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# Appeal Decision

Site visit made on 4 December 2018

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

**an Inspector appointed by the Secretary of State**

**Decision date: 11 December 2018**

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**Appeal Ref: APP/P1133/W/18/3207454**

**10, Western House, Howton Road, Newton Abbot, Devon, TQ12 6NB.**

- 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 Mrs A Makeig-Jones against the decision of Teignbridge District Council (the LPA).
  - The application Ref.17/00618/MAJ, dated 8/3/17, was refused by notice dated 6/3/18.
  - The development proposed is the phased erection of 33 dwellings, incorporating incidental open space, landscaping and other works and an area of strategic green infrastructure.
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## Decision

1. The appeal is allowed and outline planning permission is granted for 32 dwellings, incorporating incidental open space, landscaping and other works and an area of strategic green infrastructure at 10, Western House, Howton Road, Newton Abbot, Devon, TQ12 6NB. The permission is granted in accordance with the terms of the application, Ref. 17/00618/MAJ, dated 8/3/17, subject to the conditions in the Schedule below.

## Preliminary Matters

2. All matters of detail have been reserved for subsequent consideration. I have treated the proposed site layout and access/highway plans as illustrative only.
3. The correct spelling of the appellant's name is given above.
4. Prior to the LPA's determination of the application the description of the proposed development was changed to limit the provision to 32 dwellings.
5. The appellant has submitted a Unilateral Undertaking (UU) under the provisions of section 106 of the above noted Act. Amongst other things, this includes a Traffic Regulation Order (TRO) contribution towards the closure of Howton Road in order to allow a new link road between the A382 and A383.
6. The appeal site is part of a 150 hectare site that is allocated for mixed use development<sup>1</sup> within the development plan<sup>2</sup> and is mainly within the defined settlement limits. The LPA considers the proposal acceptable in principle.
7. An application for costs has been made by the appellant against the LPA. This is the subject of a separate decision.

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<sup>1</sup> This includes housing and green infrastructure.

<sup>2</sup> This includes the Teignbridge Local Plan 2013-2033 (LP) that was adopted in 2014. I understand that the site forms part of the Houghton Barton housing allocation which is already under construction.

## **Main Issue**

8. The main issue is the likely effect upon highway safety along Howton Road, including the junction with Mile End Road.

## **Reasons**

9. The appeal site is located on the northern side of Howton Road and is approximately 500 metres from the junction with Mile End Road. As part of my site visit I walked the length of Howton Road (both directions), as well as sections of Mile End Road and Highweek Road. Whilst driving, I negotiated the junction of Howton Road and Mile End Road (in and out).
10. As I saw during my visit, Howton Road varies in width and has occasional passing places. It is bounded by a mixture of roadside walls (various heights) and hedgerows. For much of its length there are no footways or streetlights other than the section nearest Mile End Road. This part of the road is subject to a 30 mph speed limit. Elsewhere in Howton Road the national speed restriction applies. This unclassified County Route links to Howton Lane at its western end and provides an alternative route from Highweek to Seale Hayne.
11. There is generally good forward visibility along Howton Road although this is restricted towards the eastern end of the road where the alignment bends sharply towards the junction with Belvedere Road. Near the eastern end of the site and on the opposite side of Howton Road there is a pedestrian link to the new housing development at Daracombe Gardens. Visibility at the junction with Mile End Road is restricted to the west by a stone boundary wall. There is on-street parking along Mile End Road and Highweek Road.
12. My site visit represents only a snapshot in time and traffic flows along the local highway network will vary throughout the year<sup>3</sup> and day<sup>4</sup>, with peak morning and evening flows. Nevertheless, in the time that it took me to walk along Howton Road (both directions), including stopping at various points to view the appeal site and surroundings, only two motor cars (one in each direction) travelled along Howton Road. I would estimate that both vehicles were moving at about 20 mph and slower when they passed me. The vehicles that I observed moving along Mile End Road at the junction with Howton Road were also travelling at about 20 mph.
13. From everything that I have seen and read, including the representations made by interested parties, the consultation and pre-application responses from the Highway Authority (HA), as well as the appellant's Highways Access Statement and Addendum, traffic flows and speeds along Howton Road are low. The appellant's and the HA's interrogation of road accident/collision and personal injury collision records indicate that this road, including the junction with Mile End Road, has a good road safety record.
14. I understand that as part of the Houghton Barton development Devon County Council, as HA, intends stopping-up Howton Road at a point west of the application site to prevent the through movement of vehicles<sup>5</sup>. In future,

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<sup>3</sup> I note the traffic count undertaken in August 2018 by a resident of Mile End Road of the number of vehicles passing her property during a thirteen hour period.

