



## Appeal Decision

Site visit made on 22 January 2018

**by Thomas Bristow BA MSc MRTPI**

an Inspector appointed by the Secretary of State

Decision date: 28<sup>th</sup> February 2018

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### Appeal Ref: APP/W1145/W/17/3188135 Land at Torridge Road, Appledore, EX39 1SG

- The appeal is made under section 78 of the Town and Country Planning Act 1990 as amended against a refusal to grant outline planning permission.
- The appeal is made by Mr & Mrs Ford against the decision of Torridge District Council.
- The application Ref 1/0614/2017/OUTM, dated 23 June 2017, was refused by notice dated 28 September 2017.
- The development proposed is described on the application form as 'the erection of up to 10 dwellings and associated infrastructure'.

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### Decision

1. The appeal is allowed and planning permission is granted for the erection of up to 10 dwellings and associated infrastructure at land at Torridge Road, Appledore EX39 1SG in accordance with the terms of the application Ref 1/0614/2017/OUTM, dated 23 June 2017, subject to the conditions below.

### Preliminary matters

2. The proposal is in outline with matters of appearance, landscaping, layout and scale reserved for future consideration (the 'reserved matters'). I have therefore treated the supporting plans as illustrative, other than in relation to details of access. A Unilateral Undertaking, dated 12 January 2018, contains obligations related to the proposal (the 'UU'). This does not significantly alter the original scheme and Torridge District Council ('TDC') have commented on it at appeal.
3. Each proposal must be determined on its particular merits in accordance with the development plan unless material considerations indicate otherwise. Noting the emerging Joint North Devon and Torridge Local Plan ('JLP'), currently at examination, the development plan includes saved policies of the Torridge District Local Plan (adopted originally in September 2004, the 'LP').
4. The appeal site falls within the Parish of Northam which is designated as an area for the purposes of preparing a neighbourhood plan. However I understand that no significant preparatory milestones have been reached in that process, and I cannot accord the intention to bring forward a neighbourhood plan substantive weight.

### Policy context and main issue

5. Regardless of the assessment of the appeal site in TDC's Strategic Land Availability Assessment ('SHLAA'),<sup>1</sup> it falls outside the established built form of Appledore and settlement boundary proposed in the JLP. The appellants'

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<sup>1</sup> SHA/NOR/109.

supporting Landscape and Visual Impact Assessment ('LVIA') finds that the proposal would have a slight to negligible effect on landscape character.

6. For these reasons, which I will expand upon, the proposal does not comply with certain provisions of LP policies DVT1 'Development in Strategic Centres', DVT2C 'Development in the Open Countryside' or ENV6 'Designated Landscape Areas'. The main issue is therefore whether or not other material considerations justify allowing development that does not accord with certain provisions of the development plan, with particular regard to the effect of the proposal on the character and appearance of the area.

### **Reasons**

7. The village of Appledore arcs around the headland at the confluence of the Taw and Torridge Rivers. The appeal site is an open untended field abutting Appledore, at some distance from its historic maritime core and outside the North Devon Area of Outstanding Natural Beauty ('AONB'). The cluster of properties comprising Watertown also falls a short distance away.
8. From the coastal path and Torridge Road the topography rises through the appeal site towards a high point in the landscape beyond Mariner's Way. Looking westwards from the appeal site towards the Atlantic, there are expansive views of the rugged surrounding landscape and seascape, of which the Northam Burrows Country Park is part. There are reciprocal views from the latter of the appeal site and its surroundings, and many local residents have explained that they place significant value on local landscape character.

