



Appeal Decision

Site visit made on 26 February 2018

by Robert Parker BSc (Hons) Dip TP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 8 May 2018

Appeal Ref: APP/W1145/W/17/3184998

Former Cattlemarket, Underlane, Holsworthy EX22 6BL

- 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 Robin Furby of Hawksmere (Holsworthy) Ltd against the decision of Torrington District Council.
 - The application Ref 1/1138/2016/OUTM, dated 15 November 2016, was refused by notice dated 13 July 2017.
 - The development proposed is demolition of existing Cattlemarket buildings and replacement with up to 55 Residential Units and associated works.
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Decision

1. The appeal is dismissed.

Procedural Matters

2. The application is submitted in outline with details of access, layout and scale for consideration. Appearance and landscaping are reserved for future approval. I have treated the submitted elevations as indicating the scale of development being proposed for the individual buildings shown on the layout plan.
3. A S106 unilateral undertaking (UU) was submitted during the appeal process. This would secure both a highways contribution and 4 affordable dwellings. I shall return to this later.
4. The amended layout plan submitted with the appeal documentation has not been subject to public consultation. My determination of this appeal is therefore made on the basis of the plan considered by the Council.
5. The appellant requests that I consider the option of granting an outline planning permission with only access approved. However, scale and layout form an integral part of the application as submitted and it is not appropriate to remove these elements from the scheme.

Main Issues

6. The main issues in this case are the effects of the proposal on:
 - a) employment opportunity within Holsworthy;
 - b) the character and appearance of the area;

- c) the living conditions of the occupiers of residential properties adjoining the site; and
- d) whether there is sufficient information within the application submission to ensure that the highway arrangements would be acceptable in terms of parking, road layout and surface water drainage.

Reasons

Employment opportunity

7. Policy HOL7 of the Torridge District Local Plan (2004) (LP) safeguards the former livestock market site for appropriate agriculture-related activities. The policy explains that the Council will support proposals for the comprehensive refurbishment of the site that secure, amongst other things, the long term viability of the cattle market and a mix of uses that complement the character of the area.
8. Things have evolved since that policy was formulated as planning permission has been granted for a replacement livestock market and agri-business centre on land to the north of the town. The new facility has been built and is operating. Having regard to the successful relocation, there is no overriding need to retain the old livestock market in its former use.
9. Notwithstanding this, LP Policy ECD4 seeks to retain sites previously used for employment for business reuse unless certain criteria are met. Under the policy, alternative uses would only be acceptable where the premises do not make an important contribution to the provision of general employment opportunity in the locality; where the site is not suitable for or cannot reasonably be made suitable for continued business use; and where it can be demonstrated that there is no realistic prospect of a viable business reuse. The supporting text to Policy ECD4 makes clear that business use may include other forms of economic development such as tourism development, agricultural development or retail development.
10. The site is vacant and judging by its derelict state has not been in active use for some time. The buildings are in poor condition and do not lend themselves readily to any other use apart from that for which they were constructed. However, that is not to say that the land could not be redeveloped for business purposes. Although the costs associated with demolition and site clearance would be significant, there is no substantive evidence to demonstrate that alternative employment generating uses would be unviable.
11. The livestock market site is not identified for employment purposes in the emerging Joint North Devon and Torridge Local Plan (eLP) but is instead allocated under Policy HOL02 as part of a mixed use scheme to include approximately 90 dwellings and a convenience retail food store. The housing is already under construction to the south, leaving the appeal site to deliver the retail element. The land is currently in the ownership of Tesco which secured planning permission for a food store in autumn 2014.
12. Tesco subsequently decided not to develop the site and placed the site on the market. The appellant has supplied a letter from the retailer's property agent which provides a summary of the marketing campaign. The letter points to there being a lack of interest in the site but there is notable absence of detail regarding the marketing exercise. Based on the evidence before me, and notwithstanding the attempts to target retail discounters and the willingness of Tesco to sell the

land at a considerable loss, I cannot be certain that every reasonable effort has been made to secure business reuse in accordance with Policy ECD4.

13. I have taken account of paragraph 22 of the National Planning Policy Framework (the Framework) which states that planning policies should avoid the long term protection of sites allocated for employment use where there is no reasonable prospect of a site being used for that purpose. However, I cannot be confident, based on the limited marketing evidence presented, that there is no realistic prospect of viable business reuse.
14. The market will ultimately decide whether a food store gets built on the site and this will determine whether the Council's aspirations for increased levels of self-containment for Holsworthy are met. Nevertheless, the development plan is my starting point and this promotes a broad range of business uses. In my opinion, the site has the potential to create employment opportunity and is physically capable of being redeveloped. I therefore conclude that the proposal conflicts with LP Policy ECD4.

Character and appearance

15. The appeal scheme would replace single-storey cattle market buildings on the Underlane road frontage, between The Post House and Underlane House (formerly The Old Manse). These properties are 2-storey with accommodation in the attic space. The local townscape is similarly domestic in scale, with the new housing under construction immediately to the south reflecting this prevailing character.
16. The proposed flatted blocks (units 40-55 inclusive) would be 3-storey, stepping down to 2-storey at either end. The plans show some variation in ridge levels with a break in the buildings midway along to facilitate pedestrian and cycle access into the site. Nevertheless, the vertical scale of the development would dominate the existing buildings on this side of the road and the street scene of Underlane in general. In my view, it would be out of character with this part of Holsworthy.
17. The appellant points out the large retaining wall associated with Waitrose on the north side of Underlane. This wall is set back and largely hidden by vegetation which continues along the length of the road to its junction with Chapel Street. Notwithstanding its height, the structure does not justify the introduction of a 3-storey urban development in this location.
18. It is contended that the proposed housing density would be discordant with that surrounding the site. There is no dispute that the density of units would be greater. However, there is nothing in the Council's evidence to persuade me that this would give rise to a poor quality urban environment. I do not share the concerns regarding parking arrangements and am content that landscaping and surface treatments could be used to break up the parking areas and visually soften the development.
19. The layout of the scheme as a whole would make effective use of previously developed land in accordance with the objectives of the Framework. However, the scale of the buildings on Underlane would have a material adverse impact on the character and appearance of the area. There would be conflict with LP Policies DVT6 and DVT7 insofar as these policies seek to ensure that new development is compatible with its context.

