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## Appeal Decision

Site visit made on 22 January 2018

**by Neil Pope BA (Hons) MRTPI**

an Inspector appointed by the Secretary of State

**Decision date: 13 February 2018**

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**Appeal Ref: APP/Y1110/W/17/3179387**

**Land to the north of WESC, Topsham Road, Exeter, Devon, EX2.**

- 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 A D P & E Farmers against the decision of Exeter City Council.
  - The application Ref. 17/0121/01, dated 19/1/17, was refused by notice dated 28/3/17.
  - The development proposed is up to 123 houses and associated infrastructure.
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### Decision

1. The appeal is dismissed.

### Preliminary Matters

2. Other than the means of access, all matters of detail have been reserved for subsequent consideration. I have treated the proposed masterplan and all other drawings (except those relating to access) as illustrative only.
3. Both main parties agree that: the Council is only able to demonstrate about 2.5 years supply of housing land; this shortfall in supply should be given substantial weight and; the 'tilted balance' in paragraph 14 of the National Planning Policy Framework (the Framework) is engaged.
4. On behalf of the appellant, an Agreement with the Council and Devon County Council, as the local highway authority, has been submitted under the provisions of section 106 of the above Act. Amongst other things, this includes obligations relating to the provision of affordable housing, green infrastructure, public open space, highway works and a travel plan.
5. An application for an award of costs has been made by the appellant against the Council. This application is the subject of a separate decision.

### Main Issue

6. The main issue is whether any adverse impacts of the proposed development, having particular regard to the likely effects upon the Ludwell Valley Park (LVP) and the landscape setting of Exeter, would significantly and demonstrably outweigh the benefits of the proposal.

### Reasons

#### *Planning Policy*

7. The development plan includes the Exeter Core Strategy (CS) that was adopted in February 2012 and the 'saved' policies of the Exeter Local Plan First Review (LP) that was adopted in 2005. The most relevant policies to the determination

of this appeal are CS policy CP16 (strategic green infrastructure network) and LP policies L1 (valley parks) and LS1 (landscape setting of Exeter).

8. I note that when determining an appeal in 2014 on a different site an Inspector gave little weight to LP policy LS1 as the evidence base on which this policy relies was found not to be up-to-date (ref. APP/Y1110/A/14/2215771). I also note the recommendation of the Inspector who reported on objections to the inclusion of the appeal site as part of the LVP during the examination into the LP. However, having considered the Inspector's report, the Council resolved to include the appeal site within LVP. That decision was not challenged through the courts and it would be inappropriate to 're-run' that part of the examination in this planning appeal. The provisions of LP policy L1 apply to the appeal site.
9. My attention has also been drawn to a 2016 appeal decision on a site at Topsham where another Inspector found that LP policy L1 and CS policy CS16 were policies relevant for the supply of housing and were out-of-date (ref. APP/Y1110/W/15/3005030). However, that finding was made prior to the Supreme Court's judgement in Suffolk Coastal District Council (Appellant) v Hopkins Homes Ltd and another (Respondents) Richborough Estates Partnership LLP and another (Respondents) v Cheshire East Borough Council (Appellant) [2017] UKSC 37. In the appeal before me, the appellant accepts that LP policy L1 should no longer be considered a policy relevant to the supply of housing. The same is true in respect of CS policy CS16. I shall afford both of these policies the full weight of the development plan.

#### *Other Documents*

10. My attention has been drawn to other published documents. These include the Riverside & Ludwell Valley Parks Masterplan 2016-2026 (MP) that was approved by the Council in 2016. Amongst other things, the MP identifies character zones for the LVP<sup>1</sup> and sets out a vision for increasing the amount, quality and accessibility of public open space and ensuring sensitive environmental features are not damaged.
11. The appeal site lies within the Ludwell character zone. This is characterised as natural green space with long views out to the estuary and an area where traditional mixed farming predominates, a strong sense of place exists and an overriding affinity with farmland, rolling fields and hedgerows. It is described as "*Little Devon*". The strategy/proposals map includes the retention of the appeal site as an open field.
12. The Exeter Fringes Landscape Sensitivity and Capacity Study (EFS) was produced in 2007. The appeal site lies within Zone 14. This is an area of high-medium landscape sensitivity and medium-low capacity for housing development.
13. Whilst not planning policy, the MP and EFS can be given moderate weight.
14. I note that over the years the appeal site has been assessed in various Strategic Housing Land Availability Assessments (SHLAA) produced on behalf of the Council. However, these do not convey any tacit approval or refusal. They are not determinative to the outcome of this appeal.

