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## Appeal Decision

Hearing held on 23 February 2016

Site visit made on 22 February 2016

**by Stephen Roscoe BEng MSc CEng MICE**

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

**Decision date: 24 March 2016**

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**Appeal Ref: APP/K1128/W/15/3039104**

**Site Allocation DPD Proposal D1, Land Adjacent to Townstal Road,  
Dartmouth, Devon**

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant outline planning permission.
  - The appeal is made by Millwood Homes (Devon) Ltd against the decision of South Hams District Council.
  - The application Ref 15\_51/1710/14/O, dated 25 June 2014, was refused by notice dated 1 May 2015.
  - The development proposed is a mixed-use development comprising up to 240 dwellings, employment land (up to 2.7 ha), a local centre (0.4ha), formal and informal open space, strategic landscaping, cycle path and footpath provision and associated infrastructure, served off new primary and secondary accesses off Townstal Road (A3122).
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### Decision

1. The appeal is allowed and outline planning permission granted for a mixed-use development comprising up to 240 dwellings, employment land (up to 2.7 ha), a local centre (0.4ha), formal and informal open space, strategic landscaping, cycle path and footpath provision and associated infrastructure, served off new primary and secondary accesses off Townstal Road (A3122) in accordance with the terms of the application, Ref 15\_51/1710/14/O, and subject to the conditions listed at the end of this decision.

### Procedural Matters

2. The above application was submitted in outline with appearance, landscaping, layout and scale reserved for future consideration, and the appeal has been considered on this basis. At the Hearing, I advised that I had already viewed the appeal site from various public vantage points and that I did not need to enter the site itself to consider the appeal. I did however undertake to consider any requests made during the Hearing for an accompanied site visit. No requests were made.

### Main Issue

3. I consider the main issue in this case to be whether the proposal would make adequate provision for affordable housing.
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## Reasons

### *Background*

4. The Council accepts that it does not have a 5 year housing land supply and that it is subject to the NPPF 20% buffer which relates to the persistent under delivery of housing. DPD<sup>1</sup> Policies AH1 and AH2 relate to the housing mix on housing land and therefore the supply of housing. In accordance with the NPPF para 49, they should therefore not be considered up to date, and I concur with the appellant's view that they should thus be given limited weight. I have therefore considered the proposal against the background of NPPF para 14 which sets out a presumption in favour of granting permission in the context of the policies of the NPPF as a whole. In this regard, NPPF para 173 suggests that the scale of obligations, including affordable housing, should not threaten development viability, and thereby sustainability.
5. Notwithstanding the limited weight that I have given these DPD policies, they can be seen to remain as a material consideration, as is the Council's adopted SPD<sup>2</sup> for affordable housing. DPD Policy AH1 suggests that there may be circumstances where the local target of 55% affordable housing in DPD Policy AH2 cannot be met. In the Hearing, the Council was of the view that these circumstances would include a viability assessment that justified a lower provision. Indeed, Policy AH2 sets the target figure in the context of a requirement to deliver as much affordable housing as is viable. Furthermore, the Council has accepted that it normally seeks 30% affordable housing rather than the 55% policy requirement.
6. The SPD suggests that reductions in levels of affordable housing from the target figures could be considered where viability is affected to a critical point by the provision of affordable housing. In the Hearing, the Council was of the view that such a critical point would be the deliverability of the scheme.
7. In view of all of the above, I consider that the viability of the proposal is critical. This is in terms of its assessment against the presumption in favour of sustainable development in the NPPF, but also in terms of its assessment against the local planning policies, notwithstanding the reduced weight that they currently attract.

### *Benchmark Land Value*

8. The appellant has submitted a viability assessment in support of a proposed 11% affordable housing provision. There is no disagreement between the main parties regarding the data used in the assessment. Indeed, in the Hearing, the Council said that it had been content to use the appellant's data after due diligence and confirmed that the base information was both correct and 'workable from which to go'.
9. The assessment data comprises market based local comparable transacted values. In view of this, and the agreement between the parties, I am satisfied that the data is appropriate and accords with PPG.

