there would not be a clear community need for the proposal. Although there is a need for housing within the district, this can be provided on alternative sites, as set out within the strategic policies of the new Local Plan. The development would not comply with Policy EN1, for the reasons set out above.

Other issues

19. At the time the appeal was lodged, recent appeal decisions² found that the Council was unable to demonstrate that it had a five-year housing supply. Given that these and the other older evidence pertaining to this issue have been superseded, I have afforded these minimal weight in my decision.
20. Representations have been made referring to the assumed value of the site with regard to local character, ecology, openness and recreation, amongst other considerations. The appellant notes that as there are no criteria for the designation of LLAI in Local Plan Policy EN1, its contribution towards these considerations is questionable. I acknowledge that the existing public access to the land could be restricted at any time, and that the scheme would provide improved access and open space in the vicinity of the stream, delivered in part by the recent adjoining development, which would provide a benefit to the community. However, neither these improvements, nor the other benefits of the scheme as set out by the appellant, are sufficient to outweigh my concerns regarding the loss of the LLAI land, given its designation and local contribution, or the proposal's inconsistency with adopted policy.

Conclusion

21. The proposal would be inconsistent with the new Local Plan, which is part of the adopted development plan for the area, and thus it is not sustainable development for which the *National Planning Policy Framework* has a presumption in favour. For the reasons set out above, and having regard to all other matters raised, I conclude that the appeal should be dismissed.

G J Rollings

INSPECTOR

² Appeal refs: APP/U1105/A/14/2223944 and APP/U1105/A/14/2223948; date of decisions: 24 August 2015.