



Appeal Decision

Site visit made on 10 May 2016

by **Jonathan Manning BSc (Hons) MA MRTPI**

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

Decision date: 24 May 2016

Appeal Ref: APP/U1105/W/15/3140719

Land at Slade Road, Ottery St Mary, Devon, EX11 1QN

- 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 Blue Cedar Homes against the decision of East Devon District Council.
 - The application Ref 15/1663/MOUT, dated 20 July 2015, was refused by notice dated 24 November 2015.
 - The development proposed is construction of up to 52 no. dwellings incorporating age restricted, open market and affordable dwellings together with associated infrastructure.
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Decision

1. The appeal is dismissed.

Procedural Matters

2. The proposal is made in outline with all matters reserved for future consideration except for access. However, a number of indicative plans have been provided, including a revised indicative site layout plan (1035 / P03 Rev A) as part of the appellant's appeal submission. I have regard to the indicative plans.
3. The Council's second and third reasons for refusal relates to the absence of a planning obligation to secure necessary infrastructure provisions. An agreed, signed and dated Section 106 agreement has been provided that secures affordable housing; age restricted housing; on-site open space; and a habitats contribution in relation to mitigation to address any potential impacts on the East Devon Pebblebed Heaths Special Area of Conservation and Special Protection Area. From the evidence before me, I consider that the requirement for each of these provisions meets the three tests set out in Paragraph 204 of the National Planning Policy Framework (the Framework or NPPF) for planning obligations, which reflect those set out in Regulation 122 and 123 of the Community Infrastructure Levy (CIL) (2010). As a result, I have not considered such matters further in my decision. Although, the level of required affordable housing provision is disputed and is discussed further below.

Main Issues

4. As a result of the evidence before me, I consider that the main issues of the appeal are: whether the Council can demonstrate a five year housing land supply; the effect of the proposal on the character and appearance of the area;
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whether the proposal would result in the loss of best and most versatile agricultural land; whether the appeal site is sustainably located in terms of access to local services and facilities; and whether the proposal is required to make provision for 25% or 50% affordable housing.

Reasons

Housing land supply

5. The Council has relatively recently adopted the East Devon Local Plan (2016) (the LP). Strategy 6 'Development within Built-Up Area Boundaries' sets out that built-up area boundaries are defined on the Proposals Map around the settlements of East Devon that are considered appropriate through strategic policy to accommodate growth and development and identifies that within the boundaries, development will be permitted subject to certain criteria. The appeal site is located outside of the settlement boundary of Ottery St Mary. Further, Strategy 7 'Development in the Countryside' of the LP sets out that the countryside is defined as all those parts of the plan area that are outside of the built-up area and outside of site specific allocations. The strategy then goes on to set out that development in the countryside will only be permitted where it is in accordance with specific Local or Neighbourhood Plan policy that explicitly permits such development. I have not been directed to any such policies and therefore the proposal conflicts with both Strategies 6 and 7 of the LP.
6. The Government is seeking to significantly boost the supply of housing, as set out in Paragraph 47 of the National Planning Policy Framework (the Framework). Further to this, the Framework at Paragraphs 14 and 49 identifies that there is a presumption in favour of sustainable development. Paragraph 49 of the Framework sets out that relevant policies for the supply of housing should not be considered up-to-date if the local planning authority cannot demonstrate a five year supply of deliverable housing sites.
7. The examining Inspector of the LP found that the Council did have a five year housing land supply. However, the appellant has contested this view and it is maintained that it is not clear how the previous shortfall in housing delivery has been taken into account. I acknowledge the appeal decisions referred to by the appellant in both South Somerset¹ and in East Devon². However, both of these decisions pre-date the examining Inspector's report of the LP. Within his report the examining Inspector set out that the Council had jointly commissioned the Exeter Strategic Housing Market Assessment 2014 (the SHMA). When commenting on a proposed change to the plan period, the examining Inspector in his report stated '*The SHMA has a base date and provided any unmet need between 2006 and 2013 is accounted for, I see no reason why the Plan should not have a new start date of 2013*' (Paragraph 14).
8. The Inspector then goes on to set out at Paragraph 15 that '*A properly formulated SHMA forms the starting point for establishing need at its base date. It takes account of un-met need within the existing population at the base date and factors that into its estimates of need looking forward*'. I consider that there is no indication that the SHMA did not fulfil this requirement

¹ APP/R3325/A/13/2209680 & APP/R3325/A/13/2203867, dated 3 June 2015.

² APP/U1105/A/14/2223944 & APP/U1105/A/14/2223948, dated 24 August 2015.

and the examining Inspector makes no criticism of its approach or raises any concern with regard to not addressing the previous shortfall.

9. Consequently, I consider that the Council has a five year housing land supply and the Council's policies that relate to the supply of housing are not out-of-date. Further, the more onerous planning balance set out in Paragraph 14 of the Framework is not engaged. The proposal conflicts with the spatial strategy of the LP, namely Strategies 6 and 7, and is not plan led, as advocated by the Framework at Paragraphs 17 and 196. This matter weighs against the scheme.
10. Notwithstanding the above, I consider that the location of the appeal site outside of the settlement boundary and the subsequent conflict with Strategies 6 and 7 of the LP is not in itself sufficient to refuse planning permission, without further consideration as to whether the proposal represents sustainable development.