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<sup>1</sup> South Hams: Local Development Framework: Development Plan Document: Affordable Housing: September 2008

<sup>2</sup> South Hams: Local Development Framework: Supplementary Planning Document: Affordable Housing: September 2008

10. The determination of a benchmark land value (BLV) to incorporate in a viability assessment is not an exact science, and the parties here have used different methods to arrive at a consented land value (CSV). These different methods have however resulted in similar outcomes. The CSVs are expressed in two ways, on an acreage basis and on a plot basis. Broadly speaking, the higher the CSV, the less opportunity there is for viable obligation commitments, including affordable housing.
11. The Council's CSVs on an acreage and plot basis are £9.65 and 11.2m. These are on the basis that 20% affordable housing would be provided, on the expectation that the Council's usual 30% figure would be reduced during negotiations. The appellant's CSVs are £9.31 and 10.12m, on the basis that 30% affordable housing would be provided, in accordance with the Council's usual practice. I have arrived at the appellant's CSVs by removing the discounts from their £8.1 and 8.8m BLVs. The appellant's CSVs do not include an income from the proposed employment land, which the Council's CSVs do at £75,000 per acre. The inclusion of this income would appear to me to increase the appellant's CSV by some £0.2m, reducing obligation opportunities, as above.
12. In my view therefore, the parties CSVs, on an acreage basis, are very close and, on a plot basis, whilst the difference is greater, the appellant's lower CSV promotes a higher level of affordable housing.
13. It is now necessary to transfer the CSVs to BLVs to reflect the current value of the site, in accordance with PPG<sup>3</sup>. The parties agree that this should be done by applying a discount to the CSVs. The Council is of the view that the discount should be 30% whereas the appellant considers that it should be 15%.
14. In order to determine an appropriate discount, it is necessary to consider the status of the site, at the date of the appellant's September 2015 assessment, in the context of the risks that remain in respect of the ability to develop the site. The site has been allocated for housing and mixed use development in the Council's adopted Dartmouth DPD<sup>4</sup> since February 2011. The Council has not had a 5 year housing land supply for a number of years, and the site is subject to the presumption in favour of granting permission for housing development in the NPPF. The Council accepts that, apart from the offered level of affordable housing, the proposal accords with the development plan, as set out in the main parties' Statement of Common Ground (SoCG). The Council's required planning obligation contributions and works have been known for some time, and are included within the appellant's viability assessment. All of these factors serve to reduce the risk associated with the consent process and the agreement of contributions. Indeed PPG suggests that these factors should be taken into account for valuation purposes.
15. The appeal site is the subject of option agreements which give the appellant an interest in the land. The appellant has suggested that land which is subject to an option agreement should be subject to a discount of between 10 and 15% applied to the CSV. In the Hearing, the Council agreed that an option discount was appropriate and was of the view that the range should be 15 to 20%. The

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<sup>3</sup> Planning Practice Guidance 10-024-20140306

<sup>4</sup> South Hams: Local Development Framework: Development Plan Document: Dartmouth Site Allocations: February 2011

Council explained this as effectively, a developer's reward or return for running a planning application and obtaining permission after an option is put in place.

16. The Council has suggested that the CSVs should be discounted by a further 20%, as the site does not have the benefit of planning permission. The Council argues that discounts of between 40 and 60% are not unusual where a site does not have any planning status. It also points out that the resulting adjustment to the viability assessment would allow the scheme to provide 30% affordable housing. The Council is obviously factually correct in the fact that the site does not have planning permission. This however is not the whole story in relation to the status of the site and development prospects on it. As set out above, there are many factors that have substantially reduced the risk associated with the consent process and the agreed contributions are within the assessment.
17. I therefore consider that the further 20% would be unjustified. To include it would effectively double count the risks that it is intended to cover. It is also of note that, in terms of the 6 comparable sites identified, three were subject to option agreements and had 15% discounts applied. The 15% discount, which the appellant has applied to give 11% affordable housing, would therefore appear to be appropriate. Indeed, it would be just within the Council's range for a developer's return for running a planning application following an option agreement, which is the case here.
18. The Council has drawn my attention to an appeal case at Shinfield in Berkshire, Ref. APP/X0360/A/12/2179141, as a default or starting point for the determination of BLV and with similarities to so-called 'marriage value' situations. In my view however, Shinfield was very much a one-off case, has no PPG or RICS policy or guidance support and therefore does not add weight to the Council's position. Indeed, in the Hearing, the Council suggested that it was something of a secondary test.

