
Appeal Decision

Site visit made on 17 May 2016

by R J Jackson BA MPhil DMS MRTPI MCMI

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

Decision date: 29 June 2016

Appeal Ref: APP/U1105/W/15/3137880

Land to rear 62 - 82 Douglas Avenue, Exmouth EX8 2HG

- 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 Littleham 2010 Ltd against East Devon District Council.
 - The application Ref 15/0753/MOUT, is dated 24 March 2015.
 - The development proposed is outline application for up to 44 residential units. All matters reserved except for access.
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Decision

1. The appeal is dismissed.

Procedural matters

2. On 28 January 2016 the Council adopted the East Devon Local Plan 2013 to 2031 (the EDLP). This became the development plan for the purposes of this determination and the main parties were given the opportunity of making representations against the policies contained within it.
 3. Following the lodging of the appeal the Council indicated that, had it been in a position to do so, it would have refused the application on the basis that under the EDLP the site lies within the countryside with what it considers a harmful visual impact. It also indicated it would have refused the application for a second reason on the basis that it considered it did not make adequate provision for affordable housing, habitat mitigation, on-site and off-site open space, education provision and foul drainage works/contribution.
 4. The appellant submitted a Planning Obligation under Section 106 of the Town and Country Planning Act 1990 (as amended) dated 4 May 2016 to make provision for the items relating to the putative second reason for refusal with the exception of foul drainage matters. I will discuss this matter later in this decision.
 5. All matters except access have been reserved for later approval. The application was accompanied by an illustrative masterplan. I have dealt with the appeal on this basis.
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Main Issues

6. The main issues are:

- whether the proposed development would provide a suitable site for housing, having regard to the principles of sustainable development and housing land supply;
- the effect on the character and appearance of the area;
- the effect of the proposal on the provision of affordable housing, nature conservation and infrastructure.

Reasons

7. The appeal site is an agricultural field located to the south and east of properties which front Douglas Avenue. The land drops away to the south and east, with a site being steeper sloped towards a stream. Beyond the stream the land rises to create a partial bowl. Public rights of way are located to the southwest and southeast of the site connecting to the wider rights of way network to the east. In addition I noted that there are permissive footpaths to the southwest and southeast.
8. The properties on Douglas Avenue are detached and are either two storey houses or chalet bungalows with rooms in the roofs. The spaces between the properties in Douglas Avenue vary with some reasonable gaps allowing views to the agricultural landscape beyond, but other properties are closer together allowing only glimpsed views. Access to the appeal site would be created by demolishing 72 Douglas Avenue.

Sustainable Development

Development Plan policies

9. Under the recently adopted EDLP the site lies within the countryside outside the Exmouth Built-up Area Boundary (BUAB). In such areas, under Strategy 7 of the EDLP, development will only be permitted where it is in accordance with a specific Local or Neighbourhood Plan policy which explicitly permits such development and where it would not harm the distinctive, amenity and environmental qualities within which it is located.
10. Strategy 22 of the EDLP sets out the overall intention for development in Exmouth. Of particular relevance to this appeal is that there would be moderate new housing provision. Specifically there is an allocation for a mixed use development of 350 homes, mixed use employment and commercial and community facilities at Goodmores Farm.
11. With the adoption of the EDLP the Council has confirmed that it has a 5 year supply of housing land and this has not been disputed by the appellant. Consequently in line with paragraph 49 of the National Planning Policy Framework (the Framework) relevant policies for the supply of housing are considered to be up-to-date and this applies to both Strategies 7 and 22.
12. The appellant considers the site to be in a sustainable location adjacent to the built up area of Exmouth. The appellant makes particular reference to the

Inspector's Report (IR) to the EDLP where he expressed concerns¹ that "too little growth is planned for the other main towns and larger villages" apart from the Cranbrook development in the West End of the District. He also expressed significant concerns regarding the Plan's strategy on satisfying the need of the indigenous population, particularly for affordable housing.

13. However as the Local Plan Inspector noted² at September 2014, 887 of the 1,123 dwellings allocated to small towns and villages had been built, were under construction or had planning permission, and the number remaining "is relatively small compared to the overall target and lack of delivery does not pose a significant threat to meeting the overall target". Paragraph 47 of the Framework indicates that a Local Plan should meet the full, objectively assessed needs for market and affordable housing. Given the overall target of housing for the District was found³ to be "supported by evidence and would meet the objectively assessed needs for the District" I do not consider that there is a pressing need to release further sites for housing to meet the needs of the District. This applies to both market and affordable housing. There is no requirement that the development would be occupied by older persons, and consequently I can give the need for housing for this demographic no additional weight.
14. I am therefore satisfied on the evidence in front of me that the plan remains up-to-date. As paragraph 17 of the Framework makes clear the planning system should be genuinely plan-led and, as such, the proposal is contrary to the policies within the EDLP set out above.