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<sup>1</sup> This comprises approximately 80 ha of private and publicly owned land that includes rolling farmland with orchards and semi-improved and unimproved neutral grasslands, arable fields, hedges and young woodlands.

### *Planning History*

15. There is a history of planning appeals for residential development on the appeal site. These include a decision by the Secretary of State in 2004 to dismiss an appeal by the appellant (ref. APP/Y1110/A/02/1103294). There have been material changes in circumstances since these previous decisions. This includes changes to the development plan, the publication of the Framework and the extent of the shortfall in supply of housing within Exeter. These previous decisions do not therefore set a precedent that I must follow. Nevertheless, they are material considerations that carry limited weight.

### *Benefits*

16. The proposed development would increase the mix and choice of housing within the city and help address the shortfall in supply. The provision of 35% affordable housing as part of the proposals would assist in meeting the needs of those who are unable to afford their own homes. In this regard, there is considerable need for affordable housing in the area. The proposals would accord with development plan policies<sup>2</sup> relating to the mix of housing.
17. Occupiers of the proposed dwellings would support local services and facilities and during the build-out, the development would also support the construction industry, including employment provision. After completion, the development would increase Council Tax revenue and attract a New Homes Bonus.
18. As set out within the appellant's Ecological Appraisal, the proposed areas of green space and planting would be likely to provide a local enhancement for wildlife. The proposed footpaths, cycleway, public open space and connection to other parts of the LVP to the north would also be of benefit.
19. The above benefits carry considerable weight in the planning balance.
20. The £250,000 green infrastructure contribution towards pedestrian and cycle accessibility enhancement within the LVP and/or towards the cost of delivering the objectives of the MP would clearly be of some benefit. However, I am only able to take into account obligations where they comply with the provisions of the Community Infrastructure Levy Regulations 2010 (as amended) and paragraph 204 of the Framework.
21. There is no cogent evidence before me to demonstrate that this green infrastructure contribution is necessary to make the development acceptable in planning terms and is fairly and reasonably related in scale and kind to the development. It is not therefore compliant with the above Regulations and the Framework and I am unable to take it into account. I note the appellant's scepticism on the necessity for this contribution.

### *Ludwell Valley Park / Setting of Exeter*

22. The appeal site comprises approximately 6.73 ha of agricultural land on the eastern fringes of Exeter. Excluding the access onto the A3015 (Topsham Road), the site is a gently undulating open field (semi-improved grassland) with a dry valley. It is bounded by intermittent hedgerow with some trees. There is no public access to the site and it forms part of the LVP.

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<sup>2</sup> CS policies CP5, CP7