#### *Residential Flat Values*

19. The Council has suggested a different method for the calculation of two bedroomed flat values to that used by the appellant in the viability assessment. The Council has suggested a constant rate per square foot, whereas the appellant has valued the flats on a whole property basis, which give a lower value per square foot.
20. The Council is however of the view that the difference would have a minimal effect in terms of the assessment as a whole, and could lead to an increase of some £100,000 on the gross development value. On this basis, I do not consider that the appellant's approach on this matter draws into question the adequacy of the assessment as a whole, and I am satisfied that the appellant's two bedroomed flat values are appropriate.

#### *Affordable Housing Revenue Cash Flow Calculation Method*

21. The parties agree that there are various methods for the incorporation of affordable housing revenues into the viability assessment. The differences between the Council's position on this matter and that of the appellant are some £100,000 at 11% affordable housing and £300,000 at 30%. In view of my finding in relation to the BLV, and therefore the general output of the assessment, the difference would be likely to be £100,000. On this basis, I

again do not consider that the appellant's approach on this matter draws into question the adequacy of the assessment as a whole, and I am satisfied that the appellant's affordable housing revenue cash flow calculation method is appropriate.

#### *Policy Tests*

22. From the main parties' submitted SoCG, the applicant's viability assessment is agreed apart from the BLV, the two bedroomed flat values and the affordable housing cash flow method. I have found in favour of the appellant's BLV and the other two matters have a very minor impact which in my view is insufficient to undermine the viability assessment.
23. There is nothing to suggest that the remainder of the assessment is in any way defective. I therefore conclude that, to ensure viability and provide competitive returns to a willing landowner and developer to enable the development to be deliverable, an affordable housing level of 11% is necessary.
24. I recognise that this view will come as a disappointment to many in the locality, particularly in view of the identified need for affordable housing. In this case however, policy seeks viability and the Council generally agrees with the appellant's assessment apart from the value discount to be applied. In this aspect, I clearly find in favour of the appellant, which leads me to accept the proposed level of affordable housing. The assessment put before me shows that, with a higher level of affordable housing alongside the other obligations, the development would not be likely to be deliverable. The other obligations include the provision of employment land, which would double the available land in Dartmouth, and local centre/cottage hospital relocation land.
25. The 11% affordable housing is lower than the other 6 identified comparable schemes in the Council's area, apart from Riverside. There are however other obligations specific to this site, as set out above, which have resulted from the DPD allocations process and have local support.
26. On my main issue, I therefore conclude that the proposal would make adequate provision for affordable housing in accordance with the NPPF and the Council's relevant DPD and SPD where appropriate.

#### *Other Matters*

27. Concerns have been raised concerning the sustainability of the community and local economy of Dartmouth as a whole, the lack of available land for development and the effects of second homes on local facilities including spare capacity in schools. These are all relevant and important matters. From the evidence put before me however, it seems to me that the proposed development, whether from a density standpoint or the proportion of housing land to other uses, does not have the ability to support the level of affordable housing sought by the Council and local residents. These though are matters that have been agreed by the Council, and nothing has been put before me to suggest that the master planning for the site should be changed. The matters therefore do not outweigh my conclusion on the main issue.
28. The A3122 has been said to have insufficient capacity to serve the proposed development. No such objection has however been raised by the highway authority, and I have not seen any reasoned evidence to suggest that the

proposal would result in any severe impact in terms of highway capacity or safety. The proposal would therefore accord with the NPPF in this regard.

