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# Appeal Decision

Site visit made on 21 November 2018

by **B Bowker Mplan MRTPI**

an Inspector appointed by the Secretary of State

Decision date: 21 December 2018

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**Appeal Ref: APP/X1118/W/17/3191164**

**Land off Westaway Plain (west of Youings Drive) Barnstaple**

- 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 Summix (Barnstaple) Developments LLP against the decision of North Devon District Council.
  - The application Ref 62736, dated 7 March 2017, was refused by notice dated 20 June 2017.
  - The development proposed is described as '*outline planning application for a residential development of up to 43 dwellings, public open space, and associated infrastructure; on land off Westaway Plain, Pilton, Barnstaple. All matters reserved, save for access off Westaway Plain*'.
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## Decision

1. The appeal is allowed and outline planning permission is granted for outline planning application for a residential development of up to 43 dwellings, public open space, and associated infrastructure; on land off Westaway Plain, Pilton, Barnstaple. All matters reserved, save for access off Westaway Plain, at Land off Westaway Plain (west of Youings Drive) Barnstaple, in accordance with the terms of the application Ref 62736, dated 8 March 2017, subject to the conditions in the attached schedule.

## Preliminary Matters

2. In the interests of accuracy and completeness, the address used above is taken from the Council's decision notice. In the interests of completeness, the description of development used in paragraph 1 above is taken from the appeal form.
3. The North Devon and Torridge Local Plan 2011-2031 (LP) was adopted by Torridge District Council and North Devon Council on 29 October 2018. Comments were sought from the Council and appellants regarding the effect of the adopted LP on the appeal proposal. The appeal has been determined accordingly.
4. The proposal as submitted is for outline planning permission with all matters reserved apart from access. Appearance, landscaping, layout and scale are reserved for later consideration and the appeal has been determined on this basis, with the layout plan treated referred to for illustrative purposes.

## Main Issues

5. The main issues are:

- Whether the proposal would be an appropriate form of development having regard to local planning policy and the landscape, character and appearance of the surrounding area;
- The effect of the proposal on neighbouring living conditions, with particular reference to privacy; and,
- Whether the proposal would conflict with local planning policy in respect of the best and most versatile agricultural land.

## Reasons

### *Landscape, character and appearance*

6. For planning purposes, the site is within the LP development boundary. In addition, outline planning permission<sup>1</sup> has been granted for the development of up to 30 dwellings at the site. As such, the evidence before me indicates that the principle of residential development is acceptable at the site. The outline proposal before me seeks the development of up to 43 dwellings at the site.
7. The appeal site comprises an elevated open area of grass land surrounded by residential development on three of its sides. Two storey dwellings with pitched roofs comprise the predominant form of residential properties in the area. Thus, despite its open and elevated appearance, the site is located in an area where a residential character prevails. Furthermore, planning permission is in place for residential development to the remaining (north-west) side of the site.
8. At a district level, with reference to the relevant Character Assessment<sup>2</sup> the appellants' Landscape and Visual Impact Assessment (LVIA) identifies that the site is located in the 'Main Cities and towns' area which has no specific description or guidance associated with it. The LVIA identifies the 'Secluded Valleys' Landscape Character Type to the north of the site, and sets out the wider characteristics of it include steep sided v-shaped valleys with dense tree cover and pasture grazed by sheep and cattle. The LVIA also refers to the landscape strategy for the Secluded Valleys area which includes protecting and enhancing the secluded character of the river valleys with a strong historic sense of place. The LVIA identifies that the landscape to the north of the site becomes more open and retains a character more typical of the secluded valleys of the North Devon downs. However, owing to the proximity of the site to surrounding residential development and topography of the site, the proposal would have a stronger visual relationship with the built form of Barnstaple and thus appear separate from the wider rural landscape of the valley to the north.
9. No specific vantage points have been identified by the Council. During my site visit I viewed the site from the vantage points set out in the appellants' LVIA. When viewed from the immediate surroundings (vantage points 1, 2, 3 and 9), the proposal would be seen in the context of surrounding residential development and thus would not look out of place. Similarly, the proposal would be seen in its residential context from the south east (vantage point 10). The residential context of the site would also prevail when seen from more

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<sup>1</sup> Council Ref 61067, granted 24 January 2017, subject to a S106 agreement.

