



Appeal Decision

Inquiry Held on 9 January 2018

Site visit made on 10 January 2018

by J Wilde C Eng MICE

an Inspector appointed by the Secretary of State

Decision date: 06 February 2018

Appeal Ref: APP/Q1153/W/17/3177360

Land at Abbey Meadows, Crapstone, Devon PL20 7FG

- 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 Mr Mark Scoot against the decision of West Devon Borough Council.
 - The application Ref 0147/17/OPA, dated 18 January 2017, was refused by notice dated 5 June 2017.
 - The development proposed is the development of up to 22 dwellings (including 40% affordable housing), access, parking, landscaping/open space and associated infrastructure.
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Decision

1. The appeal is allowed and planning permission is granted for the development of up to 22 dwellings (including 40% affordable housing), access, parking, landscaping/open space and associated infrastructure at Land at Abbey Meadows, Crapstone, Devon PL20 7FG in accordance with the terms of the application, Ref 0147/17/OPA, dated 18 January 2017, subject to the conditions contained in the attached schedule.

Application for costs

2. At the Inquiry an application for costs was made by Mr Mark Scoot against West Devon Borough Council. This application is the subject of a separate Decision.

Procedural matters

3. The application was made in outline with all matters reserved for later determination apart from access.
4. During the Inquiry the appellants produced a signed and dated Planning Obligation by Unilateral Undertaking (UU) under Section 106 of the Town and Country Planning Act 1990. This UU would ensure the provision of affordable housing and various financial contributions which I will return to later in this decision. The Council agreed that the UU overcomes its second reason for refusal and I have been given no evidence that would lead me to a different conclusion. The main issue in this appeal is therefore that outlined below.

Main issue

5. The main issue is whether or not there are material considerations that outweigh any conflict with development plan policy in relation to the location and scale of the proposed development.

Reasons

The site

6. The appeal site forms part of a former golf driving range now used for the grazing of horses. In planning terms the site is within the open countryside, although it is adjacent to the settlement boundary of Crapstone. It lies within the Tamar Valley Area of Outstanding Natural Beauty (AONB). The site has a road to the north-west from which access would be gained. There are existing houses on the opposite side of this road and houses to the north-east and south-west, although these latter dwellings are separated from the site by paddocks or green open space. In light of this the appeal site cannot in my view be described as an infill site in its purest sense.

Five year housing land supply situation

7. Prior to the Inquiry the Council confirmed that it could not demonstrate a five year housing land supply and that consequently paragraphs 49 and 14 of the National Planning Policy Framework (the Framework) are engaged in respect of this appeal. Paragraph 49 of the Framework indicates that in such cases relevant policies for the supply of housing should not be considered to be up to date and paragraph 14 makes clear that where the development plan is absent, silent or relevant policies are out of date then planning permission should be granted unless any adverse impacts of doing so would significantly and demonstrably outweigh the benefits, when assessed against the policies in the Framework as a whole (the 'tilted' balance).
8. It was agreed by both main parties that a Section 78 Inquiry is not the vehicle for a forensic analysis of housing need and to this end the parties agreed that the Council's housing land supply was between 2.5 and 4.3 years, depending on a number of factors including exactly what the fully objectively assessed need is, whether a 5% or 20% buffer should be applied and exactly what the supply situation is. To my mind the pertinent point is that the Council cannot demonstrate a five year supply of housing and therefore the 'tilted' balance as described above is engaged.
9. Whilst policies may be considered out of date that does not automatically mean that no weight should be attributed to them. Indeed the Framework says in paragraph 115 that due weight should be attached to development plan policies dependent upon their alignment with the Framework.