29. Concerns have been raised in relation to the landscape and visual impact of the proposal and, in particular, from the proposed employment land. Whilst appearance is a matter for future consideration, the application includes a landscape and visual impact assessment, which concludes that the strength of the landscape character and extent of the existing upland landscape means that the proposal would not undermine the overall integrity and character of the wider landscape, leaving only localised impacts. In view of the findings of this assessment and the opportunity to consider landscaping at the reserved matters stage, I do not consider that the proposal would necessarily be unacceptable in terms of landscape and visual impact. Moreover, no concerns have been raised by statutory bodies.
30. Representations have been made regarding light and noise pollution. The proposal would unavoidably increase levels of light and noise at and immediately around the appeal site. I am satisfied however that the likely increases in levels would not cause unacceptable harm to the living conditions of nearby residents or the environment of the area generally.

#### *Conditions*

31. Conditions would be required in respect of a landscape and ecological management plan, an ecological mitigation strategy and tree protection measures in the interests of biodiversity. Conditions in relation to the timing of access works, onsite highway details and access to Venn Lane would be necessary in the interests of highway safety. Conditions to require a surface water drainage strategy and a construction method statement would be necessary to manage flood risk and protect the living conditions of nearby occupiers. Conditions in respect of archaeological work and contamination would be required in the interests of the historic and natural environments. It would however be necessary to amend the conditions suggested by the main parties in the interests of precision and enforceability.
32. Otherwise than as set out in this decision, it would also be necessary that the development should be undertaken in accordance with the approved plans and an approved phasing programme for the avoidance of doubt and in the interests of proper planning. Conditions would therefore be required to define the approved plans and put in place an approved phasing programme.
33. Landscaping in conjunction with the proposed development is a reserved matter, and the suggested conditions in this regard would therefore be unnecessary.
34. The highway authority has suggested additional conditions in relation to road closures, adjacent existing highway condition evidence, construction traffic routes and offsite highway works approvals. Road closures and adjacent highway condition evidence would be the subject of other statutory controls. The site is accessed directly from the A3122, and there is no evidence of any potentially unsuitable short-cut routes to the site. Furthermore, there would be no offsite highway works. These remaining conditions would thus also be unnecessary.

#### *Unilateral Undertaking*

35. The appellant and relevant landowners have submitted a unilateral undertaking to the Council concerning affordable housing. Whilst the proportion of affordable dwellings over the site is a matter of dispute between the parties, the provisions within the remainder of the undertaking are agreed. Having reviewed the document, I am satisfied that the provisions within the undertaking would be necessary to make the development acceptable in planning terms and directly related to the development. Having already found that the appellant's proposed 11% affordable housing provision to be acceptable, I also consider that the undertaking would be fairly and reasonably related in scale and kind to the development in accordance with the NPPF.

*S106 Agreement*

36. The appellant, relevant landowners, the Council and the County Council have entered into a Section 106 agreement in connection with the proposed development. The agreement principally contains obligations on behalf of the appellant in relation to financial contributions for the offsite provision of a zebra crossing, high friction highway surfacing, an optional neighbourhood equipped area for play, a multi-use games area, a sports pitch, a footpath/cycleway, improvements to a nearby park and ride, a travel plan for the development and traffic regulation orders. There is no Community Infrastructure Levy (CIL) charging schedule approved for the Council. The appellant however submitted a CIL Compliance document at the Hearing which was agreed with the Council. The document describes the relationship between the contributions and the proposal, their necessity and planning policy support for the provision related to each contribution.
37. Having reviewed the document with the parties at the Hearing, I am satisfied that all of the above contributions would be necessary to make the proposal acceptable in planning terms and be directly and reasonably related to it in scale and kind. They would therefore accord with regulation 122 of the CIL Regulations 2010 as amended.

*Conclusion*

38. Having taken into account all other matters raised, none carry sufficient weight to alter the decision. I therefore conclude that the appeal should be allowed.