### **Policy context**

9. Falling outside the established built form of Appledore, residential development here is not supported via LP policy DVT1. Notwithstanding that the north-eastern boundary of the appeal site represents the extent of the village, on account of its location and natural open qualities the site may reasonably be described as open countryside.
10. LP policy DVT2C accord support only to certain types of development in the open countryside (new housing is not expressly one). In a similar vein to LP policy DVT1, DVT2C establishes that development should not detract from character and appearance. The appeal site also falls within the Coastal Preservation Area ('CPA'). This is a local designation originating from 1966 and iterations of the Devon County Structure Plan (a plan ultimately revoked in 2013). LP policy ENV6 requires a 'particular and proven' need to grant consent for development within the CPA where 'the need outweighs any harm to the unspoilt nature of the area'. As detailed in supporting LP paragraph 6.58, the primary purpose of ENV6 is to protect the open rural character of the coast.
11. Since the adoption of the LP, the National Planning Policy Framework ('NPPF') and the Planning Practice Guidance ('PPG') have been published and are material. In this context TDC acknowledge that they are presently unable to demonstrate a five year land supply of deliverable housing sites in accordance with paragraph 47 of the NPPF ('5YLS'). Therefore, with regard to paragraphs 49 and 14 of the NPPF, relevant policies for the supply of housing should be considered out-of-date, and permission withheld only if the adverse impacts of the proposal would significantly and demonstrably outweigh its benefits.

12. Whilst case law has moved on since the two appeals brought to my attention by TDC,<sup>2</sup> I agree with the observation of the inspector who determined those cases that LP policy ENV6 is not primarily concerned with the supply of housing but rather with the protection of landscape character. In part LP policies DVT1 and DVT2C seek to preserve character and appearance, however they principally relate to establishing where housing growth is supported or restricted. Accordingly LP policy ENV6 should not be considered out of date by virtue of the absence of a 5YLS, unlike LP policies DVT1 and DVT2C.
13. Nonetheless the statutory basis for decision taking remains unaltered by the NPPF or the PPG. Paragraph 215 of the NPPF explains that it is the degree of consistency of older development plan policies with relevant elements of the NPPF that is determinative of their weight in the present (rather than whether a 5YLS can be demonstrated). The NPPF variously sets out that planning should recognise the intrinsic character and beauty of the countryside, reinforce local distinctiveness, and protect valued landscapes.<sup>3</sup> As these objectives are shared with LP policy ENV6, I accord that policy substantial weight.
14. Policies DVT1 and DVT2C are also to some extent consistent with elements of the NPPF.<sup>4</sup> However they were established in a different policy context, i.e. of delivering housing relative to the former Devon Structure Plan requirement. The process of examining the JLP has indicated that a higher annual housing target is now required.<sup>5</sup> I therefore accord policies DVT1 and DVT2C moderate weight.

#### Effect on character and appearance

15. The appeal site falls within landscape type 5B 'Coastal Undulating Farmland' as defined in the Joint Landscape Character Assessment for North Devon and Torridge Districts (8 January 2011, the 'JLCA'). This is described as characterised primarily by a rolling landscape comprising a patchwork of pastoral fields, with prominent hilltops and open coastal views. Being an untended parcel of land demarcated by traditional hedgerows, the appeal site is consistent with local landscape character.
16. The erection of 10 dwellings, of whatever design, would inevitably reduce the natural qualities and openness of the appeal site. This would not preserve landscape character in itself, and would also affect scenic views from the coastal path, Northam Burrows, the setting of the North Devon AONB, and reduce the visible separation currently present between Appledore and Watertown.<sup>6</sup>
17. However from most, if not all, vantage points the development proposed would be seen in conjunction with adjacent properties accessed via Polywell. It would also broadly reflect the prevailing pattern of development at Appledore of

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<sup>2</sup> Ref APP/W1145/W/14/3001553 and APP/W1145/W/14/3001008.

<sup>3</sup> Paragraphs 17, 60 and 109.

<sup>4</sup> In particular paragraph 17 which sets out that planning should actively manage patterns of growth to make the fullest possible use of public transport, walking and cycling, and that planning should recognise the intrinsic character and beauty of the countryside.

<sup>5</sup> Noting in particular the examining Inspector's Note to the Councils following the closure of hearings on the 6 November 2016.