Character and appearance

15. The site forms part of a wider agricultural landscape and can be seen from a number of vantage points both nearby and from some distance. These viewpoints were explored in a Landscape Character & Visual Impact Assessment (LCVIA) submitted with the application. This concluded that by completion of the scheme (year 1) there would be seven locations where there would be significant visual effects and that this would reduce, through landscaping, to two locations by year 15, and only one of these, from the public footpath immediately to the southwest of the appeal site, would have a major significance.
16. The Council generally accepted this, but noted that this was greatly dependent on a successful mitigation strategy for the long-term management of the proposed landscape framework. In any event the LCVIA acknowledged that for the residents of the existing properties on the southwest side of Douglas Avenue low-lying views into the valley would be permanently interrupted by the boundary planting.
17. However good the landscaping framework the proposals would have a significant effect on the countryside altering it from a rural landscape to being part of the built-up area. This would be particularly noticeable from the public footpath passing to the southeast and southwest of the appeal site and would represent an adverse disruption from a public place and cause a significant

¹ IR Paragraph 26

² IR Paragraph 30

³ IR Paragraph 20

visual intrusion, significantly harmful to the character and appearance of the area.

18. The overall pattern of development would be considered at the reserved matters stage, but the illustrative layout shows frontage development which is characteristic of the area.
19. Overall, the proposal would be significantly harmful to the character and appearance of the area. This would be contrary to Strategy 7 of the EDLP which restricts development in the countryside and seeks to protect the distinctive landscape of an area. It would also be harmful to the intrinsic character and beauty of the countryside which should be protected in line with one of the core planning principles set out in paragraph 17 of the Framework.

Affordable Housing, Habitat Mitigation and Infrastructure

20. Regulation 122 of the Community Infrastructure Levy Regulations (CIL Regulations) states a planning obligation may only constitute a reason for granting planning permission if the obligation passes three requirements. This is reiterated in paragraph 204 of the Framework. These requirements are that the obligation is necessary to make the development acceptable in planning terms, that it is directly related to the development and fairly and reasonably related in scale and kind to the development.
21. Regulation 123 of the CIL Regulations also states a planning obligation may not constitute a reason for granting planning permission for the development to the extent that the obligation provides for the funding or provision of relevant infrastructure where five or more separate planning obligations provide for the funding or provision of that project or provide for the funding or provision of that type of infrastructure.
22. The Council has made a number of detailed criticisms of the drafting of the Planning Obligation, principally to deal with typographic issues and the omission of two definitions. Had I been minded to allow the appeal I would have asked the appellant for his comments. I will, however, deal with the principles behind the need for the Obligation.

Affordable housing

23. The Planning Obligation referred to above provides that 50% of the dwellings would be affordable. Under Strategy 34 of the EDLP outside the BUAB of Exmouth 50% of housing should be affordable. As such the affordable housing provision weighs in favour of the development but the weight that can be given to this is tempered by the fact that it is at the level necessary for the proposal to be policy compliant.
24. Having said that the provision of affordable housing is needed to ensure that the development meets the requirement for affordable housing in the District. The provision made directly relates to the development being permitted and it is fairly and reasonably related in scale and kind to the development.

Nature Conservation

25. The site lies within 4km of the East Devon Heaths Special Protection Area (SPA)/East Devon Pebblebed Heaths Special Area of Conservation (SAC) and within 1km of the Exe Estuary SPA and Ramsar site. These sites are

designated as they provide overwintering for a number of bird species. Under the Habitats Directive and the Conservation of Habitats and Species Regulations 2010 (as amended) (the Habitats Regulations) planning permission is to be refused where development would be likely to have significant adverse effects on a European Site.