*Stephen Roscoe*

INSPECTOR

## **APPEARANCES**

### **FOR THE APPELLANT:**

Mr R Kimblin QC	No.5 Chambers
Mr M Walters MSc MRICS	Associate Director WYG
Mr R Upton BSc(Hons) MRTPI	Associate Director WYG
Mr Smith BA(Hons) PG Dip	Millwood Homes

### **FOR THE COUNCIL:**

Mr Jones	South Hams District Council
Mr R Bailey BSc MBA	Managing Director, Levvel Ltd
Mr C Dawson MA FRICS	Director, Colliers International
Ms A Rehaag	South Hams District Council
Ms D Vigars	South Hams District Council
Mr P Clough	South Hams District Council

### **THIRD PARTIES:**

Cllr J Hawkins	South Hams District and Devon County Councils
Cllr T Fyson	Dartmouth Town Council
Mr Boughton	Local Resident

## **DOCUMENTS**

- 1 Suggested Conditions
- 2 Appellant's Appearances
- 3 Rural South Hams Land Supply Position Table January 2016
- 4 Hearing Notification Letter
- 5 Unilateral Undertaking dated 23 February 2016
- 6 S106 Agreement dated 23 February 2016
- 7 Regulation 122 CIL Compliance
- 8 Appellant's Closings



## CONDITIONS

1. Details of the appearance, landscaping, layout and scale (hereinafter called "the reserved matters") for each phase or phases of the development shall be submitted to, and approved in writing by, the local planning authority before any development of the relevant phase begins, and the development shall be carried out as approved.
2. Application for approval of the reserved matters for the first phase of the development shall be made to the local planning authority not later than three years from the date of this permission.
3. The development hereby permitted shall begin not later than two years from the date of approval of the last of the reserved matters to be approved for the first phase of the development.
4. The development hereby permitted shall be carried out in accordance with the following approved plans:
  - Site Location Plan Ref. 01A
  - Parameters Plan Ref. 07B
  - Proposed site access ghost island priority junction Ref. 11347-P001 Rev B
  - Ghost island priority contour and drainage plan (inc sections) Ref. 11347-P002 Rev C
  - Ghost island priority vertical design long and cross sections Ref. 11347-P003 Rev B
  - Ghost island priority junction swept paths Ref. 11347-P004 Rev A
  - Proposed site access pedestrian/cycle link to Venn Lane and Townstal Road Ref. 11347-P005 Rev B
  - Proposed site access roundabout junction general arrangement Ref. 11347-P010 Rev C
  - Proposed site access roundabout junction with swept paths Ref. 11347-P0011 Rev B
  - Proposed site access roundabout junction contour and drainage plan Ref. 11347-P0012 Rev C
  - Proposed site access roundabout junction geometric design check Ref. 11347-P0013 Rev B
  - Proposed site access roundabout junction long sections Ref. 11347-P0014 Rev B
  - Proposed site access roundabout junction swept paths Ref. 11347-P0015 Rev A
5. Notwithstanding Condition 4, no development shall take place until a phasing programme for the whole development hereby permitted has been submitted to, and approved in writing by, the local planning authority. Development shall

be carried out in accordance with the approved phasing programme or any variation to this phasing programme that has previously been submitted to, and approved in writing by, the local planning authority.

6. Notwithstanding Condition 4, no development shall take place until a landscape and ecology management plan for the whole development hereby permitted has been submitted to, and approved in writing by, the local planning authority. Development shall be carried in accordance with the approved plan.
7. Notwithstanding Condition 4, no development shall take place until a detailed surface water drainage strategy for the whole development hereby permitted has been submitted to, and approved in writing by, the local planning authority. The detailed strategy shall be based upon the principle of sustainable drainage systems as outlined in the Foul and Surface Water Drainage Strategy (April 2014) submitted as part of the planning application. The detailed surface water drainage strategy shall include provision for exceedance pathways and overland flow routes, a timetable for implementation and details of the management and maintenance proposals for the surface water drainage system. Development shall be carried out in accordance with the approved strategy.
8. Notwithstanding Condition 4, no development shall take place within an approved phase of the development hereby permitted until an ecological mitigation strategy for that phase has been submitted to, and approved in writing by, the local planning authority. The strategy shall be based on the proposed mitigation in the Ecological Impact Assessment (January 2014) submitted as part of the planning application. Development shall be carried out in accordance with the approved strategy.
9. Notwithstanding Condition 4, no development shall take place within an approved phase of the development hereby permitted until details of tree protection measures for that phase during construction have been submitted to, and approved in writing by, the local planning authority. The measures shall accord with BS 5837:2012 Trees in relation to design, demolition and construction – Recommendations and shall indicate exactly how and when the trees will be protected throughout the construction period. The measures shall include provision for the supervision of tree protection works by a suitably qualified arboricultural consultant. Development shall be carried out in accordance with the approved details and protection measures.
10. Notwithstanding Condition 4, no development shall take place until a construction method statement has been submitted to, and approved in writing by, the local planning authority. The approved statement shall be adhered to throughout the construction period. The statement shall provide for:
  - The parking of vehicles of site operatives and visitors and car sharing promotion measures.
  - Loading and unloading of plant and materials.
  - Storage of plant and materials used in constructing the development.
  - Wheel washing facilities.
  - Measures to control the emission of dust and dirt during construction.