<sup>2</sup> Joint Landscape Character Assessment for North Devon and Torridge Districts, Land Use Consultants, November 2010.

- distant views to the south east (vantage point 12), with landscaping measures and the proposed open space reducing the visibility of the development. When viewed from the north west and north east (vantage points 4, 5 and 6) the proposal would not look out of place with existing residential development already visible. In addition, intervening trees and vegetation would obscure views of the proposal from the north west.
10. From long distant views to the south (vantage point 11) the open appearance of the site has some affinity with the open landscape backdrop to the north. However, the built form of Barnstaple and surrounding residential development form the dominant site context from this vantage point. This factor combined with the separation distances involved, landscape measures, and green ridge proposed would mitigate the effect of the proposal on the Secluded Valleys character area to the north. In addition, satisfactory landscape details at the reserved matters stage would retain a green backdrop to the proposed dwellings and filter views of the development. As such the proposal would not have a negative effect on the landscape setting of the town or result in a harmful loss to the green backdrop of this part of the locality.
  11. Furthermore the Council's Landscape and Countryside Officer concurs with the conclusions of the LVIA and raises no objection in principle on landscape grounds, subject to planning conditions. Moreover the site is within the LP development boundary and outline permission has been granted for up to 30 dwellings at the site. In this light, whilst the previous permitted scheme confined development to the northern part of the site, no substantive evidence is before me to demonstrate that the proposal would result in material harm to landscape and local character and appearance.
  12. Drawing the above together, subject to the submission of satisfactory details at the reserved matters stage, the resultant increase in dwellings at the site would not have a harmful effect in landscape terms or to local character and appearance. In reaching this view I note that the Conservation Area of Pilton is to the south west of the site. However, I have no reason to disagree with the Council's acceptance of the proposal in this respect. The Council have raised no concern regarding the effect of the proposal on the grade II listed milestone to the north-east of the site. In this context, and based on the intervening existing development and the appellants' evidence, I am satisfied that the proposal would result in no harm in this respect either.
  13. Therefore the proposal would be an appropriate form of development having regard to local planning policy and the landscape, character and appearance of the surrounding area. Consequently the proposal would meet the requirements of LP policies DM04 and DM08A which are of most relevance to this matter. Of relevance, combined these policies seek to ensure that development proposals are appropriate and sympathetic to setting in terms of scale, density, appearance, height and landscape character in the local neighbourhood and surrounding area.

### *Neighbours*

14. During my site visit I observed that residential properties (predominantly two storey in height) are located at Youngs Drive, Maer Top Way and Wordsworth Avenue to the east and south boundaries of the site. Owing to local topography, these neighbouring properties would be at a lower level than the proposed dwellings. The existing boundary to the east predominantly