Living conditions

20. The Council is concerned that Plots 34 and 35 would have direct line of sight into the rear rooms and private amenity spaces of 7 and 8 Olde Court. These bungalows are positioned close to the site boundary and look directly onto the wall of one of the buildings on the appeal site. However, as the section drawing in the appellant's evidence clearly shows, privacy could be maintained by retaining a wall on the boundary. There would be no worsening of living environment for the neighbours. Indeed, the wall could be lower than existing, thereby improving levels of natural light.
21. Concerns are also raised regarding overlooking of the gardens belonging to properties in Uplands Terrace. Whilst I acknowledge this possibility, the submitted elevations are not for consideration and material loss of privacy could be avoided using good design. The Council would be able to consider this at the reserved matters stage.
22. I therefore conclude that the proposal would not have an unacceptable impact on the living conditions of the occupiers of residential properties adjoining the site. Thus I find no conflict with LP Policy DVT11 insofar as it requires development to maintain the amenity of neighbours.

Highway arrangements

23. Planning permission was refused on the grounds that the application fails to provide adequate information regarding off-street parking, road layout and surface water drainage. The Council's statement of case repeats the initial advice from the Highway Authority and in particular its concerns regarding highway drainage and the physical delineation between private parking areas and the spine road through the scheme.
24. Subsequent correspondence from the Highway Authority indicates that it has lifted all objections to the scheme, subject to the imposition of standard conditions. The Lead Local Flood Authority has also withdrawn an objection in relation to surface water drainage issues. Having regard to this, and the failure of the Council to elaborate on its concerns, I am satisfied that there is adequate information to provide the necessary certainty that the proposed highway layout is acceptable. Matters of detail can be addressed by the planning conditions suggested by the Highway Authority.
25. In conclusion, the proposal would provide an acceptable access and internal road arrangement. The layout would comply with LP Policies DVT18 and DVT19 inasmuch that it would be safe for users without adversely affecting the highway network.

Other Matters

26. The officer report states that a Local Equipped Area for Play is required for a scheme of 55 dwellings under LP Policy HSC13. However, this relates only to family houses. The proposed layout includes a significant number of 1-bed flats which are not subject to the policy requirement. Therefore, the play area shown on the plan is adequate for the development being proposed.
27. The submitted plans do not show access to an electricity substation adjoining the western boundary. However, this could be accommodated at the reserved matters stage without the need for significant amendments to the site layout.

28. The submitted UU makes provision for financial contributions towards improving cycle facilities in Holsworthy and subsidising local bus services from Holsworthy. The Council provides no policy basis for requesting the monies and there are no details on where and when the monies would be spent. It has not been demonstrated that the contributions would meet the tests set out in Regulation 122 of the Community Infrastructure Levy Regulations 2010 and as such this particular obligation within the UU cannot be taken into account.

Planning balance and conclusion

29. S38(6) of the Planning and Compulsory Purchase Act 2004 states that planning applications must be determined in accordance with the development plan unless material considerations indicate otherwise. The starting point for my assessment is therefore the development plan.
30. The scheme would conflict with LP Policy EDC4 to the extent that it would prevent reuse of the appeal site for business purposes. Although some marketing has clearly been undertaken, the documentary evidence is not sufficiently detailed or robust and therefore fails to demonstrate that every reasonable effort has been made to find an alternative employment or economic development related use.
31. The proposal would also conflict with LP Policies DVT6 and DVT7 due to its impact on the character and appearance of the area and the street scene of Underlane. These development plan policies are consistent with the core principle of the Framework to secure high quality design which responds to local character.
32. The Council was unable to demonstrate a five-year supply of housing land at the point of determining the application. I have seen nothing to suggest that this position has changed. I understand that housing supply matters have not yet been resolved as part of the ongoing examination into the eLP.
33. Paragraph 49 of the Framework indicates that, where the requisite land supply does not exist, policies relating to the supply of housing should not be considered up-to-date. The application therefore needs to be considered in the context of the presumption in favour of sustainable development set out in paragraph 14 of the Framework. This states that, where relevant policies of the development plan are out-of-date, 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 taken as a whole.
34. The scheme would make effective use of previously developed land within existing settlement limits to boost the district's supply of housing. Four of the proposed units would be secured as affordable housing in accordance with the Council's policies. The development would bring economic benefits, both during construction and thereafter through additional spending in the town centre and local businesses. These would all constitute benefits of granting planning permission. However, the harm identified in respect of the loss of employment opportunity and the effect on the character and appearance of the area would significantly and demonstrably outweigh the benefits. As such, the proposal would not represent sustainable development in the terms of the Framework.

35. Drawing matters together, the proposal would conflict with the development plan taken as a whole. Notwithstanding the scheme's benefits, there are no material considerations to justify making a decision otherwise than in accordance with the development plan. For the reasons given above, and having regard to all other matters raised, I conclude that the appeal should be dismissed.

Robert Parker

INSPECTOR

Richborough Estates