



Appeal Decision

Site visit made on 15 June 2016

by **Nick Fagan BSc (Hons) DipTP MRTPI**

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

Decision date: 16 August 2016

Appeal Ref: APP/U1105/W/15/3139171

**Pynes Field (land to the west of Barn Lane and south of the B3178),
Knowle, Budleigh Salterton, Devon EX9 6QW**

- 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 Badger Homes Limited against East Devon District Council.
 - The application Ref 15/1118/MOUT is dated 13 May 2015.
 - The development proposed is described as the erection of a 60 bed care home, 30 houses (40% affordable), 7 bungalows, 12 affordable retirement apartments and 2 live/work units.
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Decision

1. The appeal is dismissed.

Procedural Matters

2. The application is in outline with all matters reserved although it is clear from the indicative plans that access will be taken off the B3178. Two S106 Unilateral Undertakings (UU1 and UU2) have been provided by the appellant during the course of the appeal. I address these below.

Main Issue

3. The main issue is whether the proposed development would be sustainable development, with reference to local and national planning policy.

Reasons

4. There are a number of issues as set out in the Council's putative refusal reasons that require detailed assessment in order for me to conclude on the main issue. I address each of these in turn below.

Location and Development Plan Policy

5. The site comprises a field currently laid to grass 1.58ha in area, which slopes down from south west to north east. It is located abutting but just outside of Budleigh Salterton's Built-up Area Boundary (BUAB) as set out in the new East Devon Local Plan 2013-2031 (LP), which was adopted on 28 January 2016.
 6. There is no dispute that the Council can demonstrate a five year supply of deliverable housing sites (5YHLS). LP Strategy 2 sets out the scale and distribution of residential development during the plan period including strategic allocated sites; a total of 133 dwellings would be provided at Budleigh
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all of which are either completed or under construction. There is no additional strategic allocation at Budleigh but that is not surprising because the whole of the town including the site is 'washed over' by the East Devon Area of Outstanding Natural Beauty (AONB). Although the site was included in the Council's SHLAA¹ this is a broad brush process and does not preclude more thorough consideration through the planning application process.

7. LP Strategy 7 defines the countryside as all those parts of the plan area outside the BUABs and outside site specific allocations and states that development will only be permitted where it is in accordance with a specific Local or Neighbourhood Plan (NP) policy that explicitly permits such development and where it would not harm the distinctive landscape, amenity and environmental qualities within which it is located. The site is outside the BUAB, is not allocated in the LP and there is no NP that I have been made aware of. The proposed development would therefore be contrary to the LP's residential development strategy, irrespective of whether it would harm the AONB which I will now assess.

Landscape Effect

8. The Council objects on the basis that the proposed development would encroach into and significantly harm the character and appearance of the AONB. The appellant argues that it is developing the adjacent field to the west for 59 dwellings² and that the Council did not object to that development on landscape grounds.
9. In the Committee report for that application the Council stated that the close relationship of that development with the existing built form of the town and the screening to its site boundaries meant that it would not have a significant visual impact, albeit that it could not by its nature preserve or enhance the area's landscape character.
10. That site is next to the embankment of the old railway line behind which is the residential development in the cul-de-sacs off Bedland's Lane. This southern boundary of the site is the longest boundary of that site and the field's location in relation to the local topography is not as prominent as the appeal site. In contrast the shortest boundary of the appeal site is its southern boundary with Hooker Close. I must in any case assess the appeal proposal in terms of landscape effect on its own merits.
11. The appeal site is more prominent than the adjacent site from the public footpath that leads north from the B3178 near Tidwell House. It is particularly prominent from Viewpoint (VP) 05a in the appellant's Landscape and Visual Impact Assessment (LVIA). It is also more visible than the adjacent site from: the B3178 as it descends the hill to the east (VP 01e), despite partial screening by existing hedgerows; partly visible from the field gate on Kersbrook Lane; in winter it would be more visible from parts of Bear's Lane; and distant views of it are possible from the higher ridge to the north about 1km distant. It is of course also very prominent from close-up views including from the road next to the site (VPs 01a, 01b, 02a, 02b & 02c), as the adjacent site is.
12. Consequently the proposed development would have a greater impact than the 59 two-storey houses on the adjacent site. The two schemes are also different

¹ Strategic Housing Land Availability Assessment

² LPA Ref 11/2629/MFUL

- in that the appeal scheme proposes a large 60 bedroom care home, which measures approximately 27m by 42m on the layout plan. Whilst this is only indicative it is likely that the care home block would have to be about this size and it would have a greater impact on the landscape than the houses on the adjacent site merely because of its bulk. It could be relocated to another part of the site but it is indicated as being located at the site's lowest point and moving it up the slope would only increase its impact when viewed from the north.
13. As well as the greater landscape impact of the appeal proposal compared to the development on the adjacent site it is necessary to take into account the local policy framework at the time that permission was granted. This was before the new LP was adopted when the Council did not have a 5YHLS, as the relevant passage in the Committee report makes clear.
 14. The site lies within the Pebble Bed Heaths and Farmland Character Area and the Lower Rolling Farmed and Settled Slopes Character Type (3B) in the Devon Character Appraisal. Its key characteristics consist of gently rolling land with variable and irregular fields bordered by low boundaries, as opposed to the adjacent urban area of Budleigh.
 15. Although the site is on the edge of the built-up area it slopes northwards towards the rolling landscape of the open AONB whereas at present the BUAB is defined by the old railway line and the crest of the hill on which the houses in Hooker Close are sited. The development would extend the built form of the town northwards breaching its natural topographic boundary. Whilst the appellant's adjacent development would also do so, its visual prominence would not be as great. That scheme was permitted under very different policy circumstances, and consequently it does not justify this proposal or set any sort of precedent.
 16. The proposed development would not reflect the character of this part of the AONB and its impact would be more severe than the adjacent development for the above reasons. I consider that its impact would be moderate-major adverse in terms of its impact on landscape character, not slight-moderate adverse as the LVIA opines. It would not preserve the AONB's scenic beauty.
 17. LP Strategy 46 (Landscape Conservation and Enhancement and AONBs) and Policy D1 (Design and Local Distinctiveness) together require development to conserve and enhance the landscape character of the area; not undermine landscape quality; and to respect the key characteristics and special qualities of the area. The proposed residential development would fail to meet these requirements and would thus be contrary to these policies. It would also be contrary to LP Strategy 21 (Budleigh Salterton), which seeks to ensure that the semi-rural character of the edge of the town is maintained in order to protect the character of the AONB.
 18. Paragraph 109 of the National Planning Policy Framework (NPPF) states that the planning system should protect and enhance valued landscapes. Paragraph 115 states that great weight should be given to conserving landscape and scenic beauty in National Parks, the Broads and AONBs, which have the highest status of protection in relation to landscape and scenic beauty.
 19. NPPF paragraph 116 states that permission should be refused for major developments in nationally designated landscapes including AONBs except in