26. To provide mitigation of the effects of new residential development the Council has put in place the South East Devon European Sites Mitigation Strategy (SEDESMS) which seeks contributions towards open space that would relieve the recreational pressure from new residents. The Planning Obligation makes a contribution towards "non infrastructure projects" to provide this mitigation. By this terminology I take it that the contributions would not be caught by the totting up provisions of Regulation 123 of the CIL Regulations as the projects would not be the provision of infrastructure as defined in the CIL Regulations, but rather would be used for the management of projects. That the Obligation requires the payment before works commence on site will ensure that mitigation can be put in place before effects occur.
27. The provision of this contribution is necessary to prevent unacceptable effects on the European sites and has been calculated through the SEDESMS so that it directly related to the development and fairly and reasonably related in scale and kind to the development. I am therefore satisfied that the Obligation ensures that the development would not have an adverse effect on protected European sites and the proposal would comply with the requirements of the Habitats and CIL Regulations.

Infrastructure

Open space

28. The proposed development would increase the demand for open space in the area. Strategy 43 of the EDLP indicates that developments will be expected to provide amenity open space on-site against various standards set out in the LP. Had I been minded to allow the appeal I would have sought clarification of how this relates to this specific proposal, but as I am dismissing it I need not take this matter further.
29. The Planning Obligation also provides for the provision of a management company to ensure that public open space on-site is 'taken over' although its terms of reference are somewhat limited. Given the importance of landscaping to mitigate the effects of the development on the wider area, notwithstanding my conclusions on the effect on the character and appearance set out above, this is necessary and would ensure the maintenance of the area in a proportionate way. The provision of the on-site open space would be the first contribution towards this project. The Obligation would therefore comply with Regulation 123 of the CIL Regulations.
30. The contribution to off-site open space has been derived through the East Devon District Council Open Space Study 2011 and I am satisfied that it is necessary, would be related to the development and fairly and reasonably related in scale and kind to the development being permitted. I also understand that it does not exceed the threshold set out in Regulation 123 of the CIL Regulations for the number of schemes providing contributions towards an item of infrastructure.

Education provision

31. The Obligation makes provision for a contribution towards the provision of education in the District. In that there would be an additional population within the development there would be greater demand on educational facilities. However, I have not been provided with any evidence of a deficiency of provision in the area or details of any projects upon which the contribution would be spent. Had I been minded to allow the appeal I would have sought clarification of this, but as I am dismissing it I need not take this matter further.

Foul water drainage

32. In the Council's statement and putative reasons for refusal it indicated a requirement for assurance of foul drainage arrangements. However, I have not been provided with any evidence to support the need for any such arrangements outside that which is dealt with through other legislation. As such I am unable to conclude that such an Obligation is necessary to deal with this matter.

Other matters

33. Local residents have set out their concerns about the traffic implications of the development, particularly on the local highway network. I have been provided with photographs of a number of incidents which, it is asserted, indicate issues in the area.
34. The application was supported by a Transport Assessment which concluded that there were no over-riding safety issues in the vicinity of the site that would be exacerbated by the proposed development. The Highway Authority also concluded that, subject to conditions, the development would not result in severe residual cumulative impacts in the area to the extent that, in line with paragraph 32 of the Framework, development should be prevented or refused. In the absence of any other detailed evidence on this point I am therefore satisfied that traffic arising from the development could be accommodated on the highway network.
35. Concern has also been expressed about a potential loss of privacy from the new development. However, as an outline application with only access for consideration at this stage I am satisfied that a satisfactory layout could be achieved which did not result in an unacceptable loss of privacy for neighbouring residents.
36. The site lies within 500m of the East Devon Area of Outstanding Natural Beauty (AONB) and can be seen from within that area both from the opposite site of the valley and further to the east. However, when viewed from the AONB the development would only have negligible effects on the landscape and as such the natural beauty of the AONB would be preserved. The proposal would therefore comply with paragraph 115 of the Framework which seeks the conservation of landscape and scenic beauty in AONBs and great weight should be given to this.

Planning Balance

37. The appeal site lies in the countryside where development is restricted. The proposed development does not fall within any of the categories of

development acceptable in such areas and the Council has a 5 year supply of housing land meaning that relevant policies for the supply of housing are up-to-date. The proposed development would be significantly harmful to the character and appearance of the area. Set against this is the provision of affordable housing and other infrastructure, but while this is beneficial this would only be such to mitigate the effects of development on the area.

38. The Framework in paragraph 7 indicates that sustainable development has three roles, economic, social and environmental, and, in accordance with paragraph 8, all three are mutually dependant. While the development would be economically beneficial in providing jobs during construction and would comply with the social role in providing homes it would be significantly detrimental to the environment. In my view this environmental harm outweighs the economic and social benefits and the proposal would not represent sustainable development.

Conclusion

39. For the reasons given above I conclude that the appeal should be dismissed.

RJ Jackson

INSPECTOR

Richborough Estates