<sup>6</sup> TDC do not specifically object to the effect of the proposal on the AONB. Nevertheless I have determined this appeal with regard to conserving and enhancing the natural beauty of the AONB (pursuant to the duty placed on me by Section 85(1) of the Countryside and Rights of Way Act 2000, with regard to paragraph 115 of the NPPF).

properties arranged close to the water's edge.<sup>7</sup> Whilst the proposal would effectively extend the built form of Appledore towards Watertown, it would not lead to coalescence between the two on account of the presence of further intervening fields.

18. Looking landwards from the coastal path or Northam Burrows, the dwellings proposed would also be seen in connection with others visible beyond the site at the crest of the headland. Moreover, given expansive views towards the west in this location, the eye is naturally drawn to the coastline and seascape to a greater degree than inland. A careful approach to landscaping, layout and scale, including preserving or enhancing boundary features and planting, could furthermore ensure that the dwellings are partially screened from nearby vantage points and the overall effect of the proposal moderated.
19. Whilst the JLP cannot yet be accorded full weight, it is nevertheless material that it proposes allocations amounting to the provision of approximately 1,630 dwellings in Northam (with a significant proportion thereof within the CPA).<sup>8</sup> Although each proposal must be considered individually, the approach in the JLP serves to qualify the visual effect that would result from a proposal of up to 10 dwellings. For the above reasons, I find that the proposal would result in only a limited degree of harm to character and appearance.

#### Planning balance

20. The proposal would conflict with the approach to locating development and to preserving character and appearance as established in LP policies DVT1, DVT2C and ENV6 (and with relevant elements of the NPPF which seek to achieve similar objectives as these policies). However the environmental harm arising from the proposal in terms of its effect on local character would, as established above, be limited.
21. TDC cannot presently demonstrate a 5YLS. This situation may be altered by the emerging JLP. However the examination of that plan has yet to conclude, and that process has identified a record of persistent under delivery of housing relative to needs.<sup>9</sup> Accordingly it is accurate to describe the housing supply situation in Torridge as serious and significant.
22. The NPPF sets out that to achieve sustainable development, economic, social and environmental gains should be sought jointly and simultaneously (with no one element thereof automatically outweighing any other). Given the housing supply situation, I accord moderate weight to the benefits of the provision of 10 new homes and the social and economic benefits that would result from development.<sup>10</sup>

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<sup>7</sup> This distinguishes the proposal here from that considered by the inspector in appeal Ref APP/W1145/W/14/3001553. In that instance the appeal site was at an elevated position in the topography, off Staddon Road close to Mariner's Way, noting that 'prominent hilltops' are a characteristic feature of the area as set out in the JLCA. The appeal site in this instance is at a lower level alongside Torridge Road.

<sup>8</sup> As set out in emerging JLP policies ST08 'Scale and Distribution of New Development in Northern Devon' and NOR 'Northam Spatial Vision and Development Strategy' in the submission draft of the JLP dated May 2016 and associated inset policies maps 8A and 8B.

<sup>9</sup> With regard to the North Devon and Torridge Local Plan Topic Paper: Establishing an Objectively Assessed Need (OAN) and Housing Requirement, dated May 2016, and the examining Inspector's Note to the Councils following the closure of hearings on the 6 November 2016.

<sup>10</sup> Notably in supporting employment during construction and future occupants would also make use of nearby services and facilities.

23. Accordingly as only limited environmental harm would result, any adverse impacts of the proposal would not significantly and demonstrably outweigh its benefits (when assessed against the NPPF as a whole). I therefore conclude that the other material considerations in favour of the proposal justify taking a decision which does not accord with relevant provisions of the development plan, with particular regard to the effect of the proposal on the character and appearance of the area.
24. I acknowledge that housing delivery and supply across the District do not represent a 'proven need' for development to be located within the CPA. However the approach in the JLP above clearly demonstrates that housing growth within the CPA will be required to meet requirements in the light of current policy circumstances. Moreover, inherent in my reasoning above is that the need for the development outweighs the harm to the nature of the area within the terms of LP policy ENV6 itself.