exceptional circumstances and where it can be demonstrated that they are in the public interest. Planning Practice Guidance (PPG) states: "*Whether a proposed development in these designated areas should be treated as a major development, to which the policy in paragraph 116 of the Framework applies, will be a matter for the relevant decision taker, taking into account the proposal in question and the local context.*"³

20. However, the PPG also states, in the same paragraph as that quoted above: "*The Framework is clear that great weight should be given to conserving landscape and scenic beauty in these designated areas irrespective of whether the policy in paragraph 116 is applicable.*"
21. The second sentence confirms the NPPF's stance to conserving landscape and scenic beauty irrespective of whether the development is considered to be major. I have concluded above that the proposed development would fail to do so. It is not therefore necessary for me to rule whether the proposal would constitute major development in terms of paragraph 116 because it would fail to comply with paragraph 115.

Best and Most Versatile Agricultural Land (BMV)

22. The appellant does not dispute that the site comprises Grade 1 (the highest grade) agricultural land. As such it falls into the highest category of BMV as defined in LP Policy EN3, which states that BMV will be protected from development not associated with agriculture or forestry and that permission will only be granted exceptionally if there is an overriding need.
23. The appellant argues that there is a need for the development for three reasons. First, because there is an established need for the over-55 retirement apartments and the dementia care home as proven by its Healthcare Analysis Report submitted with the application. Secondly, because the effect of the development would be to free up existing family housing in the town it would introduce younger families into Budleigh making it more socially balanced, something that the LP Examining Inspector considered important. Thirdly, because 50% of the relevant dwellings would be affordable, for which there is a pressing need in the town.
24. I accept that these would all be benefits of the scheme but I do not see how they would be exceptional. The need for retirement and care home accommodation, its freeing up of family houses and the need for affordable housing is common to many coastal areas in the South West, as is the presence of environmental designations such as AONBs and BMV.
25. Policy EN3 is part of a very recently adopted LP that was found sound by the Examining Inspector. The appellant has not explained why the development could not take place on lower grade agricultural land and not convincingly argued why its benefits justify the loss of BMV. The LP's residential development strategy, which does not allocate this site, allows for the District's objectively assessed housing need to be met elsewhere. There is therefore no overriding need for the development. For these reasons the proposal would not comply with Policy EN3, or with NPPF paragraph 112.

³ PPG Reference ID: 8-005-20140306

The Planning Balance and Sustainability

26. I have already acknowledged the benefits of the proposed scheme above. These are all substantial and important social and economic benefits in favour of the scheme but they must be balanced against the need to conserve landscape and scenic beauty in the AONB and to retain BMV.
27. Paragraph 6 of the NPPF states that the policies in paragraphs 18 to 219 taken as a whole constitute the Government's view of what sustainable development in England means in practice for the planning system.
28. The proposal would fail to comply with the environmental dimension of sustainable development because it would be contrary to NPPF paragraphs 109, 112 and 115. It would also be contrary to bullet points 5 and 7 of paragraph 17.
29. The NPPF recognises that applications must be determined in accordance with the development plan unless material considerations indicate otherwise and emphasise that planning should be genuinely plan-led⁴. The LP has been very recently adopted having been found sound by the Examining Inspector. The appellant's arguments do not constitute material considerations sufficient for me to set aside the up-to-date policies in the development plan, which are fully in accordance with national policy in the NPPF. For these reasons the proposal would not be sustainable development.

Other Matters

30. The appellant's UUs provide for 50% affordable housing on-site of what it considers to be the C3 residential uses at an agreed split of 30% intermediate (shared ownership):70% social rent, as well as a range of other infrastructure requirements including financial contributions sufficient to overcome the Council's last two putative refusal reasons. The planning obligations in the UUs are conditional on the grant of permission. Since I am dismissing the appeal there is no need for me to consider them in any great detail.
31. However, LP Strategy 34 requires 50% affordable housing on residential developments in this area. The appellant has not provided any affordable housing on the 2 live/work units because it says they are a sui generis use (a mix of B1/C3) and the care home element is a Class C2 use. Whilst I agree with the latter, live/work units could be used entirely as C3 residential use, so they should not be exempted from contributing to the affordable housing requirement. Only 48% of the qualifying units would currently be affordable, so the amount of affordable housing is insufficient to comply with Strategy 34. No viability argument has been put forward by the appellant. The UUs are deficient in this respect, and this constitutes an additional reason to dismiss the appeal.

Conclusion

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

Nick Fagan

INSPECTOR

⁴ NPPF paragraphs 11, 12, 17 (bullet point 1) & 196