Location of the development

10. The appeal site lies adjacent to the village of Crapstone. The village has a small convenience store/post office and a garage, which would both be a short walk from the appeal site. There are however no community facilities such as village hall, although the village does have sustainable travel options.
11. In respect of the location of the proposed development, the Council detailed five policies within the local plan that they considered the development was in

- conflict with. I will consider each in turn, starting with those in the West Devon Local Plan 2005 (LP).
12. Policies NE10 and H31 of the LP prohibit development outside of settlement boundaries subject to a number of caveats. The proposed development would not comply with these caveats and would therefore be in conflict with these policies. However, the LP was intended to cover the period to 2011. It is therefore already time expired and the development boundaries within it are also dated and have not been assessed against an up to date housing need. The LP was also prepared before the introduction of the Framework and the introduction of the presumption in favour of sustainable development contained within it. For these reasons the weight to be given to the conflict with these policies is significantly reduced.
 13. I note that a similar conclusion was reached by the Council in respect of policy H31 in their deliberations regarding a site at Lifton in February 2017 (2323/16/OPA) and by an Inspector in an appeal decision¹ in 2013.
 14. Policy H37 is an exception policy allowing for affordable housing schemes adjoining settlement boundaries to meet local needs. There was discussion at the Inquiry relating to the need for affordable housing in the parish and my attention was drawn to the 2013 Parish of Buckland Monachorum Housing Need Report (HNR). This concluded that 18 affordable homes were required within the parish within the next one to five years. In response to this a site at Briar Tor has subsequently been developed that contains eleven affordable homes, resulting in a deficit of seven homes. My attention has also been drawn to comments in an email dated 26 May 2017 from the Council's Housing Officer that states that the shortfall is now nine. This email also acknowledges that the HNR is almost four years old and that need tends to increase.
 15. The proposed development would therefore meet an affordable housing need within the parish. However, as the development would contain a preponderance of market housing, even though it would meet the affordable housing need it would still technically be in conflict with policy H37.
 16. The Council also consider the proposed development to conflict with policies SP5 and SP24 of the adopted Core Strategy (CS). This is dated 2006-2026 but was not actually adopted until 2011. Policy SP5 is a spatial strategy policy that aims to concentrate new housing in the towns of Tavistock and Okehampton, strictly controlling development in the countryside. However, as with policies NE10 and H31 of the LP, the CS was adopted prior to the introduction of the Framework and relies on development boundaries determined against now dated housing need. It follows that only limited weight can be attributed to the conflict with this policy.
 17. Policy SP24 of the CS permits small scale development adjoining settlement limits where a need has been identified through the use of the Sustainable Rural Communities Toolkit (SRCT) and where appropriate, a Parish Housing Survey has been undertaken. Whilst in this case the SRCT has not been utilised, as I have previously stated, a parish survey has been undertaken and furthermore the Council's Housing Officer acknowledges that there is a need for nine affordable homes in the parish.

¹ APP/Q11153/A/13/2196454

18. In summary, the policies relied upon by the Council all date from before the introduction of the Framework and rely upon a now outdated housing need and outdated settlement boundaries. In respect of settlement boundaries I also note that a large majority of the proposed allocations for West Devon contained within the emerging Plymouth and South West Devon Joint Local Plan (JLP) are outside of current boundaries. Furthermore the Framework puts significant emphasis on boosting the supply in housing and upon the sustainability of proposals. I therefore give very limited weight to the conflict that I have identified with the above policies that relate to the location of the proposed development.

Scale of the development

19. The Council's third reason for refusal did not form part of their decision letter but was formulated during the appeal process, and relates to the scale of the proposed development within the AONB.
20. Paragraph 115 of the Framework states that great weight should be given to conserving landscape and scenic beauty in amongst other things, AONBs. Paragraph 116 of the same document states that planning permission should be refused for major development in designated areas such as AONBs except in exceptional circumstances where it can be demonstrated that they are in the public interest. The Framework does not define what constitutes major development.
21. Natural England has set out three aims of AONBs and makes clear that the primary purpose of AONB designation is to conserve and enhance natural beauty. The second aim follows on from the primary purpose and makes clear that account should be taken of the needs of agriculture, forestry and other rural industries and of the economic and social needs of local communities.
22. My attention has also been drawn to the Tamar Valley AONB Management Plan 2014-2019 (AONBMP). This is an adopted document that carries considerable weight in my determination. On page 58 of the document the question of what is major development is discussed and four criteria are outlined. The first criterion relates to whether or not the scale of the proposed development would be likely to have a detrimental visual impact that would harm the scenic quality of the AONB.
23. The Council themselves agree that there would be limited impact in terms of landscape and visual receptors. In landscape terms a relatively small area would change from having an open aspect (although I acknowledge the presence of existing posts on two of the boundaries) to one with limited housing. The site is however flat with trees and hedges either immediately bordering it or slightly further away. Views would be available from some neighbouring houses and from a short length of a nearby public right of way. Overall however I do not consider that there would be any harm to the scenic quality of the AONB taken as a whole.
24. The second criterion relates to whether or not the location of the development would erode the special qualities of the AONB (in terms of factors such as landscape, biodiversity, cultural and tranquillity), and the Council consider that the proposed development would erode the special qualities of the AONB with respect to tranquillity.