<sup>4</sup> Another resident has informed me that approximately 24 cars travel along Howton Road/day.

<sup>5</sup> I understand that pedestrian and cycle access would continue.

background traffic flows along Howton Road are therefore set to reduce when this road effectively becomes a cul-de-sac.

15. Using the TRICS database, the predicted daily trip rate for a scheme of 34 dwellings<sup>6</sup> has been calculated by the appellant and the HA to equate to 1 vehicle passing through the Mile End junction every three minutes during the morning and evening peak hour periods. The HA accepts that this would not have a severe impact on the highway.
16. The proposal would result in a potential increase for conflict between pedestrians or cyclists and the drivers of motor vehicles. However, given the predicted traffic flows, the incidences of this are likely to be very small and, in all likelihood, vehicles would be slow moving and drivers would generally have good line of sight. The proposal would not pose a serious risk to existing or future users of the highway. Moreover, whilst I note the representations made by some interested parties that Mile End Road operates as a 'rat run' there is no technical or other cogent evidence to indicate that the proposal would, in the context of paragraph 109 of the National Planning Policy Framework, result in any severe cumulative impacts on the road network.
17. A risk to highway safety would not have to be severe to justify withholding permission. However, in this instance, and in addition to the intended stopping-up of Howton Road<sup>7</sup>, the appellant, following discussions with the HA, has suggested various improvement works to the Howton Road/Mile End Road junction. The illustrative plan (ref. 16020-001 Rev D) submitted in support of the application details these improvements. These include the introduction of a priority system along Mile End Road at this junction, as well as improvements to the visibility for the drivers of vehicles emerging from Howton Road. The HA has advised that such mitigation works would be acceptable and should be addressed by a 'Grampian style' planning condition.
18. I concur with the appellant, the HA and the LPA's planning officers that with the intended stopping-up of Howton Road and improvement works to the junction of Howton Road and Mile End Road the proposed development would be very unlikely to compromise highway safety interests along the local highway network. I do not set aside lightly the concerns of local residents who are familiar with the local highway network and the traffic flows / speeds. However, there is a greater weight of evidence, based on specialist knowledge and understanding of highway matters by the appellant's transport consultant and the HA, to support the appellant's argument that permission should not be withheld on highway grounds. The proposal accords with the transport / highway provisions of LP policies S1, S2, S9 and S14.

### *Section 106 Undertaking*

19. As I have noted above, a contribution towards the cost of a TRO and improvements to the Howton Road / Mile End Road junction would be necessary to mitigate the highway impacts of the proposed development. As the site forms part of a larger allocation it is also necessary for the proposal to make a proportionate contribution towards the provision of the main road serving that allocation. I have therefore taken these obligations into account.

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<sup>6</sup> This is the figure that was used in the appellant's Highways Access Statement.

<sup>7</sup> As noted above, the appellant has offered to help deliver this through the TRO contribution in the UU.

20. There is a shortage of affordable housing within the district and the proposed affordable housing provisions of the UU would help to address the shortfall in supply. I have therefore taken the affordable housing obligations into account.
21. The Government attaches importance to self-build and custom-build dwellings. The obligation that is intended to provide 5% of the dwellings for such purposes would help meet society's demand for this type of housing. I have therefore also taken this obligation into account.
22. Some residents of the proposed dwellings could reasonably be expected to require access to or make use of community facilities and local green infrastructure, including the green infrastructure that forms part of the proposals. Whilst it is unclear to me exactly how the respective financial contributions of £1,617 / dwelling and £2,235 / dwelling have been arrived at such contributions are necessary and on balance, are reasonably related to the scale of the development. I have also taken these obligations into account.
23. To encourage residents to make use of sustainable modes of transport and to reduce the need to travel by car, it would be necessary for the proposals to include provision for travel / welcome packs, including sustainable travel vouchers, as well as a contribution towards walking and cycle links (£3,383 / dwelling). These contributions are reasonably related to the development. I have therefore also taken them into account.
24. I have no doubt that the employment contribution of £3,179 / dwelling towards the cost of off-site employment could be very useful in helping to improve the economic prospects for some members of the local community. However, it has not been demonstrated that this is necessary for the development to proceed or is reasonably related in scale and kind to the development. I am unable therefore to take this obligation into account.
25. Those obligations that I have taken into account accord with the tests set out in paragraph 56 of the National Planning Policy Framework and the relevant provisions of the Community Infrastructure Levy Regulations 2010.