- comprises wooden panel and post and wire fencing whilst the southern boundary includes trees and vegetation. I also observed that garden areas serving neighbouring properties are adjacent the site and are mostly set at a lower level. In addition, gardens at Youings Drive are shallow in depth.
15. Of concern to the Council is the level of information submitted to demonstrate that the site can accommodate up to 43 dwellings without harm to neighbouring amenity. Specific reference is made by the Council to privacy, local topography and the separation distances between the proposed buildings and neighbouring properties. Neighbours also raise concerns regarding privacy. A mixture of one and two storey dwellings is indicated within the Design and Access Statement for the site.
  16. As appearance, scale and layout are reserved matters, the submitted plans have been treated for indicative purposes only. However, owing to the staggered nature of properties along Youings Drive and those proposed, the separation distances between some of the existing and proposed dwellings would need to be increased to correspond with other proposed dwellings on the indicative plan at this part of the site. That said, based on the overall separation distances in the indicative plan and the outline permission sought, I am satisfied that the site could be developed for the number of dwellings sought. In this light, the appellants state that separation distances between the proposed dwellings and properties along Youings Drive would be a minimum of 21 metres and a maximum of 29 metres where the landform rises. In addition, two bungalows are indicated at the south eastern corner of the site. In relation to properties to the south, the appellants state that separation distances between proposed and existing properties would range between 22 metres and 42 metres. Furthermore, existing boundaries to the site would be retained and enhanced to ensure privacy. Drawing the above together, the submission of satisfactory design details in relation to appearance, layout, landscaping and scale would ensure no material harm to the privacy of neighbouring occupants.
  17. In reaching this view I note that the Council consider that the outline permission granted has a more appropriate site area that responds to adjoining residents. However I must determine the appeal before me on its own merits. Concern has also been raised in relation to the effect of the proposal on the day and sunlight of neighbouring occupants. However, based on the indicative separation distances set out and with no substantive evidence to the contrary, dismissing the appeal on this basis would not be justified.
  18. Therefore the proposal would not have a harmful effect on neighbouring living conditions, with particular reference to privacy. Consequently the proposal would accord with LP Policy DM01 which is of most relevance to this matter. This policy sets out that development will be supported where it would not significantly harm the amenities of any neighbouring occupiers or uses.

#### *Agricultural land*

19. The appeal site is classified as grade 3a agricultural land. LP Policy ST14 seeks to conserve the best and most versatile agricultural land. I understand that other agricultural land in the area has been lost to development. However outline permission has been granted for the residential development of the site and the site is located within the LP development boundary. As such the principle of residential development at the site and associated loss of

agricultural land has already been established. On this basis and with no substantive evidence to the contrary, the proposal would not result in any material conflict with LP Policy ST 14.

20. Therefore the proposal would not conflict with local planning policy in respect of the best and most versatile agricultural land, the relevant requirements of which are set out above.

*Other matters*

21. Concern has been raised regarding the proposed site access visibility splays and in relation to traffic levels in the area, which includes the hospital and recently permitted residential development. However the Highway Authority raises no concern on the basis of traffic or highway and pedestrian safety, subject to a planning obligation and conditions. Consequently, and with no substantive evidence to the contrary, the proposal would not result in material harm to local traffic levels and highway and pedestrian safety. As appearance and layout are reserved matters, concerns regarding security could be addressed at a later stage.
22. Based on the evidence before me, dismissing the appeal on wildlife grounds and the loss of a green area would not be justified. Nor would the level of vehicular noise and pollution associated with the development be unusual in a residential area. The issue of property values has also been raised. However, it is a well-founded principle that the planning system does not exist to protect private interests such as value of land or property. I am also mindful of the accepted position taken by the Courts that the right to a private view is not a material consideration in planning matters and accordingly I afford this matter limited weight.
23. Concern is also raised regarding drainage and flooding, which includes reference to local topography. However as the Council and relevant consultees raise no concern on this basis, dismissing the appeal on these grounds would not be justified. Nor has any substantive evidence been submitted to demonstrate that permission should be withheld based on the capacity of health facilities, public transport, the police or the availability of shopping facilities in the area. Subject to contributions towards school provision in the area, the Council raise no concern on the basis of education capacity.

*Planning obligation*

24. A dated Section 106 agreement<sup>3</sup> signed by the owner, District Council and County Council has been submitted as part of the appeal. The agreement would secure contributions towards secondary school education, recreation, transport improvements, and ensure the provision of on-site affordable housing, public open space and surface water management.
25. Based on the consultation responses provided by the Council and with no substantive evidence to the contrary, I am satisfied that the obligations sought would comply with paragraph 56 of the Framework and the statutory tests contained in Regulation 122 of The Community Infrastructure Levy Regulations 2010. However no evidence is before me to demonstrate that the monitoring costs associated with the obligations would fall outside the scope of the reasonable everyday functions of a local planning authority or be necessary to

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<sup>3</sup> Dated 1 October 2018.

make the development acceptable in planning terms. Consequently I have not taken this contribution into account in my determination of the appeal.

