



Appeal Decision

Site visit made on 23 January 2018

by **Stephen Hawkins MA MRTPI**

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

Decision date: 13 February 2018

Appeal Ref: APP/U1105/W/17/3183352

The Gap, Lower Broad Oak Road, West Hill EX11 1UD

- 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 Stuart Partners Ltd against the decision of East Devon District Council.
 - The application Ref 17/0523/OUT, dated 1 March 2017, was refused by notice dated 15 June 2017.
 - The development proposed is construction of up to two dwellings, with associated access.
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Decision

1. The appeal is allowed and planning permission is granted for construction of up to two dwellings with associated access at The Gap, Lower Broad Oak Road, West Hill, EX11 1UD in accordance with the terms of the application, Ref 17/0523/OUT, dated 1 March 2017, subject to the conditions in the Schedule attached at the end of this Decision.

Procedural Matter

2. The application was made in outline, with all matters other than the means of access reserved for future approval. The submitted block plan is illustrative. I have dealt with the appeal on that basis.

Main Issues

3. The main issues in this appeal are:
 - Whether this would be a suitable site for housing, having regard to the settlement strategy and the effect on the character and appearance of the area.
 - Whether a safe and suitable means of access would be provided.

Reasons

Settlement strategy, character and appearance

4. The appeal site is a pony paddock on the edge of West Hill. The village is identified in Strategy 27 of the East Devon Local Plan 2013 to 2031 (LP) as a settlement offering a range of accessible services and facilities to meet the everyday needs of local residents, with reasonable public transport. However, the site is outside of the Built-Up Area Boundary (BUAB) for the village in the emerging East Devon Villages Plan (VP) and the Council regards it as being in

the countryside. LP Strategy 7 seeks to resist development in the countryside unless it is in accordance with a specific Local or Neighbourhood Plan policy that explicitly permits such development and where it would not harm the distinctive landscape, amenity and environmental qualities within which it is located.

5. The Council have resolved to use the VP as primary policy for development management purposes. It has been subject to Examination and the Main Modifications, which are currently the subject of public consultation, propose no changes to the boundary for West Hill. The VP must therefore be afforded considerable weight. However, the VP has not yet been found sound so it cannot carry the same weight as the LP.
6. In the absence of an adopted boundary, the site should be assessed against the three primary functions of BUABs set out at LP paragraph 6.20. The site offers reasonable access to village services and facilities, which are around a 500 metre walk away along village lanes that are largely level with limited volumes of traffic and vehicle speeds. Therefore, its location would promote sustainable development. I regard the other two primary functions-limiting the outward expansion of settlements and preventing unregulated development across the countryside and open areas-as principally concerning the character and appearance of the area and have assessed the proposal accordingly.
7. The site frontage onto Lower Broad Oak Road is formed by part of a Devon hedge and bank. When I visited, the hedge had been cut back and there was no obvious evidence of it containing a Beech tree. A similar hedge and bank also lines the opposite side of the road, adjacent to which are mature trees forming part of an area of woodland. Part of the south boundary of the site is formed by a tall evergreen hedge. There is a line of mature trees beyond the rear boundary, with open land beyond forming part of the wider countryside. These factors contribute to a well wooded and enclosed, semi-rural feel in the vicinity of the site, which provides a sense of visual separation from nearby undeveloped land and the more loose-knit development to the south, beyond the adjacent pair of modern bungalows.
8. Nevertheless, the site is also adjoined by residential development. To the north is a recently-built bungalow, within the BUAB. This bungalow occupies a spacious plot and is adjacent to rows of modern detached dwellings occupying similarly sized, well landscaped plots on either side of the road to the north and along Elsdon Lane. On the other side of the site, the pair of bungalows also occupy generous sized plots, they are a relatively limited distance from the built-up part of the village and they are largely viewed in conjunction with other residential development. Consequently, although these bungalows are outside the BUAB I do not regard them as occupying a wholly rural setting. At the rear of the site is a private residential drive serving 'The Gap', a substantial detached dwelling in grounds. Due to the relatively limited size of the site, the bungalows on either side are readily apparent features from within the site itself and in views thereof in the street scene. Therefore, the bungalows on either side and to a lesser extent the private drive all contribute to the impression of the site being enclosed by residential development. Consequently, the site relates more readily in visual and physical terms to residential development than the wider countryside. Accordingly, although it is outside of the BUAB to my mind the site is well related to the built-up part of the village.