- No construction work to be carried out, or deliveries received, outside of the following hours: 0800-1800 Monday-Friday and 0800-1300 on Saturdays and not at all on Sundays and public holidays.
  - Means of enclosure of the site during construction.
  - Construction traffic signage strategy.
11. Notwithstanding Condition 4, no development shall take place until the applicant has secured the implementation of a programme of archaeological work in accordance with a written scheme of investigation which has been submitted to, and approved in writing by, the local planning authority. Development shall be carried out at all times in strict accordance with the approved scheme or such other details as may be subsequently approved in writing by the local planning authority.
12. For internal roads on the site within an approved phase of the development hereby permitted; the proposed estate road, cycleways, footways, footpaths, verges, junctions, street lighting, sewers, drains, retaining walls, surface water outfalls, road maintenance/vehicle overhang margins, embankments, visibility splays, accesses, car parking arrangements and street furniture within that phase shall be constructed and laid out in accordance with details to be submitted to, and approved in writing by, the local planning authority before their construction commences. The submitted details shall indicate, as appropriate, the design, layout, levels, gradients, materials and method of construction.
13. If, during construction, contamination not previously identified is found to be present at the site; no further development, unless otherwise agreed in writing with the local planning authority, shall be carried out until an investigation and risk assessment and, where necessary, a remediation strategy and verification plan, detailing how this unsuspected contamination shall be dealt with, has been submitted to, and approved in writing by, the local planning authority. Development shall be carried out in accordance with the approved remediation strategy and verification plan.
14. No part of the development hereby permitted shall be occupied until a verification report, demonstrating completion of the works set out in the approved remediation strategy and the effectiveness of the remediation, has been submitted to, and approved in writing by, the local planning authority.
15. Prior to the public use of the secondary site access, as shown on approved drawing 11347-P001 Rev B, the pedestrian/cycle link to Venn Lane, as shown on drawing 11347-P005 Revision B, shall be provided in accordance with details to be submitted to, and approved in writing by, the local planning authority. The details shall ensure that the access to Venn Lane access can only be used by cyclists and pedestrians. The approved access shall thereafter be retained.
16. No part of the development hereby permitted shall be occupied until:
- The main site access with the A3122, as shown on the plans identified in Condition 4, has been laid out, kerbed, drained and constructed up to base course level for the first 20m into the site from its junction with the public highway.

- Drainage and access covers within the 20m have been set to base course level and the visibility splays required by this permission laid out.
  - The footway on the public highway frontage to the site, as shown on the plans identified in Condition 4, has been constructed up to base course level.
  - The pedestrian crossing and relocated bus stop, as shown on the plans identified in Condition 4, have been provided.
17. The car parking arrangements approved under Condition 12 shall be laid out, surfaced and made available for use in connection with the units to which they relate, prior to their first occupation. The car parking arrangements shall be thereafter retained and kept permanently available for parking to serve the development hereby permitted.
18. Buildings on the local centre land indicated on Parameters Plan 07B shall not be used for any purposes other than for retail, health or community facilities uses within use classes A1, A2, A3, A4, A5, B1(a), C2, D1 and D2 of the Town and Country Planning (Use Classes) Order 1987 (as amended).
19. Buildings on the employment land indicated on drawing Parameters Plan 07B shall not be used for any purposes other than under use classes B1 and B8 of the Town and Country Planning (Use Classes) Order 1987 (as amended).

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