### **Other matters**

25. I have carefully considered the additional concerns raised by local residents including the potential effects of the development proposed on highway safety and capacity, ecology, flooding and to the living conditions of those nearby. However supporting plan 4190-001 Revision A shows that suitable visibility would be achieved from the proposed access, and there is no robust evidence before me to indicate that observed traffic speeds or volume are cause for concern.
26. With regard to the appellants' Preliminary Ecology Appraisal in particular, and subject to an appropriate approach to reserved matters applications, the proposal would not detrimentally affect ecology. The site is in flood zone 1, at low risk of flooding, and any relevant development must, independently of planning, comply with the relevant provisions of Building Regulations related to securing appropriate drainage. As the level of density would broadly reflect that of the wider area, and as detailed matters of design are reserved for future consideration, I am not of the view that undue effects would necessarily result from the proposal to the living conditions of those nearby.
27. I note TDC's concern that the level of density proposed may be artificially lowered from that which could be achieved. However their SHLAA assessment of the site found that it had a potential yield of 10 dwellings, a density described as reflecting the 'rural setting and surrounding character'. Moreover I must determine the acceptability of the proposal before me, rather any alternative scheme. Accordingly neither this, nor any other matter, is sufficient to outweigh or alter my conclusion in respect of the main issue in this case.

### **Obligations**

28. Notwithstanding that the appellants dispute their necessity, the UU contains financial obligations related to education provision (Schedule 1). Clause 12.1 of the UU explains that these obligations are void where they are not compliant with relevant statute,<sup>11</sup> or where I do not accord them weight. Therefore with regard to relevant statute and to paragraphs 203 and 204 of the NPPF in particular, I now consider whether the obligations before me are necessary in order to render the development proposed acceptable.

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<sup>11</sup> Regulations 122 and 123 of the Community Infrastructure Levy Regulations 2010 (as amended).

29. Where development has a 'directly attributable and measurable impact' on infrastructure, LP policy DVT16 'Infrastructure Provision' requires that relevant contributions will be sought. TDC explain in their associated officer report that the proposal would generate the need for additional early years (academic years 2, 3 and 4), primary and secondary school provision.
30. However there is no substantive evidence before me as to how the early years provision figure of £2,500 has been established. There is, for example, no benchmark for this set out in TDC's Code of Practice No4: Education and Libraries Provision in New Development (adopted September 2004, 'the Code'). This obligation is furthermore stated by TDC to be based on a 'per dwelling' basis rather than relating to the precise need for provision that would likely arise from the development proposed in this location. I am not therefore satisfied that this contribution would be directly, or fairly and reasonably related in scale and kind, to the proposal.
31. The anticipated uplift forecast to arise from the proposal by TDC in respect of primary and secondary school provision are, however, largely consistent with the approach in the Code (which in turn refers to Department for Education methodologies). On this basis TDC state that the proposal would likely generate the need for an additional 2.5 primary school places. Associated contributions relate to the cost of land and construction of a primary school.
32. However the PPG sets out that planning obligations should not be sought to contribute to the pooled funding 'pots' intended to fund the provision of general infrastructure in the wider area,<sup>12</sup> which is clearly the intention of the primary education obligations. There is also no evidence before me to indicate the number of similar obligations that have been received, or would need to be received, in order to enable the provision of a new school. I am therefore not satisfied that the contributions related to primary school provision would be compliant with regulation 123(3) of the Community Infrastructure Levy Regulations 2010 (as amended).
33. I acknowledge that the proposal would generate some need to travel to secondary school provision in the wider area. However there is no robust evidence before me as to how the figure of £6,365 for school transport has been established (for example were pupils to reach Bideford Community College via private modes of transport, or why this should relate to a period of five years as opposed to any other given timeframe). I cannot therefore conclude that this obligation would be fairly and reasonable related to the development proposed.
34. In correspondence dated 29 January 2017, TDC raise, with regard to LP policies DVT16, DVT9 'Open Space' and HSC13 'Play Facilities in New Housing Development' that the development would result in a requirement of 0.06 hectares of on-site informal play space. As this correspondence post-dates the UU, and is the first occasion where this matter has been raised, unsurprisingly there is no obligation before me in this respect. Even were I to consider this matter, TDC's position in this regard is supported by no substantive evidence related to the distinctive characteristics of the area or the population profile of

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<sup>12</sup> Reference ID: 23b-014-20160519

the locality that, within the terms of LP policy DVT9, are necessary to establish open space needs.

