



Appeal Decision

Hearing held on 8 March 2016

Site visit made on 8 March 2016

by **G P Jones BSc(Hons) MA MRTPI**

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

Decision date: 05 May 2016

Appeal Ref: APP/U1105/W/15/3137990

Land adjoining Peace Memorial Playing Fields, Coly Road, Colyton, Devon EX24 6PU

- 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 DBD Developments against the decision of East Devon District Council.
 - The application Ref 15/0131/MOUT, dated 17 January 2015, was refused by notice dated 7 May 2015.
 - The development proposed is Residential development of mixed housing together with access road and amenity land.
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Decision

1. The appeal is dismissed.

Application for costs

2. An application for costs was made by DBD Developments against East Devon District Council. This application is the subject of a separate Decision.

Procedural and Preliminary Matters

3. For the sake of clarity, and as indicated at the Hearing by the appellants, I have used the description of development as provided on the planning application form.
 4. Since the decision was made by the Council, the New East Devon Local Plan (NEDLP) was adopted on 28 January 2016, and this has replaced entirely the East Devon Local Plan 1995 to 2011 (EDLP). Therefore in reaching my decision I have had regard to the relevant policies of the NEDLP.
 5. At the Hearing it was acknowledged by the appellants that they were not seeking to challenge the issue of a five year Housing Land Supply (HLS). As such I attach full weight to the policies for the supply of housing that are contained in the NEDLP.
 6. Reference has been made to the planning history of this site including the previous application, reference 14/0429/MOUT, that was recommended for approval by the case officer but refused at the Development Management Committee, and also the land transfer for an extension to the playing fields. I consider that this provides background context only. In addition, reference has been made to the case officer's report for this application that was withdrawn
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from consideration at the Committee. However, as this was written in the context of both the superseded EDLP and the Council not being able to demonstrate a 5 year HLS, I attach only limited weight to this in terms of the current development plan.

Main Issues

7. Taking into account all that I have read, seen and heard at the Hearing the main issues are as follows:
 - Whether the proposal would provide an appropriate location for housing in accordance with development plan and national policies;
 - The effect of the proposal on the character and appearance of the area, having regard to the East Devon Area of Outstanding Natural Beauty; and
 - The effect of the proposal on affordable housing provision.

Reasons

Housing policies

8. Section 38(6) of the Planning and Compulsory Purchase Act 2004 states that applications for planning permission must be determined in accordance with the development plan unless material considerations indicate otherwise. This is confirmed by paragraph 12 of the National Planning Policy Framework (the Framework).
9. Strategy 2 of the NEDLP defines a hierarchy of settlements within the District, with Colyton classified as a 'local centre'. The appellants have raised concerns about the number of dwellings allocated for Villages and Rural Areas in Strategy 2 of the NEDLP and consider that the figure for windfall allocations appears unrealistic. However, I have not been presented with any substantive evidence to support this argument.
10. The appeal site lies adjacent to, but outside of, the Built-Up Area Boundary (BUAB) of Colyton and consequently, as indicated in Strategy 7 of the NEDLP, it is classified as being located in the countryside. Notwithstanding this, there would be easy access on foot from the appeal site to the reasonably comprehensive range of facilities and services that are located in Colyton.
11. Strategy 7 contains two elements and firstly indicates that development in the countryside will only be allowed where it is in accordance with a specific Local or Neighbourhood Plan (NP) policy that explicitly permits such development. The second element is that such development would also not harm the distinctive landscape, amenity and environmental qualities in which it is located. Strategy 6 indicates that should a NP allocate sites outside of a BUAB then such 'outside of boundaries' policy provision would supersede relevant constraint policies in Strategy 7 and other policies.
12. Strategy 27 of the NEDLP indicates 15 settlements, including Colyton, that have a BUAB. These settlements do not have specific housing allocations and development would need to be promoted through the Neighbourhood Plan (NP) or other community-led process. However, whilst the Parish has been designated as a 'Neighbourhood Area', there is no NP in place for Colyton and at the Hearing I heard evidence, which was not disputed by the appellants, that

the NP process was in its early stages. Therefore at this juncture the NP is not a consideration to which I can attach any weight.