#### *Planning Conditions*

26. Conditions would be necessary requiring the development to commence within the 'standard' time period and to secure the submission of the reserved matters. In the interests of certainty a condition would be necessary specifying the approved site location plan.
27. As set out above, in the interests of highway safety a planning condition requiring improvement works at the junction of Howton Road and Mile End Road would be necessary. The appellant agrees that this should comprise a 'Grampian style' pre-commencement condition. For the same reason, as well as safeguarding the living conditions of neighbouring residents, a condition would be necessary requiring the submission of a construction management plan. The LPA's suggested condition for a separate construction environmental management plan would entail some unnecessary duplication. It would therefore be appropriate to combine the relevant parts within a single Plan.
28. To safeguard public health a condition would be necessary regarding any land contamination within the site. To safeguard the living conditions of future residents a condition would be necessary in respect of noise compliance

testing. To safeguard the character and appearance of the area a condition would be necessary requiring the submission of a Tree Constraints Plan.

29. In the interests of nature conservation / biodiversity, conditions would be necessary to: establish a badger sett protection zone; secure ecological mitigation works, including a landscape and ecology implementation plan and; establish and control external lighting. To limit flood risk a condition would be necessary to secure satisfactory surface water drainage arrangements.
30. Conditions to the above effect would accord with the provisions of paragraph 55 of the National Planning Policy Framework.

#### *Other Matters*

31. The proposed development would involve some inevitable disturbance and inconvenience for neighbouring residents during the construction phase. However, this is likely to be for a temporary period and would not result in any significant long-term adverse impacts.
32. Public opposition to a proposed development is insufficient by itself to justify withholding planning permission. In this instance, the appeal scheme would deliver an important package of social, economic and environmental benefits. These include helping to boost the supply of housing, helping to meet the housing needs of the local community, support for the construction industry and the provision of green infrastructure. The proposal accords with the provisions of the development plan and comprises sustainable development.

#### *Overall Conclusion*

33. Given the above and having regard to all other matters raised, I conclude that the appeal should succeed.

*Neil Pope*

Inspector

#### SCHEDULE OF PLANNING CONDITIONS

1. Details of the access, 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 three years from the date of this decision.
3. The development hereby permitted shall take place not later than two years from the date of approval of the last of the reserved matters to be approved.
4. The development hereby permitted relates to the 1:2,500 scale Ordnance Survey based site location plan (ref.151110 L01 02) showing the site edged in red.

5. No dwelling shall be constructed until a scheme for improvement works at the junction of Howton Road and Mile End Road and based upon the details shown on illustrative plan ref.16020-001 Rev D has been submitted to and approved in writing by the Local Planning Authority. No dwelling shall be occupied until the approved junction improvement works have been undertaken.
6. No development shall take place until a phase 2 assessment of any land contamination of the site has been submitted to and approved in writing by the Local Planning Authority (LPA). This assessment shall estimate and evaluate the potential risks to people, property, and the environment identified in the phase 1 study submitted with the application. This assessment shall be undertaken by a competent person and shall assess any contamination on the site, whether or not it originates on the site. Moreover, it shall include:
  - (i) a survey of the extent, scale and nature of contamination;
  - (ii) an assessment of the potential risks to human health, property (existing and proposed) including buildings, crops, livestock, pets, woodland and service lines and pipes, adjoining land, groundwaters and surface waters, ecological systems, archaeological sites and ancient monuments.

Where contaminated is found which poses unacceptable risks, no development shall take place until a detailed remediation scheme has been submitted to and approved in writing by the LPA. The scheme must include all works to be undertaken, proposed remediation objectives and remediation criteria, an appraisal of remedial options, and details of the preferred option(s), and a timetable of works and site management procedures. The scheme must ensure that the site would not qualify as contaminated land under Part 2A of the Environmental Protection Act 1990 in relation to the intended use of the land after remediation.