23. There is development on three sides of the site. This includes houses in Tollards Road to the north west, the West of England School and College<sup>3</sup> (WESC) to the south west and the A379 (Rydon Lane) to the south east. To the north east is an adjoining part of LVP with Pynes Hill Business Park beyond.
24. As I noted during my visit, notwithstanding its location on the fringe of Exeter, the LVP has a distinctly rural (countryside) character and appearance that provides an attractive contrast with the built-up areas alongside. The unspoilt open qualities of the appeal site, its undulating landform and agricultural use compliment the pleasing attributes of this area of landscape/LVP and adds to the sense of relief from the built environment. I concur with the Council that the site contributes to a visual appreciation of the park and adds to the feeling of openness for users of LVP. It forms an integral<sup>4</sup> part of the LVP.
25. In addition to the above, there are alluring views across the appeal site. In particular, there are sweeping views down the Exe Estuary, as well as towards some of the hills surrounding Exeter. From the hillside to the south west of the River Exe, the site forms part of an attractive green swathe that softens the eastern edge of the city and is a visual link to the wider countryside. The site contributes the scenic qualities of the area and the landscape setting of Exeter.
26. During my visit I walked along sections of the well-worn paths within the LVP and saw the links to adjoining residential and office areas. I also noted the various information boards, benches and the popularity of this park with walkers and cyclists. From some of the representations made to me the LVP is perceived as a 'green lung'. It is an important asset to Exeter.
27. The main parties disagree as to whether or not the appeal site forms part of a valued landscape to which the first bullet point of paragraph 109 of the Framework applies. Valued landscape is not defined within the Framework and all landscapes have some value.
28. The courts<sup>5</sup> have held that a site must possess demonstrable physical attributes which would take it beyond mere countryside. The appellant has drawn attention to the Landscape Institute's 'Guidelines for Landscape and Visual Impact Assessment' (GLVIA). This does not comprise planning policy or Government guidance but it can assist in helping to identify valued landscapes.
29. Mindful of these matters and with regard to: the provisions of the development plan and the MP regarding the LVP (including the appeal site); the distinctive landscape qualities of this park (such as its undulating fields, dry valleys and scenic qualities); the perceptual aspects of this landscape (as conveyed by many of those who have made representations at application and appeal stages), I have no doubt that the appeal site forms part of a valued landscape.
30. The appellant's indicative masterplan for the development of the site avoids housing on the upper slopes of the eastern side of the dry valley with structural planting on this part of the site. Structural planting is also shown around the boundaries of the site. There would be a green 'spine' of open space along the bottom of the valley and footpath and cycle connections. On behalf of the appellant, it has been calculated that the developable area would be 3.51 ha.

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<sup>3</sup> A specialist school for the blind and partially sighted.

<sup>4</sup> In landscape and visual terms.

<sup>5</sup> Stroud District Council v SoS CLG and Gladman Developments Limited [2015] EWHC 488 (Admin).

31. In all probability, some greenfield land would have to be released to meet Exeter's housing requirement. The loss of such land would inevitably have some adverse landscape and visual impacts. I recognise the attempts made by the appellant to limit the impact of the proposals. However, the appeal scheme would entail the permanent loss of a sizeable part of the field to housing, roads and other ancillary works. Development would extend from the lower parts of the site adjacent to WESC and across the field onto the upper slopes of the western side of the dry valley. It would dramatically change the rural character and appearance of the site and replace it with an overtly urban form of development. This would considerably erode the pleasing attributes of the site.
32. The erosion of the agricultural character and unspoilt open qualities of the site would be evident from some neighbouring residential properties, Rydon Lane and more importantly<sup>6</sup> from elsewhere within the LVP. No matter how carefully sited and designed, the proposed development, including the marked increase in vehicular activity within the site, would contrast awkwardly with the natural green space and countryside character of the LVP that is cherished by many.
33. From within the LVP some of the proposed dwellings would intrude into and detract from the quality of some of the views across the site. When seen from the hillside to the south west of the River Exe the proposal would appear as an extension of the urban limits into the surrounding countryside. To a limited extent this would detract from the landscape setting of Exeter.
34. The loss of open land and the housing proposed adjacent to the north western boundary of the appeal site would create an 'awkward' strip of park sandwiched between the business premises to the north and the edge of the appeal site. This part of the LVP would become a rather odd linear feature or isolated tongue of open land that would lack the extensive rural character which typifies the rest of the LVP. The proposals would diminish the pleasing sense of space that currently exists within this part of the LVP and be likely to result in a less attractive area for informal or casual recreation. This harm would not be 'off-set' or adequately compensated by the proposed public access which would run through the middle of a housing estate or be adjacent to new houses.
35. The proposed development would have a serious adverse effect upon the character and appearance of the LVP and also detract from the landscape setting of Exeter. There would be conflict with the provisions of CS policy CP16, LP policies L1 and LS1 and the objectives of the MP. The proposal would also be at odds with the provisions of the Framework that are aimed at protecting and enhancing valued landscapes. The totality of this harm carries very considerable weight within the planning balance.