13. Furthermore, Strategy 35 of the NEDLP allows for the consideration of housing proposals outside of BUABs providing there is robust evidence of housing need, the site is well located to the village and would be for up to or around 15 dwellings, of which a minimum of 66% would be affordable. Whilst I consider that the appeal site would be well located to Colyton it would not meet the required provision for affordable housing and there is no robust evidence before me of need for this particular proposal. Consequently I conclude that the proposal would not meet the requirements of either Strategy 27 or Strategy 35 of the NEDLP.
14. The appellant contends that the 2014 Draft Document for Consultation of the East Devon Villages Development Plan Document (EDVDPD), that contained the allocation of 10 no. dwellings on part of the appeal site under reference E142 and with the remainder indicated as a SHLAA site, and the August 2015 Update indicates a direction of travel for the BUAB for Colyton. However, the BUABs for the settlements listed in Strategy 27 will be designated through the EDVDPD process, as indicated in the report to the Development Management Committee dated 8 March 2016.
15. I heard evidence at the Hearing that the BUAB for Colyton is not likely to change as a result of this process except to include recent developments and areas with planning permission. This is contested by the appellants who consider that to accommodate the 40 dwellings from 2014 onwards, that the Small Towns and Villages Assessment (STVA) has predicted, then the BUAB would need to alter. The Council indicated that 33 of the 40 dwellings are committed, and some of these have been built. Whether or not it will prove to be the case that the BUAB for Colyton will alter, due to its status I attach only limited weight to the emerging EDVDPD, including the 2014 Draft Document for Consultation, and instead I intend to consider this proposal in terms of the existing BUAB.
16. I heard evidence at the Hearing from some local residents that the Ceramtec factory site would be preferred for housing. The majority of this site also lies outside of the BUAB and it is currently allocated for employment use. Therefore I accord only limited weight to this other site in this regard.
17. The appellants have cited appeals¹ where proposals have been allowed outside of settlement boundaries. However, I am mindful that for both of these cases the Council was not able to demonstrate a 5 year HLS and that these were considered in the context of the EDLP. The appeal, reference APP/U1105/W/15/3132115, for the site to the south of Yaffles has also been cited. This was also considered in the context of the EDLP and the Council's inability to demonstrate a 5 year HLS, and it benefits from a greater degree of enclosure than the proposal that is before me. Therefore whilst I do not have the full details of any of these cases inevitably their circumstances differ from the particular circumstances of the proposal that is before me. Consequently I only attach limited weight to these other decisions.
18. It is not in dispute that the appeal site lies outside of the BUAB and in terms of Strategy 7 would be considered to be in the countryside. As the proposal

¹ Appeal reference APP/U/1105/W/14/3001140 and APP/U1105/W/14/3001024

would not be in accordance with any other relevant policies of the NEDLP it would fail the test in the first strand of Strategy 7, and thus would conflict with it.

Character and appearance

19. The appeal site is located on the southern outskirts of the town of Colyton outside of both the East Devon Area of Outstanding Natural Beauty (AONB) and the 'Green Wedge'. It is bounded to the west by Coly Road that leads in to the town centre and playing fields lie immediately to the east. To the north of the stepped boundary of the appeal site lies the property known as Devonia and a group of houses in Govers Meadow whose rear boundaries lie on the northern side of Ham Lane. To the immediate south is the Reece Strawbridge Youth Centre and its associated car park. This is a large building that at present sits isolated from the housing in the locality, but when considered in conjunction with its large tarmac car park and the nearby clubhouse building, represents a continuation of the urban form on this side of Coly Road.
20. When viewed at a distance from the east the appeal site is seen against the backdrop of the houses that lie on the western side of Coly Road and which are in an elevated position in relation to it. In addition, planning applications have been granted to the immediate north and south of the Yaffles property and I have not received any substantive evidence to indicate that these developments will not proceed. Whilst I accept that these other developments, if built, would benefit from a greater degree of enclosure than the appeal proposal, they would nevertheless extend the residential boundary to the south on the eastern side of Coly Road.
21. The proposal is an outline application with all matters reserved. An indicative plan, reference TW14/05/1C, has been produced which depicts 16 dwellings located in the western section of the appeal site. The proposed development would erode much of the open character that the appeal site currently enjoys and the existing views eastwards to the AONB would be significantly reduced from along this stretch of Coly Road. However, these are localised views along only a small section of Coly Road. The proposal would not extend the development line eastwards beyond that established by the Govers Meadow properties, and this would be further reinforced by the eastern part of the site remaining as open space.
22. The proposed housing would be seen as an infill site within the overall visual context of the surrounding built development. Therefore I consider that, if sensitively designed and located within the overall site, the proposal would not give rise to any material harm to the character and appearance of the area. As such I conclude that the proposal would accord with NEDLP Policy D1 and the second strand of Strategy 7 that, taken together, require that development respects the key characteristics and special qualities of the area and that important landscape and amenity qualities are not adversely affected.
23. There is a distance of some 150m between the eastern boundary of the appeal site and the River Coly that forms the AONB boundary. The playing fields immediately to the east of the appeal site form a transition to the open countryside of the AONB. Whilst it would give rise to housing development where there is currently an open field, due to the distance from the AONB and the visual context of the surrounding built development, I consider that it

would conserve the landscape and scenic beauty of the AONB and thus would accord with paragraph 115 of the Framework.