25. I cannot however agree that, notwithstanding a small increase in traffic and noise, a development of only 22 houses, located on the opposite side of a road from an existing housing estate and having dwellings to the north-east and south-west would compromise or erode the overall tranquillity of the AONB.
26. The third criterion concerns whether or not the type of development would be directly compatible with its surroundings. However, given that the site is close to existing houses I cannot agree that the proposed development would be incompatible with its surroundings.
27. The fourth criterion considers that a development would be major if it conflicted with the economic and social needs of local communities and with the AONBs guiding principles of sustainable development. The Council's contention in regard of social needs is that the proposed development would be prejudicial to the local community in terms of their input into the emerging Buckland Monachoram Neighbourhood Plan (NP) such that they would lose faith in the development plan led system.
28. However, it seems to me that the communities' social needs in terms of housing have been identified in the form of the housing survey, which has identified the need for affordable housing, which would be provided by the proposed development.
29. Whilst engagement of the local community and losing faith in the plan led system are important they do not specifically relate to economic and social need of the local community, and there is no conflict with criterion 4. I do acknowledge that the local community has put time and effort into formulating the NP and that it is a positive document, allocating two sites (but not the appeal site) within the parish for housing. The scheme would therefore be in conflict with the NP.
30. However, the status of the Neighbourhood Plan and emerging plans are made clear in the Planning Practice Guidance² which states that refusal of planning permission on grounds of prematurity will seldom be justified where a draft Local Plan has yet to be submitted for examination, or in the case of a Neighbourhood Plan, before the end of the local planning authority publicity period. The NP has recently been submitted to the Council for publicity and consultation and had not therefore reached the end of the publicity period. However, it is at a reasonably advanced stage and I therefore afford it some weight in my decision. I will return to this in my planning balance.
31. Finally, I note that the paragraph preceding the aforementioned four criteria finishes with the sentence 'Nevertheless there are some key indicators that would suggest that a development is likely to be major in its effect on the landscape quality'. The thrust of the four criteria is therefore to protect landscape and scenic quality, which is in line with paragraph 115 of the Framework. Furthermore, whilst the three aims for AONBs set out by Natural England mention the social needs of local communities, it is made clear that this relates to pursuing the primary purpose of the AONB which is to conserve and enhance its beauty.
32. The Council in their evidence point to a document entitled *Opinion*, which contains the findings of James Maurici QC on the meaning of major

² Reference ID: 21b-014-20140306

development in paragraph 116 of the Framework. Mr Maurici sets out a series of principles and the Council utilise the third and fourth of these principles to construct their argument. The third relates to the fact that a decision maker may consider whether a development has the potential to have a serious adverse impact on the natural beauty and recreational opportunities provided by an AONB and the fourth makes clear that the decision maker must consider the application in its local context. As in my reasoning above, I do not accept that this helps with the Council's case as the Opinion makes clear that potential impact is in relation to the natural beauty of the AONB.

33. In light of the above I conclude that the proposed development does not constitute major development in the AONB. I note that this is also the conclusion reached by the Council in its officer's report and also by the Tamar Valley AONB unit. The proposal would, overall, conserve the landscape and scenic beauty of the AONB. Consequently no conflict with paragraph 115 of the Framework or policy SP17 of the CS occurs.

Unilateral Undertaking

34. As stated previously, at the Inquiry I was supplied with a signed and dated UU, which the Council confirmed would overcome its second reason for refusal. Community Infrastructure Levy (CIL) regulation 122 makes clear that it is unlawful for a planning obligation to be taken into account in a planning decision on a development that is capable of being charged CIL if the obligation does not meet all of the following tests. These are that the obligation is necessary to make the development acceptable in planning terms, is directly related to the development, and is fairly and reasonably related in scale and kind to the development. It is incumbent upon me to assess the offered provisions against regulation 122 of CIL.
35. The UU would serve to ensure the provision of the affordable housing as well as providing financial contributions to mitigate the effects of the proposed development on education, the Plymouth Sound and Estuary Special Area of Conservation (SAC), highway safety and off site play areas. The UU would also provide for the Council's legal fees to be covered.

