



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: 5 May 2016

Appeal Ref: APP/U1105/W/15/3031347

Land to the rear of Orchard House, Globe Hill, Woodbury, Exeter, EX5 1JP

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a failure to give notice within the prescribed period of a decision on an application for outline planning permission.
 - The appeal is made by Mr D Lovell (Heritage Developments (South West) Ltd) against East Devon District Council.
 - The application Ref 14/2574/MOUT, is dated 17 October 2014.
 - The development proposed is an outline application (appearance, landscaping, layout and scale reserved) for the construction of up to 24 dwellings, open space, community parking and access.
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Decision

1. The appeal is dismissed, and outline planning permission for the construction of up to 24 dwellings, open space, community parking and access, on 'Land to the rear of Orchard House', Globe Hill, Woodbury, Exeter, EX5 1JP, is refused.

Procedural Matters

2. 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 modifications 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.
 3. The appeal site is within the area covered by the emerging Woodbury Neighbourhood Plan. This plan has been the subject of an initial consultation exercise, but is at an early stage of development, and will be subject to further refinement and consultation. As such, I can only attach minimal weight to the plan and its policies, within my decision.
 4. The description of development that I have used is that provided on the appeal form. This better reflects the nature of the proposed development than that used on the application form, as it takes account of amendments that have been made to the proposed scheme during the course of its assessment.
 5. The appellant submitted a Unilateral Undertaking, dated 4 September 2015, on which the parties have commented, and to which I refer within the relevant sections of my decision.
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Background and Main Issues

6. The appeal proposal is in outline format, with access being the only detailed matter for consideration at this time.
7. The appeal was submitted before the Council decided the application to which it relates. The Council has advised that had it decided the application, it would have been minded to refuse it for three reasons, based on the proposal's predicted impacts on:
 - The character and setting of the village and surrounding rural landscape and context, as well as the possible residential density of the development;
 - The Woodbury Conservation Area and the urban grain of this part of the village; and
 - Local open space, three Sites of Special Scientific Interest (SSSI) within the district, local education provision, and the supply of affordable housing.
8. Accordingly, the main issues are:
 - The effect of the proposed development on the character and appearance of the area;
 - Whether the proposed development would adequately provide for suitable mitigation to address any potential impacts on the surrounding natural environment;
 - Whether the proposed development would adequately provide for suitable mitigation to address any potential impacts on local infrastructure; and
 - The appropriateness of the proposed affordable housing provision.

Reasons

Character and appearance

9. The site is on the edge of the built-up area of Woodbury village. Globe Hill abuts part of the site's eastern boundary, with the site's proposed access from this street. There is a scattering of terraced, semi-detached and detached cottages fronting Globe Hill as it rises to the north of the site. The land behind these homes is laid out as fields, with sparse tree cover. A similar pattern of development abuts the site across much of its southern boundary, with a car scarp yard adjoining the remainder. Fields are located beyond the western edge, and the site is similarly laid to grass, rising slightly to the north. The Applebrook watercourse runs roughly parallel with the site's southern edge, with a small portion of the site located to the south of the stream.
10. A portion of the site abutting Globe Hill and including the intended highway access, is within the Woodbury Conservation Area. This designation extends throughout most of the built-up area of the village, with the area's boundary also abutting the site alongside much of its southern edge.
11. Although the main part of the village is located south of the appeal site, there are numerous houses fronting Globe Hill as it rises to the north. There are variations in their style and siting, but their built form, together with their domesticating effects, such as the erection of fences and cultivation of gardens, restricts most views of the wider rural landscape. On approaching the village

along this road, the cumulative effects of this abutting development provides the impression that the main built-up area of the village extends into this area. Nonetheless, the ad-hoc appearance of this development and its generally low residential density, together with the vegetated verges, contributes to a semi-rural character.

12. As such, the open character of the appeal site allows a relatively unobstructed view from the road, which is unique in this part of the village. I consider that this 'rural lung' view is a defining element and a significantly positive contributor to the character and appearance of this part of the Conservation Area. The view from the road, through the site, is identified within the Council's adopted *Woodbury Conservation Area Appraisal* (2010) as an important open view.
13. Despite the aforementioned development to the north of the site, there is a marked transition on Globe Hill immediately to the south of the appeal site's road frontage, as it enters the main built-up part of the village and Conservation Area. The relatively fine grain of the older village buildings and their siting close to the edge of the highway, is typical of traditional centre-of-village development. There is a partially obstructed view of the site from the intersection of Globe Hill and The Arch. The only other significant views of the site from the public realm are from a footpath leading away from the rear of the site. These views are predominantly oblique and partially obstructed by vegetation and buildings.
14. Policy D1 of the new Local Plan sets out a requirement for development to avoid adversely impacting on important landscape characteristics, and to respect the key characteristics and special qualities of the surrounding area. Policy EN10 states that development within a conservation area, or outside an area but affecting its views and setting, will only be permitted where it would preserve or enhance the appearance and character of the area. The *Woodbury Village Design Statement* (2002) was adopted by the Council as a supplementary planning document following community consultation. This offers additional design guidance and identifies the local architectural vernacular. The indicative plans submitted with the appeal show that the proposed houses would be located to the north of the Applebrook, arranged in both detached and attached configurations, and likely to be two storeys.
15. Given its value to the Conservation Area, the loss of the open views across the site would be detrimental. Although the principle of a well-designed development is not objectionable on its own terms, such development would need to preserve or enhance the Conservation Area, and its setting, which includes the outward views. The maximum proposed number of houses, in conjunction with the indicative cul-de-sac layout, suggests a suburban form of development. This would result in an intensity of its built form which would be at odds with the prevailing character and appearance of surrounding development. Viewed in totality with the parking area adjacent to Globe Hill, the development would neither preserve nor enhance the part of the site within the Conservation Area, or the wider views of the land, which contribute to and help to define its setting. The extension of the built-up area of the village onto the appeal site would also affect the landscape setting of the site and surrounding areas within the other public viewpoints, detracting from its open and rural character.