Character and appearance

11. The appeal site is currently open agricultural land and is located on the south eastern edge of Ottery St Mary. The site is bordered by existing housing to the north and open fields to the west, south and east. Although, Slade Farm would adjoin part of the southern boundary of the appeal site. Open countryside lies to the south and east, with scattered farms and there is an open area to the west until Sidmouth Road, with residential dwellings beyond. The appeal site itself varies in topography, with the land sloping away to the south west and to the south east. There are two fairly distinct parts of the site, the larger western field and the smaller eastern field, that are separated by the current access road and boundary hedges associated with the existing farm. There is an existing bridleway that runs along the western boundary of the appeal site and it is proposed that pedestrian access would be gained into the scheme. The site does not have any landscape designations.
12. The appeal site falls within the 'Lowland Plains' character type, as set out, in the Landscape Character Assessment & Management Guidelines (2008). Some of the key characteristics of this type are long views over hedges and a surprising feeling of remoteness in some parts, despite the general level of development. Reference has also been made to the 'Upper Undulating Farmed and Wooded Slopes' character type, which is found close to the boundary of the appeal site. I would agree with the Council that the appeal site appears as part of the Lowland Plains, but does have views to the east up the slopes.
13. During my site visit, it was clear that when travelling south along the bridleway, once the existing dwellings are passed, there is a distinct sense of remoteness. Given the pattern of development to the west and the lack of development to the east, the appeal site has a strong connection with the open countryside and a noticeable rural context. This can also be said when travelling along Slade Road, where once the existing dwellings to the north of the appeal site are passed, it is evident that you are exiting the settlement and proceeding into the open countryside.
14. The scheme would result in the loss of two open fields and would extend built development significantly beyond that currently existing to the south and east. This would be particularly evident from several locations. Views over the appeal site and particularly its relationship with the open countryside beyond, are gained from the elevated ground to the north, particularly from St Mary's

Park and glimpsed views from Longdogs Lane. The proposal would be seen as a projection into the countryside. In a similar manner, this would be very noticeable when travelling along the bridleway, despite the boundary hedges, and also from views further to the south of the appeal site, even when looking back towards the built development of the settlement. This would directly conflict with the above key characteristics of the 'Lowland Plains' landscape character type.

15. The Landscape and Visual Impact Assessment (the LVIA) that supports the application acknowledges that from several viewpoints, included those discussed above, that there will be moderate adverse visual impacts, even after mitigation. The LVIA considers that a moderate adverse effect '*would cause substantial permanent loss or alteration to one or more key elements of the landscape, to include the introduction of elements that are prominent but may not be substantially uncharacteristic with the surrounding landscape. The development would be visually intrusive and would adversely effect upon the landscape*'. I would agree with these findings.
16. I am mindful that the appeal site is to some degree contained from long distance views to the west, south and east and that mitigation measures, along with the retention of existing vegetation, would help to soften the impact of the development. I accept both parties view that any impact on the Area of Outstanding Natural Beauty and its setting would be limited, given that it is located over a kilometre to the south. I also accept that there is existing housing, some of which are modern, in the vicinity and that the appeal site would not appear as an isolated development in the countryside. However, I consider that the proposal would result in an unacceptable intrusion into the countryside and would be viewed as a prominent projection, significantly past the built confines of the existing settlement. This would cause demonstrable harm to the character and appearance of the area.
17. The proposal therefore runs contrary to Strategy 46 of the LP, which seeks to ensure that (amongst others) development conserves and enhances the landscape character of the area and does not undermine landscape quality. I find a clear conflict with these criteria. This weighs heavily against the scheme.

Agricultural land

18. It is accepted by the appellant that the appeal site represents best and most versatile agricultural land. Policy EN13 of the LP sets out that best and most versatile land will be protected from development that is not associated with agriculture or forestry. The policy goes on to identify that development affecting such land will only be granted exceptionally where there is an overriding need.
19. Given my findings in terms housing land supply, I consider that there is no overriding need in this case and the proposal runs contrary to Policy EN13 of the LP. Whilst I accept the appellant's view that given the scale of the appeal site, such a loss would not be significant, there is still clear conflict with the development plan in this regard, which weighs against the scheme.

Sustainably located?

20. The Council has raised concern that the proposal would not have suitable access to local services and facilities by sustainable modes of transport. The

Council accept that Ottery St Mary has a good range of local services and facilities and I agree with that view. However, the Council's concern principally relates to the appeal site's distance from the local services and facilities.