To justify the need for the UU I have been supplied with the Council's Affordable Housing Code of Practice and a table entitled *Regulation 122 CIL Compliance*. This table outlines the need for the various contributions as well as detailing where the contributions would be spent and the policy support. I consider that the contributions would be in compliance with regulation 122 and therefore I can take the UU into account in my decision.

Planning balance

36. I have found that the proposed development would conflict with various policies in the Council's development plan in respect of location, but that the weight to be given to this conflict is very limited due to a number of factors including the age of the development plan and the Council's lack of a five year housing supply. There would also be conflict with the emerging NP and I give moderate weight to this. I have also found that the proposed development would not represent major development in the AONB. It follows that no conflict with paragraph 116 of the Framework would exist.

37. The development would provide much needed housing as well as 40% affordable housing for which a need has been demonstrated. I give substantial weight to this, notwithstanding whether the Council's five year supply is 4.3 years or 2.5 years.
38. I acknowledge that such provision will eventually be made through the emerging joint local plan but that plan is being examined and the most optimistic estimated date for adoption given by the Council is nine months from the date of the Inquiry. Given that the plan is a joint one between three authorities, that much of the land is either within the National Park or AONB and that objections to various policies exist, I consider that date to be overly optimistic. It follows that the lack of a five year supply of housing will continue for some time yet.
39. There would be economic benefits associated with the development, although I accept that these would not be significantly greater than any similar development elsewhere. In terms of social benefits I note that the Framework in paragraph 55 supports development where it will enhance or maintain the vitality of rural communities, particularly where there are groups of smaller settlements and that development could support services in nearby villages. This would be the case with the proposed development, with Buckland Monachorum and Yelverton only short distances away, and both containing services not available in Crapstone.
40. Overall I consider that there are no adverse impacts of the proposed development that significantly and demonstrably outweigh the benefits. It follows that the development can be considered to be sustainable. This is a significant material consideration that would outweigh any conflict with local plan or NP policy.

Conditions

41. The conditions in the attached schedule were brought forward by the main parties and discussed at the Inquiry. Where necessary I have amended the wording of these in the interests of precision and clarity in order to comply with advice in the Planning Practice Guidance.
42. To prevent flooding I have imposed a condition requiring further details of surface water management to be provided and in a similar vein I have imposed a condition preventing surface water flowing off the development onto the existing highway. To protect existing trees on the site I have imposed a condition requiring a scheme for the protection of the trees and a second one prohibiting certain activities close to the trees.
43. In the interests of biodiversity I have imposed a condition requiring the submission of a landscape and ecology management plan and for safety reasons I have imposed a condition specifying what action should be taken if contamination is found unexpectedly at the site.
44. In the interests of highway safety and also the amenity of future and existing residents I have imposed a condition requiring further details of the internal roads and one requiring a construction method statement. Finally, to ensure certainty I have imposed a condition detailing the approved drawings.

Conclusion

45. In light of my above reasoning and having regard to all other matters raised, including highway safety and potential flooding, I conclude that the appeal should be allowed.

