
Appeal Decision

Site visit made on 25 March 2014

by John Wilde C.Eng M.I.C.E.

an Inspector appointed by the Secretary of State for Communities and Local Government

Decision date: 28 April 2014

Appeal Ref: APP/U1105/A/13/2210510

Land south of Otter Close, Tipton St John, Devon

- 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 Devonshire Homes Ltd against the decision of East Devon District Council.
 - The application Ref 13/1431/MOUT, dated 28 June 2013, was refused by notice dated 18 October 2013.
 - The development proposed is to include up to nineteen residential units, creation of vehicular access arrangements, internal road layout, car parking, open space, landscaping, services and infrastructure and all other associated development. Closure of the sunken lane to vehicles and creation of a footpath/cycleway. All matters reserved for further consideration except access.
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Decision

1. The appeal is dismissed.

Procedural matters

2. The application has been made in outline, with details of access to be considered at this stage. Layout, scale, appearance and landscaping have been reserved for later determination.
3. The Planning Practice Guidance was published on 6 March 2014. I have taken into account the content of the guidance but in light of the facts in this case its publication does not alter my conclusions.
4. I have been made aware of a letter dated 31 March 2014 from the Inspector responsible for the examination of the emerging East Devon Local Plan (EEDLP). This letter indicates that there are problems with the housing target as identified within the EEDLP such that further work on housing figures will be necessary to ensure that the plan is sound. Whilst I have taken this letter into consideration the Council had already accepted that they do not have a five year supply of housing, and this is to my mind the pertinent factor.

Main Issues

5. The main issues are:-
 - (a) Whether or not the proposed development could be considered as sustainable development.

- (b) Whether or not the proposed development should be subject to contributions to mitigate its effects, and whether or not arrangements have been entered into that would provide such contributions.

Reasons

6. The appeal site is a field to the north-east of the village of Tipton St John. The site is about a ten minute walk from the centre of the village and abuts existing residential development at Otter Close and Mallocks Close. Notwithstanding that it abuts existing residential roads, the site is outside of the development boundary of the village. In planning terms it is therefore in the countryside, and policy S5 of the East Devon Local Plan (LP) makes clear that *development in the countryside will only be permitted where in accordance with a specific policy that explicitly permits such development*. This would not be the case, and therefore conflict with the development plan exists. Policy S3 of the LP defines the development boundaries of villages and makes clear that these villages are identified as offering a range of services and facilities and through the definition of built up area boundaries they are regarded as appropriate to accommodate a limited scale of development.
7. However, the Council have confirmed that they cannot demonstrate an up to date five year supply of housing land and I also note that the East Devon Local Plan was adopted in 1995 and had an end date of 2011. It is therefore time expired. These factors have relevance in respect of the National Planning Policy Framework (the Framework).
8. The Framework makes clear in paragraph 215 that the weight to be afforded to policies within local development plans adopted prior to 2004 should be according to their degree of consistency with the Framework. Furthermore, paragraph 49 of the Framework makes clear that relevant policies for the supply of housing should not be considered to be up to date if the Council cannot demonstrate a five year housing land supply. Policies S5 and S3 therefore need to be considered in the light of these paragraphs.
9. Policy S5 makes clear that its intention is to conserve the character, landscape, historic character and archaeological value, wildlife, agricultural, recreational and natural resource value of the countryside. Such an intention is mirrored within the Framework at paragraph 17 where it is made clear that planning should recognise the intrinsic character and beauty of the countryside. Therefore whilst policy S5 does have an impact on the supply of housing, its aim is consistent with the Framework and it can therefore be afforded considerable weight.
10. Similarly policy S3 makes clear that in its formulation the Council have given consideration to the availability of community facilities in the villages and whether some additional development might help retain those services where they exist. The text underlying the policy also makes clear that in formulating the policy consideration was given to the need to reduce travel by private car and focus on areas with good access to public transport, jobs, leisure and services. This to my mind indicates that the policy is aimed at achieving sustainability and therefore has a strong correlation with the Framework, which in paragraph 14 makes clear that sustainability lies at its heart. For this reason I also afford considerable weight to policy S3.