9. The site is of a size which would be capable of comfortably accommodating two dwellings of a similar height and size to the adjacent bungalows whilst occupying similarly spacious plots and would be consistent with the pattern of local development. Formation of a vehicular access onto Lower Broad Oak Road and the associated visibility splays would breach the relatively long section of hedge and bank and would reduce the sense of enclosure in the street scene. Even so, the access would be of limited width and its effects could be substantially mitigated by replacement hedge planting and other planting, including planting of a new Beech or a tree of another appropriate species, within the site. The access arrangements would also not be dissimilar in appearance to a number of other residential accesses in the village, some of which appear to have been constructed recently. Therefore, the access would not result in a significantly more urbanised appearance and it would not harmfully erode the semi-rural character of the road. Whilst the Council suggests that the drive to 'The Gap' would provide an alternative means of access, that is not part of the scheme before me. Given the proximity of the site to existing housing, any additional lighting associated with the dwellings is unlikely to have a significant adverse effect on the surroundings.
10. Overall therefore, I find that the proposal would not result in the outward expansion of the village or unregulated development in the countryside. Consequently, it would not undermine the primary functions of the BUAB and it would not cause unacceptable harm to the character and appearance of the area. As a result, the proposal would not harm any distinctive landscape, amenity and environmental qualities which LP Strategy 7 seeks to protect. The proposal would also accord with LP Strategy 46, as it would conserve landscape character, it would not undermine landscape quality and housing development would be appropriate to the economic, social and wellbeing of the area. Further, the proposal would accord with LP Policy D1, as it would respect the key characteristics and qualities of the area and it would not affect trees worthy of retention. Moreover, the proposal would ensure the appropriate retention of planting in accordance with LP Policy D3.
11. The West Hill Village Design Statement has been adopted by the Council as Supplementary Planning Guidance. The Design Principles at paragraph D.3 require existing hedges and Devon Banks to be retained. However, I do not read this as automatically preventing all development where there is partial removal and reinstatement of the hedge. To interpret paragraph D.3 otherwise would be unreasonably restrictive. The proposal would substantially retain the hedge and bank and would not cause any significant harm; therefore, it would not be inconsistent with paragraph D.3. I have also been referred to policies in the emerging Neighbourhood Plan (NP). However, as the NP has not yet been subject to Examination I can only afford it limited weight.

Whether safe and suitable access would be provided

12. The access would have visibility splays measuring 2.4 metres by 25 metres on either side. However, the Highway Authority (HA) published advice¹ requires splays of 2.4 metres by 43 metres to be provided for an access which, as in this case, is onto a 30 mph road, reflecting the requirements in the *Manual for Streets* (MfS).

¹ Devon County Council: 'Highways Development Management Advice for the Determination of Planning Applications'.