21. The indicative site layout illustrates that pedestrian access to the site would be gained from Knightstone Lane, which is a bridleway. During my site visit, I took considerable time walking the two routes to the local services and facilities discussed by the parties. The first route was via Longdogs Lane and Tip Hill. This route offered largely street lit footpaths along the majority of the route, except in relation to a pinch point where Longdogs Lane meets Tip Hill. At this pinch point it was very difficult to pass as a pedestrian, due to the number of cars using this very narrow section of the road and lack of footpaths. I consider that this would deter pedestrians and cyclists from using this route. However, I also observed that there is a footpath linking Homefield Close and St Budeaux Close to Yonder Street, which would offer an alternative route for this part of journey, which would result in pedestrians avoiding the pinch point and it is also slightly shorter in length. I consider that taking this route offers a safe and attractive journey to the majority of local services and facilities in the town centre on foot and by bicycle.
22. The other route that I walked was via Slade Road and Yonder Street, which also offered a safe walking route, although, slightly longer in length. In both cases, I accept that the walking distance involved is not insignificant. However, I consider that given the routes are safe and offer an attractive environment for walking with footpaths and street lights, that they are not unreasonable. I accept some of the local services and facilities such as the medical centre, the hospital and the secondary school are beyond the distances advocated by the Manual for Street and the CHIT guidance. However, many of the local services and facilities are within the advocated distance range of 800 and 1200 metres, as set out in the appellant's evidence at Appendix 23. The area where the majority of the local services and facilities are located also accommodates bus stops, which I understand offer a good level of services to the wider area.
23. Turning to concerns about the suitability of Knightstone Lane, I accept that the bridleway is narrow, but I observed that it is wide enough to accommodate a good level of pedestrian usage and to accommodate children's buggies etc. It is proposed that the surface of the bridleway would be improved and upgraded as part of the proposal, which would be essential. The Council has set out that it is content that such improvements can be undertaken and delivered. I have not been provided with any substantive evidence to make me take a different view, despite the concerns of interested parties in relation to landownership. I agree that adding street lighting along the bridleway would further urbanise the area and this would add to the harm that I have identified above, in terms of the effect of the proposal on the character and appearance of the area. I acknowledge that the lack of street lighting along the narrow bridleway would deter its use during the hours of darkness. Notwithstanding this, I consider that it would offer a suitable walking route during the day.
24. Given all of the above, I consider that the appeal site is, on balance, suitably located to access a good level of local services and facilities, which can to a reasonable level, be accessed by sustainable modes of transport. I am also mindful that any journey to the local services and facilities by car would be very short. Consequently, I conclude that the proposal accords with Policy TC2

and TC4 of the LP. The policies seek to ensure that: new development is located so as to be accessible by pedestrians, cyclists and public transport to minimise the need to travel by car; and include measures to provide, improve and extend facilities for pedestrians and cyclists commensurate with the scale of the proposal.

25. I acknowledge the appeal decision³ provided by the Council. However, it is clear that this is for a different settlement with different local circumstances. As a result, I consider that it does not alter my above findings.

Affordable housing

26. Strategy 34 'District Wide Affordable Housing Provision' of the LP has now been adopted and sets out within the built up area boundary of Ottery St Mary that developments should make provision for 25% affordable housing. However, the Strategy also sets out that outside of defined built up area boundaries, proposals are required to make provision for 50% affordable housing. Given that the appeal site is located outside of the built up area boundary, I consider that the scheme is required to make provision for 50% affordable housing.
27. In any event, the S106 Agreement secures the provision of either amount and therefore, I consider that the proposal secures the suitable provision for affordable housing in accordance with Strategy 34 of the LP.

Other matters

28. The proposal would result in the delivery of up to 52 dwellings, including age restricted open market and affordable dwellings. The appellant has provided a large amount of evidence to demonstrate the need for age restricted open market and affordable dwellings. I also acknowledge some of the concerns raised by the examining Inspector of the LP, with regard to the lower growth of some towns and villages in the plan area. Whilst this is all acknowledged, I nonetheless agree that the provision of such housing and the proposed open market housing, despite the presence of the Council's five year housing land supply, should be afforded significant weight in favour of the scheme. I also accept that there would be associated economic benefits that also carry weight in favour of the proposal.
29. Interested parties have raised a large number of other concerns. However, as I am dismissing the appeal on other grounds, such matters do not alter my overall conclusion and have therefore not had a significant bearing on my decision.

Planning balance and conclusion

30. As identified above, there are clear and substantial social and economic benefits associated with the development. However, I consider that these are not sufficient to outweigh the identified environmental harm and associated development plan conflict in relation to the proposal's conflict with the Council's spatial strategy for new development, the identified harm to the character and appearance of the area and the loss of best and most versatile agricultural land. Consequently, on balance, I consider that the proposal does not represent sustainable development, when the Framework is considered as a whole. I acknowledge that the appellant has provided a copy of the High Court

³ APP/U1105/A/14/2229080, dated 29 May 2015.

judgement *Wychavon District Council vs Secretary of State for Communities and Local Government and Crown House Development Ltd* [2016] EWHC 592 (Admin), dated 16 March 2016. I have regard to the judgement, however, I consider that it does not affect my overall findings.

31. For the reasons set out above and having regard to all matters raised, I consider that the identified benefits of the scheme are not sufficient to outweigh the identified harm and the proposal does not represent sustainable development. Consequently, there are no material considerations that outweigh the development plan conflict. The appeal is therefore dismissed.

Jonathan Manning

INSPECTOR

Richborough Estates