Affordable housing

24. Since the Hearing took place the appellants have submitted a Unilateral Undertaking (UU). The UU proposes that up to 50% of the units would be Affordable Housing, subject to viability, and would comprise Shared Ownership and Affordable Rented Units. The Council has been given an opportunity to comment on the UU, and has provided a number of comments. The majority, but not all, of the Council's comments have been accepted by the appellants and incorporated into a revised UU.
25. Since I am dismissing the appeal for other reasons I do not need to consider these matters in detail, or whether the obligation would meet the tests of Regulation 122 of the Community Infrastructure Levy Regulations 2010 and the tests for planning obligations set out in the National Planning Policy Framework (the Framework). However, as regards the matter of the percentage of affordable housing units to be provided that was given by the Council as a reason for refusal, I consider that the proposal would be acceptable in principle in this regard as it would comply with the 50% affordable housing target applicable to this location as required in Strategy 34 of the NEDLP.

Other matters

26. Parts of the appeal site lie within Flood Zones 2 and 3 and the issue of flood risk has been raised and photographic evidence of flooding near to the appeal site was presented. Whilst I have concerns about the extent of flooding depicted, and I noted during my site visit the spongy nature of the ground and the nature of the vegetation growing on parts of the appeal site, I am mindful that this is an outline application and that the detailed design and layout of the dwellings and any flood risk mitigation measures would be reserved matters. Furthermore, I am aware that the Environment Agency has not objected on flood risk grounds. I therefore conclude that based on the evidence before me the proposal would be acceptable in principle in regard to flood risk.
27. I have had regard to the letters of representation that were made regarding this proposal. Whilst I have taken these into account, I have found nothing further of sufficient materiality, beyond the main issues, to count either for or against the proposal.

Planning balance and conclusion

28. In accordance with paragraph 49 of the Framework I have considered this proposal in the context of the presumption in favour of sustainable development. In terms of benefits, it would increase the supply of housing, including affordable units, by a modest amount, and this in turn may well provide a degree of patronage for the facilities and services in Colyton that are easily accessible by walking and cycling. Also the proposal would provide some short-lived construction employment opportunities, and by way of the proposed UU it would provide open space within the overall site and also financial contributions in this regard.
29. However, the proposal would represent housing development outside of the BUAB on land designated as countryside and thus the proposal would be contrary to Strategy 7 of the NEDLP, to which I attach considerable weight. I

am mindful that the BUAB will be assessed as part of the ongoing EDVDPD process. However, the location of the proposal is such that it would be contrary to the recently adopted development plan. Consequently, to allow this appeal would be in effect to pre-empt the NP and EDVDPD process, and I consider that it would not be appropriate to release the site for housing at this time.

30. Therefore when taken as a whole, and in the context of paragraphs 12 and 49 of the Framework, I conclude that the adverse impacts of granting permission would significantly and demonstrably outweigh the benefits. For the reasons set out above, and having regard to all other matters raised, I conclude that the appeal should be dismissed.

GP Jones

INSPECTOR

Richborough Estates

APPEARANCES

FOR THE APPELLANT:

Louise Seaman	DBD Developments
James Carthy	James Carthy and Company Limited
Alan Breckon	

FOR THE LCOAL PLANNING AUTHORITY

Charlie McCullough	East Devon District Council
Gareth Stephenson	East Devon District Council

INTERESTED PERSONS

Andrew Parr	Parish Councillor
Helen Parr	District Councillor
Derek Johnston	Local resident
Norman Carling	Local resident
Robert Cargill	Local resident
T Searle	Local resident
B Searle	Local resident
D DuFeu	Local resident
Yvonne Spijkerman	Local resident
Janice Bush	Local resident
Sheila Smith	Local resident
R Thorp	Local resident

DOCUMENTS SUBMITTED AT THE HEARING

1. East Devon Villages Plan – report to Development Management Committee on 8 March 2016.
2. East Devon Local Plan 2013 to 2031 (Extracts)
3. NEDLP District Proposal Map
4. Built Up Area Boundaries plan (blown up version)
5. East Devon Villages Plan – Draft for Consultation, plan of Colyton

6. Aerial photograph of Colyton, Appendix 7
7. Extract from Colyton Parish Plan 2008
8. Schedule of Conditions for appeal APP/U1105/W/15/3132115
9. East Devon Village Development Plan Document: Draft for Consultation 17 January 2014 to 10 March 2014 (Extract only)
10. Small Towns and Villages Development Suitability Assessment 2014
11. Photographs depicting flooding

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