35. I am therefore not satisfied that the obligations within the UU are compliant with relevant statutory provisions, the NPPF or the PPG (as set out above). Accordingly they are not necessary to render the development acceptable in planning terms. Similarly the absence of an obligation in respect of on-site open space provision has not affected my determination of this appeal given the lack of appropriate justification for it.

### **Conclusion**

36. For the above reasons, and having taken all other relevant matters into account, the other material considerations in favour of the development proposed justify taking a decision which is not in accordance with certain provisions of the development plan. Therefore, having had regard to the development plan as whole, the JLP, and to the approach in the NPPF, I conclude that the appeal should be allowed subject to the conditions below.

### **Conditions**

37. It is necessary to impose conditions limiting the life of the planning permission and setting out requirements for the reserved matters in accordance with relevant legislation, and requiring compliance with supporting plans in the interests of certainty (conditions 1, 2 and 3).
38. As the appeal site lies in an area where archaeological remains are potentially present, with regard to paragraph 141 of the NPPF, I have imposed a condition requiring that any such remains are identified and recorded (condition 4). In order to prevent adverse effects arising from construction traffic and to ensure that disturbance to those nearby is minimised, with regard to the fourth bullet point of NPPF paragraph 17, conditions related to compliance with a construction management plan and limiting hours of construction are necessary (conditions 5 and 6). To ensure that suitable foul drainage provision is made in connection with the development proposed I have imposed condition 7.
39. Notwithstanding that the appellants' Phase 1 Desk Study assessment of the site indicates that there are no physical or environmental issues of sufficient magnitude to indicate that the development proposed could not safely be undertaken, as a precautionary approach and with regard to paragraph 120 of the NPPF I have imposed conditions related to investigating, remediating, and reporting any contamination (conditions 8, 9, and 10).
40. I have further imposed a condition establishing that development must proceed in accordance with an agreed access and highways scheme to mitigate adverse effects that might otherwise arise to highway or pedestrian safety or convenience (condition 11). This consolidates various conditions proposed by the appellants in this regard, omitting that which is unnecessary.
41. I have not, however, imposed conditions proposed by the appellants which relate primarily to reserved matters of landscaping and site layout as opposed to the scheme before me for determination.<sup>13</sup> Conditions 4, 5, 7, 8, and 11

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<sup>13</sup> Conditions numbered by the appellants 4 and 7.

must apply before any development takes place, as any has the potential to affect the matters that those conditions seek to address.

42. In imposing conditions I have had regard to the tests within the NPPF, the PPG and relevant statute,<sup>14</sup> and have accordingly amended the wording of certain conditions proposed without altering their aim.

*Thomas Bristow*

INSPECTOR

### **SCHEDULE OF CONDITIONS**

- 1) Details of the appearance, landscaping, layout and scale (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 three years from the date of this decision, and the development hereby permitted shall begin not later than two years from the date of approval of the last of the reserved matters to be approved.
- 3) The development hereby permitted shall be carried out in accordance with the following approved plans, except in respect of any details related to the reserved matters: Site Location Plan 1640 01, Proposed Site Access Plan 4190-001 Revision A.
- 4) No development hereby permitted shall be undertaken until a programme of archaeological work has been agreed in writing by the local planning authority (including details of how any relevant archaeological features identified will be recorded). The development hereby permitted shall be undertaken in accordance with the programme of archaeological work thus agreed.
- 5) No development hereby permitted shall be undertaken until a Construction Management Plan ('CMP') has been agreed in writing by the local planning authority.