### *Conditions*

26. The conditions below are based on those suggested by the Council. Where necessary the conditions have been amended to comply with paragraph 55 of the Framework and advice given in the Planning Practice Guidance.
27. Conditions 1 – 3 requiring the submission of the reserved matters are necessary as the proposal is an outline application. I have imposed a condition specifying the relevant drawings as this provides certainty. Conditions relating to the submitted ecological and flood risk documentation is necessary in the interests of wildlife and based on the lead local flood authority response. A condition relating to site levels is necessary in the interests of neighbouring privacy and to ensure the site has a satisfactory appearance. Conditions relating to surface water drainage are necessary to ensure that the site is adequately drained. Conditions relating to contamination are necessary based on the comments of the Council's Environmental Health Consultant.
28. A condition requiring a Construction Method Statement is necessary in the interests of neighbouring living conditions, wildlife, flood risk and water quality. This condition would also address the related concerns of neighbours. Conditions relating to the site access, access road, cycle and the width of the pedestrian and cycleway are necessary in the interests of highway safety and sustainable transport. A condition relating to archaeological works is necessary based on the comments of the Council's Senior Historic Environment Officer.
29. As a Tree Survey Assessment has already been undertaken and with landscape details being a reserved matter, this related condition has not been sufficiently justified and thus is not necessary. As matters relating to sewers are covered by separation regulations and in the absence of any convincing justification, it is not necessary to secure these details via planning conditions. As appearance, landscaping, layout and scale are reserved matters, conditions relating to the foot/cycle path, on-site highways, ecological buffer zone, an ecological management plan, landscape management plan, materials, walls, fences, landscaping, play equipment, public realm details, utility buildings/pumping stations, show house, vehicular parking and refuse storage are not necessary at this stage.

### **Conclusion**

30. For the reasons set out above, I conclude that the appeal should be allowed subject to the attached schedule of conditions.

*B Bowker*

INSPECTOR

### **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: Site Location Plan BIR.5071\_31\_1 and Proposed Access Design 17466-01B.
- 5) The development hereby permitted shall be carried out in accordance with the Flood Risk Assessment (Report Ref. 3516802A, Rev 3 dated April 2017).
- 6) The development hereby permitted shall be carried out in accordance with the Preliminary Ecological Appraisal (dated 22 January 2016) and the Additional Species Survey (dated July 2016) undertaken by Cotswold Wildlife Surveys. No development shall take place until the recommendations set out in the appraisal and survey have been implemented in accordance with details, including trigger points, that have been submitted to and approved in writing by the Local Planning Authority.
- 7) No development shall take place until full details of the finished levels, above ordnance datum, of the floor levels of the proposed buildings, in relation to existing ground levels, including existing dwellings abutting the site by way of detailed cross sections, have been submitted to and approved in writing by the local planning authority. The development shall be carried out in accordance with the approved levels.
- 8) At the same time as the first reserved matters application a surface water drainage management plan shall be submitted to and approved in writing by the local planning authority. The surface water drainage management plan shall be in accordance with the principles of sustainable drainage systems, and those set out in the Flood Risk Assessment (Report Ref. 3516802A, Rev 3 dated April 2017). The development shall be carried out in accordance with the approved details.
- 9) No part of the development hereby permitted shall be commenced until details of the adoption and maintenance arrangements for the entire site's permanent surface water drainage management system has been submitted to and approved in writing by the local planning authority.
- 10) Prior to the commencement of the development hereby permitted a land contamination assessment and associated remediation strategy, together with a timetable of works, shall be submitted to and approved in writing by the local planning authority.
  - (a) The land contamination assessment shall include a desk study and site reconnaissance. The desk study shall detail the history of the site

uses, identify risks to human health and the environment, and propose a site investigation strategy based on the relevant information discovered by the desk study. The strategy shall be submitted and approved in writing by the Local Planning Authority prior to investigations commencing on site.