The approved remediation scheme shall be implemented and a verification report submitted to and approved in writing by the LPA, prior to occupation or the development being brought into use.

In the event that contamination is found at any time when carrying out the approved development, that was not previously identified, it must be reported immediately to the LPA. Development on the part of the site affected must be halted and site investigations undertaken. Where required by the LPA, remediation and verification schemes shall be submitted to and approved in writing by the LPA. These shall be implemented prior to occupation, or the development being brought into use, on the site affected.

7. No development shall commence until a Tree Constraints Plan has been submitted to and approved in writing by the Local Planning Authority. The development shall be undertaken in accordance with the approved Plan.
8. A 20 metre exclusion zone shall be retained around the identified badger sett on site, as set out within the Ecological Appraisal prepared by ESL (September 2016). No development shall take place within this zone.
9. No development shall commence until a Construction Management Plan has been submitted to and approved in writing by the Local Planning Authority. The Plan shall include details of the following:
  - (a) the timetable of the works;
  - (b) hours of construction;
  - (c) any road closure;

- (d) hours during which delivery and construction traffic will travel to and from the site, with such vehicular movements being restricted to between 8:00am and 6:00pm Mondays to Fridays inclusive, 9:00am to 1:00pm Saturdays, and no such vehicular movements taking place on Sundays and Bank/Public Holidays unless agreed by the Local Planning Authority (LPA) in advance;
- (e) the number and sizes of vehicles visiting the site in connection with the development and the frequency of their visits;
- (f) the compound/location where all building materials, finished or unfinished products, parts, crates, packing materials and waste will be stored during the demolition and construction phases;
- (g) areas on-site where delivery vehicles and construction traffic will load or unload building materials, finished or unfinished products, parts, crates, packing materials and waste with confirmation that no construction traffic or delivery vehicles will park on the highway for loading or unloading purposes, unless prior written agreement has been given by the LPA;
- (h) hours during which no construction traffic will be present at the site;
- (i) the means of enclosure of the site during construction works;
- (j) details of proposals to promote car sharing amongst construction staff in order to limit construction staff vehicles parking off-site;
- (k) details of wheel washing facilities and obligations;
- (l) the proposed route of all construction traffic exceeding 7.5 tonnes;
- (m) details of the amount and location of construction worker parking;
- (n) photographic evidence of the condition of adjacent public highway prior to commencement of any work and;
- (o) inventory and timetable of all dust generating activities, including a list of dust and emission control methods to be used, pollution control measures, identification of an authorised responsible person on site for air quality, a summary of monitoring protocols and agreed procedure for notify the Local Authority Environment & Safety Services Department, a site log book to record details and action taken in response to incidences of the air quality objectives being exceeded and any exceptional incidents.

The development shall be undertaken in accordance with the approved Plan.

10. No development shall commence until a detailed design of a proposed temporary and permanent surface water drainage system, including adoption and maintenance arrangements and avoidance of surface water draining onto highway, has been submitted to and approved in writing by the Local Planning Authority. The design shall be informed by a programme of percolation tests and a groundwater monitoring programme. The development shall be undertaken in accordance with the approved details.
11. Upon completion of all of the dwellings compliance testing in respect to noise levels shall be undertaken in accordance with the Noise Planning Report (prepared by Hydrock). Within two months of completing the testing the results shall be submitted to the Local Planning Authority and any necessary remediation work shall be undertaken in accordance with an agreed timetable.
12. The development hereby approved shall be undertaken in accordance with the mitigation set out in pages 14-16 of the Ecological Report (Ecological Surveys Ltd: Bat activity Report) dated November 2016.
13. No development shall commence until a landscape and ecology implementation

and management plan (LEMP) has been submitted to and approved in writing by the Local Planning Authority (LPA). The LEMP shall include a timetable for implementation of the landscaping and ecology work and details of the management regime and who will be responsible for this management. The development shall be undertaken and subsequently maintained in accordance with the approved details, unless otherwise agreed in writing by the LPA.

14. No development shall commence until a lighting modelling assessment has been undertaken and details submitted to the Local Planning Authority (LPA) for approval. The development shall be undertaken in accordance with the approved details. No external lighting shall be installed unless otherwise agreed in writing by the LPA.