John Wilde

INSPECTOR

Richborough Estates

Schedule of conditions

- 1) In the case of any matter reserved by this permission, application for approval of any reserved matter shall be made not later than the expiration of three years beginning with the date of the grant of outline planning permission. The development to which this permission relates shall be begun not later than whichever is the later of the following dates:
 - (i) the expiration of three years from the date of the grant of outline planning permission; or
 - (ii) the expiration of two years from the final approval of the reserved matters or, in the case of approval on different dates, the final approval of the last such matter to be approved.
- 2) The development hereby permitted shall be carried out in accordance with detailed drawings which shall previously have been submitted to and approved in writing by the Local Planning Authority. These detailed drawings shall show the following:
 - (a) the design and external appearance of the proposed buildings;
 - (b) their siting;
 - (c) existing and proposed site levels together with proposed slab levels;
 - (d) the materials for their construction
 - (e) the arrangements for the disposal of foul and surface water;
 - (f) the areas for parking and turning of vehicles in accordance with the Devon County Council's parking standards;
 - (h) all other works including walls fences means of enclosure and screening.
 - (i) the location, extent and layout of open spaces and play spaces
 - (j) the design, layout, levels, gradients, materials, drainage, lighting and method of construction of all new roads and their connection with existing roads.
- 3) The development hereby permitted shall be carried out in accordance with the following approved plans: LL-263-101 Rev E (Site Framework Plan), LL-263-011 Rev D (Proposed Sections), LL-263-P-001 Rev E (Site Location Plan).
- 4) No development approved by this permission shall be commenced until details of a scheme for the provision of surface water management has been submitted to and approved in writing by the Local Planning Authority. The details shall include:
 - a) details of drainage during the construction phase;
 - b) details of final drainage scheme;
 - c) provision of exceedance pathways and overland flow routes;
 - d) a timetable for construction;
 - e) a construction quality control procedure;

- f) a plan for the future maintenance and management of the system and overland flow routes.

Prior to occupation of the site it shall be demonstrated to the satisfaction of the Local Planning Authority that relevant parts of the scheme have been completed in accordance with details and timetable agreed. The scheme shall thereafter be managed and maintained in accordance with the approved details unless otherwise approved in writing by the Local Planning Authority.

- 5) No works or development shall take place until a scheme for the protection of the retained trees has been agreed in writing with the Local Planning Authority. This scheme shall be in accordance British Standard 5837:2012 -Trees in relation to design, demolition and construction - Recommendations and shall include:
 - a) arboricultural method statement;
 - b) a plan to a scale and level of accuracy appropriate to the proposal that shows the position, crown spread and Root Protection Area (paragraph 4.6 of BS5837) of every retained tree and hedge on site and on neighbouring or nearby ground to the site in relation to the approved plans and particulars. The positions of all trees to be removed shall be indicated on this plan;
 - c) the details of each retained tree (as outlined at section 4 of BS5837) in a separate schedule;
 - d) a schedule of tree works for all the retained trees in the paragraphs above, specifying pruning and other remedial or preventative work, whether for physiological, hazard abatement, aesthetic or operational reasons. All tree works shall be carried out in accordance with BS3998, Recommendations for Tree Work;
 - e) the details and positions (shown on the plan at paragraph (b) above) of the Tree Protection Barriers (section 6.2 of BS5837:2012), identified separately where required for different phases of construction work (e.g. construction, hard landscaping). The Tree Protection Barriers shall be erected prior to each construction phase commencing and remain in place, and undamaged for the duration of that phase. No works shall take place on the next phase until the Tree Protection Barriers are repositioned for that phase;
 - f) the details and positions (shown on the plan at paragraph (b) above) of the Construction Exclusion Zones (section 6.2 of BS5837);
 - g) the details and positions (shown on the plan at paragraph (b) above) of the underground service runs or drainage;
 - h) the details of any changes in levels or the position of any proposed excavations within 5 metres of the Root Protection Area of any retained tree, including those on neighbouring or nearby ground;
 - i) the details of any special engineering required to accommodate the protection of retained trees (section 7 of BS5837), (e.g. in connection with foundations, bridging, water features, surfacing);