(b) The site investigation shall be carried out by a suitably qualified and accredited consultant/contractor in accordance with a Quality Assured sampling and analysis methodology.

(c) A site investigation report detailing all investigative works and sampling on site, together with the results of analysis, risk assessment to any receptors and a proposed remediation strategy shall be submitted to and approved in writing by the Local Planning Authority. The Local Planning Authority shall approve such remedial works as required prior to any remediation commencing on site. The works shall be of such a nature as to render harmless the identified contamination given the proposed end-use of the site and surrounding environment including any controlled waters.

Prior to occupation of the buildings hereby permitted:

(a) Any approved remediation works shall be carried out in full on site under a Quality Assurance scheme to demonstrate compliance with the proposed methodology and best practice guidance.

(b) A verification report shall be submitted to and approved in writing by the local planning authority. The verification report shall include details of the proposed remediation works and Quality Assurance certificates to show that the works have been carried out in full in accordance with the approved methodology. Details of any post-remedial sampling and analysis to show the site has reached the required clean-up criteria shall be included in the completion report together with the necessary waste transfer documentation detailing what waste materials have been removed from the site.

(c) A certificate signed by the developer shall be submitted to the local planning authority in writing to confirm that the appropriate works have been undertaken as detailed in the completion report.

- 11) Any contamination that is found during the course of construction of the approved development 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 full assessment carried out and submitted to and approved in writing by the local planning authority. Where necessary 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 is resumed or continued.
- 12) No development shall take place until a Construction Method Statement has been submitted to, and approved in writing by the local planning authority. The Statement shall provide for:
- i) The timetable of the works, including 'phasing' and daily hours of construction and delivery
  - ii) any road closure, and hours and days during which delivery and construction traffic will travel to and from the site
  - iii) the proposed route of all construction traffic exceeding 7.5 tonnes

- iv) the parking of vehicles of site operatives and visitors, and the loading and unloading of plant and materials
- v) the number and sizes of vehicles visiting the site in connection with the development, the frequency of their visits, and details of proposals to promote car sharing amongst construction staff
- vi) storage of plant and materials used in constructing the development and details of any site construction office and ancillary facility buildings
- vii) the erection and maintenance of security hoarding including decorative displays and facilities for public viewing, where appropriate
- viii) wheel washing facilities
- ix) a surface water drainage management plan addressing the rates, volumes and quality of surface water runoff from the construction site
- x) photographic evidence of the condition of adjacent public highway prior to commencement of any work
- xi) measures to control the emission of dust and dirt during construction
- xii) the importation and removal of spoil and soil on site and the recycling/disposal/removal of materials from site resulting from the development, including soil and vegetation
- xiii) a noise control plan which details hours of operation and proposed mitigation measures
- xiv) a point of contact (such as a Construction Liaison Officer/site manager) and details of how complaints will be addressed

The Construction Method Statement shall also set out measures to protect retained features through appropriate fencing, precautions in respect of protected species, and site best practice to avoid pollution from run-off. The approved Construction Method Statement shall be adhered to throughout the construction period for the development.

- 13) The site access and visibility splays shall be constructed, laid out and maintained for that purpose in accordance with the approved plans where the visibility splays provide intervisibility between any points on the X and Y axes at a height of 1.05 metres above the adjacent carriageway level and the distance back from the nearer edge of the carriageway of the public highway (identified as X) shall be 2.4 metres and the visibility distances along the nearer edge of the carriageway of the public highway (identified as Y) shall be 43 metres in a westerly direction and 49 metres in the other direction.
- 14) Prior to any occupation of the site a minimum 3.0 metre width shared pedestrian and cycleway shall be constructed and made available for public use between the south west corner of the site and the northern boundary of the site.
- 15) No development shall take place until the access road has been provided in accordance with details that have been submitted to and approved in writing by the local planning authority.

- 16) No development shall take place until a programme of archaeological work in accordance with a written scheme of investigation which has been submitted to and approved in writing by the local planning authority. The development shall be carried out at all times in strict accordance with the approved details.

Richborough Estates