16. With due regard to the *National Planning Policy Framework* ('the Framework') I consider that the development would have a harmful impact on the Conservation Area, and would fail to preserve or enhance its character or appearance. While the harm arising would be notable, it would be less than substantial. The Framework notes that less than substantial harm should be weighed against the public benefits of the development (paragraph 134). I appreciate that the development would be designed in accordance with the prevailing local vernacular, and that it would incorporate positive environmental and sustainability measures. However, I do not consider that these public benefits, or the benefits to which I refer elsewhere in this decision, outweigh the harm. Although the harm is less than substantial in terms of the definition of the Framework, it is nevertheless tangible and unacceptable in the local context.
17. I therefore conclude that the proposed development would have a harmful effect on the character and appearance of the area. The proposal conflicts with Policies D1 and EN10 of the new Local Plan, for the reasons which I have set out above. Together, these reflect the aims of the Framework in ensuring the protection and where appropriate, enhancement of historic assets, and their setting, including Conservation Areas, and the promotion of a high standard of design.

Natural environment

18. The site is close to three Sites of Special Scientific Interest (SSSI), these being: the Exe Estuary Special Protection Area (SPA) and Ramsar site; the East Devon Pebbled Heaths Special Area of Conservation (SAC); and the East Devon Heaths SPA. The Framework states that development on land within or outside an SSSI should not be permitted where it would have an adverse effect on its notified special interest features, unless the benefits of the development clearly outweigh its impacts (paragraph 118).
19. A planning obligation (Unilateral Undertaking dated 4 September 2015) has been completed and signed, which provides for a payment of £749 per dwelling to be made in respect of mitigation measures to avoid adverse effects arising from the development on these sites. This is fully in accord with the recent practice of the Council, advised by Natural England. I agree that it is necessary to ensure that the impact of the scheme on the SSSIs would be adequately mitigated.
20. The appellant's surveys indicate that the site has minimal ecological value, in terms of its biodiversity and floral/faunal contributions, as a result of its intensively managed nature. Were the development to proceed, appropriate protection would have been afforded to the site's retained boundary hedgerows and trees.
21. I am satisfied that the proposed mitigation measures, including the planning obligation, provide an appropriate level of protection to ensure the long-term biodiversity of these areas. They would ensure that the proposal would not result in a breach of the protection afforded to a European Protected Species, the Habitats Directive, or Natural England Guidelines. Overall, there is clear evidence that these sums are necessary to make the development acceptable in planning terms and that they are fairly and reasonably related in scale and kind to the proposal. I therefore conclude that any harm to the SSSIs would be mitigated through the legal agreement. There would be no conflict with either

Strategy 47 of the new Local Plan, which seeks to ensure that new development is appropriate and limits its impacts on wildlife habitats, or the Framework, for the reasons set out above.

Infrastructure

22. In considering the impact of the proposal on demand for local services and facilities, the Council decided that contributions should be sought to mitigate the effects of any increased demand or pressure on provision. In addition to affordable housing and natural environment contributions, which I have addressed elsewhere in this decision, financial contributions were sought for secondary-level education infrastructure and transport costs (£65,667 and £13,110), and open space provision (allotments, amenity open space, parks and recreation grounds, and youth play space). Although the Council indicated that the amount sought would be based on the number of bedrooms provided within the completed development, the appellant's Unilateral Undertaking specifies a contribution of £27,216.24.
23. The financial contributions were calculated in accordance with the Council's adopted schedules, as set out within the previous Local Plan. On 20 April 2016, the Council adopted its Community Infrastructure Levy (CIL) charging schedule, but this will not take effect until 1 September 2016. Notwithstanding, these would be 'pooled' contributions. The transitional period set out within Community Infrastructure Levy (CIL) Regulation 123(3) (as amended)¹, after which s106 planning obligations designed to collect pooled contributions ('tariffs') may not lawfully be used to fund the majority of infrastructure which could be funded from CIL, ended nationally on 6 April 2015. If I was minded to allow the appeal, further information would have been sought from the parties with regard to the current level of pooled contributions and the appropriateness of a planning obligation in this instance.
24. Having considered the relevant evidence, I consider that there is a reasonable case for the provision of financial contributions for mitigation of the development's impacts on open space and education provision. Notwithstanding this current position, I acknowledge that these matters will, in future, be included in the Council's CIL charging schedule. However, in respect of the submitted planning obligation, I conclude that the Unilateral Undertaking would not adequately provide suitable mitigation to address any potential impacts on local infrastructure. As such, for the reasons set out above, the proposal conflicts with Strategies 43 and 50 of the new Local Plan.