#### *Other Matters*

36. There is considerable local opposition to the proposals. This includes representations from the local County Councillor and the Ludwell Life community group. Whilst I recognise the Government's 'localism' agenda, public opposition or support for a proposal does not in itself justify refusing or granting planning permission.
37. Having considered the appellant's detailed Transport Assessment (TA) and separate Travel Plan neither the Council nor officers acting on behalf of Devon

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<sup>6</sup> There would be glimpsed views from the A379 and residents are not entitled to views across private land.

County Council as Local Highway Authority have raised any highway objections. I note the City Council's concerns over the County Council's resolution that it was "*not able to submit any view on this application*". Whatever the reason behind this resolution the stance taken by members of the County Council's Development Management Committee does not assist the planning process. Whilst I note the concerns of some interested parties regarding highway issues, there is no cogent evidence to justify reaching a different conclusion to the TA that the proposed development would have safe, convenient and appropriate access arrangements with adequate car parking provision.

38. I also note the concerns of some interested parties regarding surface water run-off and flooding. The appeal site lies within Flood Zone 1 (low risk of flooding) and the proposed surface water drainage strategy would incorporate a sustainable drainage system, including a swale feature to ensure run-off rates would be restricted to greenfield rates. Having considered the appellant's Flood Risk Assessment and Addendum, the County Flood Risk Officer did not object to the proposals. The proposal accords with the aims of the development plan regarding flood risk<sup>7</sup>. There is no technical or other cogent evidence to support the concerns of some local residents on this matter.
39. Some interested parties have expressed concerns regarding the likely impact upon vulnerable students at WESC. However, I note that WESC wrote in support of the application. Whilst the proposed construction phase would result in some disturbance to those studying/living alongside, this would be for a temporary period and the impact would be limited if controlled by a Construction Management Plan that was agreed by the main parties.
40. I note the concerns of some interested parties regarding the cumulative impact of developments, including the appeal scheme, upon air quality in this part of Devon. Air quality is an important matter. However, I note that the Council's Environmental Health Officer was consulted on the application and did not raise any concerns on this matter. The appellant's Air Quality Assessment also concluded that the change in air quality as a result of the development is predicted to be "*imperceptible*" and the impact "*negligible*". This Assessment is several years old and circumstances may have changed. If I had been minded to allow the appeal I would have required an update to this Assessment.
41. I note that the appeal site comprises grade 2 agricultural land. This is best and most versatile agricultural land (BMV) as defined within the Framework. The permanent loss of about 3.5 ha of BMV weighs against the sustainable credentials of the proposal. However, this would be very unlikely to have any significant effect upon the efficient operation of the agricultural industry. My decision does not therefore turn on this matter.

#### *Planning Balance / Overall Conclusion*

42. When all of the above is weighed together, including the shortfall in the supply of land for housing, I find that the adverse impacts of the proposed development and in particular, the likely effects upon the LVP and the landscape setting of Exeter, significantly and demonstrably outweigh the benefits of the proposal.

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<sup>7</sup> CS policy CP12.

43. Whilst the appeal scheme accords with some aspects of the development plan I have found conflict with other policies. Providing sufficient homes to meet the needs of the community is an important element of the plan. However, it is not the intention of the plan for this to be achieved at the expense of important environmental assets such as the LVP. The proposal would conflict with the provisions of the development plan when considered as a whole.
44. The proposal would satisfy the economic dimension to sustainable development as set out within the Framework. There would also be some social and environmental benefits. However, the harm that I have identified to the LVP leads me to conclude that the proposal would not satisfy the social and environmental dimensions to sustainable development. The shortfall in housing land supply does not override other considerations. The proposal would be contrary to the policies of the Framework taken as a whole.
45. Given all of the above and having regard to all other matters raised, I conclude that the appeal should not succeed.

*Neil Pope*

Inspector

Richborough Estates