- j) the details of the working methods to be employed for the installation of drives and paths within the RPAs of retained trees in accordance with the principles of "No-Dig" construction;
 - k) the details of the working methods to be employed with regard to site logistics and storage, including an allowance for slopes, water courses and enclosures, with particular regard to ground compaction and phytotoxicity;
 - l) the timing of the various phases of the works or development in the context of the tree protection measures.
- 6) During construction of the development the following activities must not be carried out under any circumstances:
- a) no fires shall be lit within 10 metres of the nearest point of the canopy of any retained tree;
 - b) no works shall proceed until the appropriate Tree Protection Barriers are in place, with the exception of initial tree works;
 - c) no equipment, signage, fencing, tree protection barriers, materials, components, vehicles or structures shall be attached to or supported by a retained tree;
 - d) no mixing of cement or use of other materials or substances shall take place within a RPA, or close enough to a RPA that seepage or displacement of those materials or substances could cause them to enter a RPA;
 - e) no alterations or variations to the approved works or tree protection schemes shall be carried out without the prior written approval of the Local Planning Authority.
- 7) No development shall commence until a Landscape and Ecological Management Plan (LEMP) (including plans and schedules) setting out the management and maintenance of public open space and green infrastructure to be managed for biodiversity (including inbuilt bird and bat boxes), landscape and informal recreation purposes has been submitted to and approved in writing by the Local Planning Authority. For the avoidance of doubt the LEMP shall comply with the recommendations, mitigation and enhancement measures contained within the Ecological Report and include:
- a) all existing boundary hedgerows, trees and tree belts;
 - b) details of inbuilt provision for birds and bats reflecting ecologist and RSPB recommendations;
 - c) a plan outlining the proposed landscape treatment, both hard and soft;
 - d) arrangements for stripping, storage and re-use of top soil;
 - e) materials, heights and details of fencing and other boundary treatments;
 - f) the location, number, species, density, form and size of proposed tree, hedge and shrub planting;
 - g) the method of planting, establishment and protection of tree, hedge and shrub planting;

- h) a timetable for the implementation of all hard and soft landscape treatment;

All elements of the Landscape Scheme shall be implemented and maintained in accordance with the approved details unless otherwise agreed in writing by the local planning authority. All work shall be completed in accordance with the timetable agreed.

- 8) Any proposed estate road, footpaths, verges, junction street lighting, sewers, drains, retaining walls, service routes, surface water outfall, road maintenance / vehicle overhang margins, embankments, visibility splays, accesses, car parking and street furniture shall be constructed and laid out in accordance with details to be approved by the Local Planning Authority in writing before their construction begins. Details submitted for approval shall include plans and sections indicating, as appropriate, the design, layout levels, gradients, materials and method of construction.

The occupation of any dwelling shall not take place until the on-site access and associated works are carried out in accordance with the details which have been submitted to and approved in writing by the Local Planning Authority.

- 9) No development shall take place, including any works of demolition, until a Construction Method Statement has been submitted to, and approved in writing by the Local Planning Authority. The Statement shall provide for:
 - a) the parking of vehicles of site operatives and visitors;
 - b) loading and unloading of plant and materials;
 - c) storage of plant and materials used in constructing the development;
 - d) programme of works (including measures for traffic management);
 - e) provision of boundary hoarding behind any visibility zones.

The approved Construction Method Statement shall be adhered to throughout the construction period for the development.

- 10) In accordance with details that shall previously have been submitted to, and approved in writing by the Local Planning Authority, provision shall be made for the disposal of surface water so that none drains on to the County Highway.
- 11) If, during development, contamination not previously identified is found to be present at the site then no further development (unless otherwise agreed in writing with the Local Planning Authority) shall be carried out until the developer has submitted, and obtained written approval from the Local Planning Authority for, an investigation and risk assessment and, where necessary, a remediation strategy and verification plan detailing how this unsuspected contamination shall be dealt with.

Following completion of measures identified in the approved remediation strategy and verification plan and prior to occupation of any part of the permitted development, a verification report demonstrating completion of the works set out in the approved remediation strategy and the

effectiveness of the remediation shall be submitted to and approved, in writing, by the Local Planning Authority.

Richborough Estates

APPEARANCES

FOR THE LOCAL PLANNING AUTHORITY:

Mr H Richards of Counsel
He called
Mr T Jones

FOR THE APPELLANT:

Mr D Corsellis
He called
Mr M Scoot

INTERESTED PERSONS:

Councillor R Cheadle

DOCUMENTS SUBMITTED DURING THE INQUIRY

- 1 Opening submissions by the appellant
- 2 Opening submissions by the Council
- 3 Buckland Monachorum Neighbourhood Plan Open Day Survey
- 4 Buckland Monachorum Neighbourhood Plan (version 5.1 – Nov 2017)
- 5 Statement from Councillor Cheadle
- 6 Second statement of common ground
- 7 Proposed conditions
- 8 Regulation 122 CIL Compliance schedule
- 9 Costs Application by the appellant
- 10 Response to costs application by the Council
- 11 Planning Obligation by Unilateral Undertaking