13. The road in the vicinity of the site has a straight alignment but is of a limited width, so that vehicles travelling in opposite directions cannot easily pass one another. The banks, hedges and trees on either side of the road also reduce forward visibility beyond the carriageway. In common with other local roads, the road does not have separate footways or formal lighting. The appellant's traffic survey indicates that vehicles travel along this stretch of the road at a mean speed of 24 mph. West Hill Parish Council considered that the survey was not representative of typical vehicle speeds. Nevertheless, when adjusted for wet weather the vehicle speeds derived from the survey are significantly below 30 mph. No firm evidence has been supplied to support different conclusions in relation to typical vehicle speeds on the road. During my visit I observed little to suggest that vehicles were travelling along the road at speeds approaching 30 mph.
14. The appellant's evidence indicates that residential accesses in the environs of the site and the Elsdon Lane junction largely afford significantly reduced levels of visibility compared with the HA requirements. This matter, which was borne out by own observations, would not in itself support the creation of a further access with visibility significantly below that normally required. Even so, it does form part of the road environment for drivers. Also, there are no records of personal injury accidents on this part of the road or on the access routes to facilities and services in the village within the last five years.
15. To my mind, all the above evidence suggests that forward visibility is not the sole factor influencing driver behaviour and drivers are adapting their speed to suit the conditions of the road. This reflects the *Manual for Streets 2* (MfS2) as well as the Highway Code. There is no firm evidence before me to suggest that the findings in MfS2 are not applicable to the road. Details submitted with the appeal also indicate that drivers approaching the access along the road would have 43 metres forward visibility towards the access, which would equate to the HA requirement for forward visibility from the access itself.
16. In my view, data on accidents which took place on roads in other parts of the village would not be directly relevant to the proposal. I appreciate that unrecorded road accidents might also have taken place on local roads and that a local survey recently recorded road safety as being the single largest concern for villagers. Nevertheless, in the absence of firm evidence to support those concerns I am only able to give them limited weight.
17. Consequently, I find that the reduced level of visibility from the access over the HA requirement would still afford all drivers reasonable advanced warning of approaching vehicles and would not result in a significant increase in the risk of accidents. Therefore, the proposal would provide a safe and suitable means of access to the site. As a result, the proposal would accord with LP Policy TC7, as the access and traffic generated by the development would not be detrimental to the safe and satisfactory operation of the local highway network.

Other matters

18. LP Strategy 47 requires development to provide mitigation against direct or indirect effects upon sites that are designated, either nationally or internationally for their wildlife importance. The site is located in a zone where further to the recommendations in the South-East Devon Site Mitigation

Strategy², the Council has resolved to seek to non-infrastructure habitat mitigation contributions in respect of the East Devon Pebblebed Heaths Special Protection Area (SPA).

19. A completed Planning Obligation was submitted with the appeal, making the required financial contribution towards habitat mitigation in the SPA. I am satisfied that the habitat mitigation contribution is necessary to make the development acceptable in planning terms, is directly related to the development and is fairly related to it in scale and kind. The Obligation would therefore comply with the tests in Section 122 (2) of the CIL Regulations and the Framework at paragraph 204 and I have taken it into account in my decision.
20. West Hill might have experienced significant levels of housing development in recent years. However, there is no substantive evidence before me of an oversupply of housing in the village. Whilst the Council can demonstrate a five-year supply of housing land, schemes involving 'windfall' sites such as in this case, still have to be considered on the basis of their individual planning merits. Given its size, the site could accommodate two dwellings which, provided they were no more than a single storey in height, would not adversely affect the privacy of the occupiers of the adjacent bungalows.

Conditions

21. I have imposed the standard conditions for outline permissions, as well as a condition specifying the approved plans in the interests of certainty. I have imposed a condition requiring the dwellings to be of single storey height in order to preserve the character and appearance of the area and to safeguard the privacy of neighbouring dwellings. Conditions requiring prior approval of samples of the external materials, implementation of an approved hedge protection plan and landscaping implementation are also necessary in the interests of the character and appearance of the area. A condition requiring the development to be carried out in accordance with the submitted ecological impact assessment is necessary in order to safeguard protected species and their habitats. A condition requiring the access to be constructed and visibility splays provided in accordance with the approved plans is necessary in the interests of highway safety. Implementation of an approved scheme of surface water drainage is also necessary, to prevent the risk of flooding.
22. Where required, I have revised the Council's suggested conditions to ensure that they meet the tests in paragraph 206 of the Framework. Also, I have amended their order to reflect the Planning Practice Guidance (PPG) '*Use of Planning Conditions*'. However, I have not imposed two of the Council's suggested conditions. Details of the finished floor levels should form part of the reserved matters as it is relevant to the appearance of the dwellings. Therefore, imposing a condition in this respect is unnecessary. Also, I have not followed the Council's suggestion of removing 'permitted development' rights in respect of the future alteration and enlargement of the roof of the dwellings. I am mindful of the PPG, which indicates that conditions which generally restrict permitted development rights should only be used exceptionally. The Council did not offer a detailed explanation as to why, exceptionally, such a condition should be imposed. Careful design of the dwellings should ensure that any future alterations or enlargement of the roofs would not cause unacceptable

² Footprint Ecology April 2014.

harm to the privacy of occupiers of the neighbouring residential properties. Therefore, I am not persuaded that such a condition would be reasonable and necessary in this instance.