The CMP shall include details of: (i) a timetable of the works, (ii) daily hours of construction, (iii) any road closures, (iv) the number, size and frequency of vehicles visiting the site in connection with the undertaking of the development hereby permitted, (v) the compound/ location where all buildings materials, plant and machinery and waste will be stored during the course of undertaking development, (vi) areas on site where delivery vehicles and construction traffic will load or unload materials, plant and machinery and waste, (vii) the means of enclosure of the site during construction works, (viii) details of wheel washing facilities and obligations

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<sup>14</sup> Including paragraph 206 of the Framework, Guidance Reference ID: 21a-004-20140306 and Article 35(1)(a) of the Town and Country Planning (Development Management Procedure) (England) Order 2015.



(ix) the proposed route of all construction traffic exceeding 7.5 tonnes, (x) details of the amount and location of construction worker parking, and (xi) photographic evidence of the condition of the adjacent public highway prior to undertaking any development hereby permitted.

The development hereby permitted shall be undertaken in accordance with the details of the CMP thus agreed.

- 6) No construction works related to the development hereby permitted, including any construction traffic entering or leaving the site, shall take place outside of the following hours: 0800 – 1800 Mondays to Fridays, 0900 – 1300 on Saturdays. No construction works related to the development hereby permitted, including any construction traffic entering or leaving the site, shall take place on Sundays, on public holidays, or on bank holidays.
- 7) No development hereby permitted shall be undertaken until a Foul Drainage Scheme ('FDS') has been agreed in writing by the local planning authority. The FDS shall be implemented before any relevant dwelling hereby permitted is first occupied and thereafter retained and maintained in accordance with the details thus agreed.
- 8) No development hereby permitted shall be undertaken until an assessment of the risks (the 'risk assessment') posed by any contamination has been agreed in writing by the local planning authority in accordance with the recommendations in section 5.0 of the Phase 1 Desk Study supporting application Ref 1/0614/2017/OUTM (dated February 2017, Ref GCE00752/R1). This assessment must be undertaken by a suitably qualified contaminated land practitioner, in accordance with British Standard 10175: 2011 Investigation of Potentially Contaminated Sites (or equivalent British Standards if replaced), and shall identify any and all potential sources of ground contamination on any part of the site.
- 9) No development shall take place where (following the risk assessment) land affected by contamination is found which poses risks identified as unacceptable in the risk assessment, until a detailed remediation scheme shall have been submitted to and approved in writing by the local planning authority. The scheme shall include an appraisal of remediation options, identification of the preferred option(s), the proposed remediation objectives and remediation criteria, and a description and programme of the works to be undertaken including a verification plan. The remediation scheme shall be sufficiently detailed and thorough to ensure that upon completion the site will not qualify as contaminated land under Part IIA of the Environmental Protection Act 1990 in relation to its intended use. The approved remediation scheme shall be carried out before the development, or any relevant phase of development, is occupied.
- 10) Any contamination that is found in undertaking the development hereby permitted that was not previously identified shall be reported immediately to the local planning authority. Development on the part of the site affected shall be suspended and a risk assessment carried out and submitted to and approved in writing by the local planning authority. Where unacceptable risks are found, remediation and verification schemes shall be submitted to and approved in writing by the local planning authority. These approved

schemes shall be carried out before the development, or relevant phase of development, is resumed or continued.

- 11) Notwithstanding conditions 1,2 and 3, no development hereby permitted shall be carried out until an access and highways scheme ('AHS') has been agreed in writing by the local planning authority.

The AHS shall include details of: (i) site access construction, (ii) visibility splay creation, (iii) public footpath provision, (iv) a site compound and parking provisions during construction (v) the layout and construction of all roads, pedestrian routes, parking provision and vehicle manoeuvring space within the site, (vi) all kerbing, draining, lighting and street furniture, (vii) a schedule of construction, implementation and maintenance of (i) to (vi) inclusive.

The development hereby permitted shall be undertaken in accordance with the details of the CMP thus agreed.

Richborough Estates