Affordable housing

25. The policy framework under which the Council approaches affordable housing and relevant planning obligations is set out in Strategy 34 of the new Local Plan. The Plan expresses a compelling and up-to-date case for the provision of affordable housing in the district, with the general target of 50% applying to the appeal site. The Plan allows for a lesser provision in certain circumstances, such as where there is an identified need for particular housing within specific rural areas as set out within Strategy 35, or provision of viability assessment evidence. I am not aware of either of these scenarios being applicable in this case.

¹ The Community Infrastructure Levy Regulations 2010.

26. The appellant's Unilateral Undertaking specifies that the development would incorporate a minimum provision of 40% of dwellings being allocated as affordable housing, in lieu of the Council's general 50% target. However, additional clauses allow for the provision to be increased, were I to consider such an increase to be appropriate. The appellant has provided reasons for the lower level of provision, but given the clear-cut provision and exceptions provided within the Local Plan, the type and amount of information is not sufficient to justify an exemption from the 50% target.
27. The main parties also raise opposing points regarding the proposed tenure split, the method of delivery, and the form and content of the planning obligation. However, given my concerns about the overall level of provision, I do not consider it necessary to examine these issues in further detail. I therefore conclude that in this instance, there is insufficient evidence to demonstrate that a proposed affordable housing proportion of 40% would be appropriate, and conflicts with new Local Plan Strategy 34, for the reasons set out above.

Other issues

Five-year housing land supply

28. 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 report², 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.
29. Strategy 27 of the new Local Plan states that certain settlements within the district, including Woodbury, will have defined built-up area boundaries, with no specific residential land allocations; and that development other than that supported within the Plan's policies would need to be supported by a Neighbourhood Plan. As noted above, the Neighbourhood Plan is at an early stage of production, as is the relevant Development Plan Document specifying built-up area boundaries.
30. Although the Council was unable to demonstrate that it had a robust five-year housing land supply during most of 2015, the EiP Inspector found that the Council's housing delivery plan is appropriate, and that the Council is now 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 agree with the Inspector's finding that the Council is able to demonstrate that it has an up-to-date five year housing land supply.
31. I have taken into consideration the evidence from both main parties, and various other interested parties, relating to the number of new homes in Woodbury which have either been recently constructed, or are yet to be constructed but do have planning permission. Although I note the appellant's points regarding the new Local Plan's flexible approach to housing allocation, as well as the EIP Inspector's concerns about the rate of development in settlements such as Woodbury, I do not consider that there is sufficient

² Dated 15 January 2016

justification in this case to deviate from the policies of the new Local Plan, or that these considerations outweigh the harm that I have identified in relation to the main issues, as set out above.

Other planning obligation inclusions

32. The appellant's Unilateral Undertaking includes further provisions, in addition to those that I have considered already. These are the provision of community car parking spaces, the establishment and maintenance of a management company, the provision of a footpath link, and traffic and highway measures. However, given that I am dismissing the appeal for other reasons, I have not considered these further.

Flood risk

33. Part of the site is within an area designated as Flood Zone 3, as set out in the Planning Practice Guidance (PPG)³ definitions, and designated on the Environment Agency's Flood Map for Planning (Rivers and Sea). No dwellings are proposed to be located on this part of the site. The Environment Agency has advised that it does not object to the proposed development. There is no need for the sequential test, as set out in the Framework (paragraph 101), to be applied in this instance. Given the measures proposed to mitigate the possibility of flooding and manage surface water runoff – including the provision of a sustainable urban drainage system – I have no concerns on this issue.

Additional matters

34. There are several other issues raised by the main parties and other interested persons, that I have not included within my decision. These include the loss of agricultural land, which was addressed by the Council in its evidence, and the effect of an increased population within the village. Given that the appeal is being dismissed on the basis of the harm caused by the proposed development in respect of the main issues, it is not necessary to consider these in detail.
35. I acknowledge that the proposed development would provide additional environmental, social and economic benefits for future residents and the existing community. I have also have taken into account the appellant's comments regarding the sustainability of the location, and the inclusion of other appeal decisions in support of the proposal. However, when considered in totality, these considerations do not outweigh my significant concerns about harm arising in relation to the main issues, as set out above.

Conclusion

36. 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

³ PPG ref ID: 7-065-20140306 (Flood Zone and Flood Risk Tables – Table 1L Flood Zones); revision date: 06 03 2014.