Conclusion

23. The proposal would provide a suitable site for dwellings with a safe and suitable access, in accordance with the Development Plan. Therefore, I conclude that the appeal should be allowed.

Stephen Hawkins

INSPECTOR

Richborough Estates

SCHEDULE OF CONDITIONS

- 1) Details of the appearance, landscaping, layout, and scale, (hereinafter called "the reserved matters") shall be submitted to and approved in writing by the Local Planning Authority before any development takes place and the development shall be carried out as approved.
- 2) Application for approval of the reserved matters shall be made to the Local Planning Authority not later than 3 years from the date of this permission.
- 3) The development hereby permitted shall take place not later than 2 years from the date of approval of the last of the reserved matters to be approved.
- 4) The development hereby permitted shall be carried out in accordance with the following approved plans: Drawing No 18143-GA-001 Rev A; site location plan.
- 5) The reserved matters submitted pursuant to condition 1 shall show inter alia, dwellings of single storey height with the ground floor window heads approximately level with their eaves and no windows in the roof slopes or habitable accommodation within the roof voids.
- 6) No site clearance, preparatory work or development shall take place until a scheme for the protection of the hedges on the south and west boundaries of the site (the hedge protection plan) in accordance with the principles in British Standard BS 5837 *Trees in relation to design, demolition and construction - Recommendations* has been submitted to and approved in writing by the Local Planning Authority in writing. The hedge protection plan shall be carried out as approved before any equipment, machinery or materials are brought onto the site for the purposes of the development, and shall be maintained until all equipment, machinery and surplus materials have been removed from the site. Nothing shall be stored or placed within any areas of protective fencing, and the ground levels within those areas shall not be altered, nor shall any excavation be made or any fires lit or liquids disposed of within those areas.
- 7) The development hereby approved shall be carried out in accordance with the recommendations in the Ecological Impact Assessment (Richard Green Ecology) dated January 2016 and addendum dated February 2017.
- 8) No development above the Damp Proof Course level of the dwellings hereby approved shall take place until samples of all external facing materials have been submitted to and approved by the Local Planning Authority in writing. The relevant works shall be carried out in accordance with the approved sample details.
- 9) The dwellings hereby approved shall not be occupied until surface water drainage works have been implemented in accordance with details that shall first have been submitted to and approved in writing by the Local Planning Authority. Before any details are submitted to the Local Planning Authority an assessment shall be carried out of the potential for disposing of surface water by means of a sustainable drainage system, having regard to Defra's non-statutory technical standards for sustainable drainage systems (or any subsequent version), and the results of the assessment shall have been provided to the Local Planning Authority.

Where a sustainable drainage scheme is to be provided, the submitted details shall:

- i) provide information about the design storm period and intensity, the method employed to delay and control the surface water discharged from the site and the measures taken to prevent pollution of the receiving groundwater and/or surface waters;
 - ii) include a timetable for its implementation; and,
 - iii) provide a management and maintenance plan for the lifetime of the development which shall include the arrangements for adoption by any public authority or statutory undertaker and any other arrangements to secure the operation of the scheme throughout its lifetime.
- 10) The dwellings hereby approved shall not be occupied until the means of vehicular access from the public highway has been constructed and surfaced and 2.4 metre by 25 metre visibility splays have been provided, in accordance with Drawing No 18143-GA-001 Rev A. The visibility splays shall be retained free from any obstruction above 0.9 metres in height.
- 11) All planting, seeding or turfing comprised in the details of landscaping approved pursuant to condition 1 shall be carried out in the first planting and seeding seasons following the occupation of the dwellings or the completion of the development, whichever is the sooner; and any trees or plants which within a period of 5 years from the completion of the development die, are removed or become seriously damaged or diseased shall be replaced in the next planting season with others of similar size and species.

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