11. However, the Framework also recognises that sustainability has several strands other than just the transport aspect. These are economic, social and environmental in its broadest sense, and the proposed development needs to be assessed against these factors. I will deal firstly with the environmental aspect.
12. The village of Tipton St John has a number of facilities including a community hall, a primary school, a village shop, a garage, a public house and children's play area. Most of these facilities are located in the centre of the village. It does not however have a secondary school, large supermarket type shop, doctor's surgery or other health facilities. Nor are there any significant employment opportunities.
13. There are only about seven buses per weekday to Ottery St Mary with the first one being at 09:11hrs and the last at 17:51hrs and only seven to Sidmouth, with the first being at 08:27hrs and the last at 17:12hrs. There are no bus services serving the village on Saturdays or Sundays or any direct bus services to Exeter, which is the main regional centre for employment and services. I consider therefore that the use of the bus for regular travel to and from the proposed development would be unlikely, and note from the Transport Statement provided by the appellants¹ that the site will generate about 101 trips between the hours of 0700 and 1900hrs.
14. I have also been supplied with a Highways and Transportation Statement² (HTS) prepared on behalf of the appellants. The HTS shows that the percentage of people driving to work from the ward area that includes the appeal site is only slightly higher than the more urban wards of Sidmouth Sidford and Ottery Town. I do note however that the percentage of people who walk to work is considerably higher in the more urban wards. Furthermore, the location of the appeal site would result in more car based trips for things like health appointments, leisure activities and shopping.
15. I accept that people living in more urban areas are still likely to use the car for large shopping trips, and note that the supermarket in Sidmouth is on one side of the town, with a distance of two miles to the other side. However, the average distances covered by town dwellers would be likely to be less than a person travelling from the proposed development to a supermarket in an urban area. I also note the assertion that the principal driver for the use of a bus is car ownership. It seems to me however that the proposed development would be likely to attract car owning occupiers, whereas a development in a far more transport sustainable location would be attractive to those without cars or who wish to reduce their dependency on the use of a car.
16. I take note of the suggested travel plan and the fact that people could reduce their number of trips by linking for example shopping and work based trips. I also acknowledge the statistics provided within the HTS that show that people living in rural areas are more likely to work from home. This cannot however be guaranteed on any given development. On balance, given the relatively few services and employment opportunities available in the village, and the scarcity of public transport, I consider that the proposed development could not be classified as being sustainable in transport terms.

¹ Prepared by WSP and dated June 2013

² Prepared by Mr Iain McNeill CEng MICE BSc.

17. I now turn to the social and economic strands of sustainability. I note that a number of pupils who attend the village school are residents of other communities that have schools of their own, and that in theory more children residing in Tipton St John would result in these other children being displaced back to their more local schools with a consequent reduction in car journeys. However, I have not been made aware of the capacity of the primary school and consider that in an age of parental school choice it would be inappropriate to attach any great weight to this argument. Also, any weight that could be afforded to this line of reasoning would have to be balanced against the fact that any children of secondary age living on the proposed development would have to travel to the schools in nearby towns.
18. The appellant also considers that allowing the proposed development would provide a boost to the village shop and other local services such as the pub and garage. They point out that without such a boost these services could close resulting in further trips emanating from the village. However, I have been given no significant evidence that the any of these services are likely to close so once again can give very little weight to this argument.
19. I do note that planning permission has been granted for a development more or less in the centre of the village for fifteen dwellings. This will satisfy the local affordable housing need and is, in the Council's view, in line with policy S3 in that the villages identified within that policy are regarded as *appropriate to accommodate a limited scale of future development*. This development is also likely to go some way to ensuring the viability of the village school and shop.
20. Overall, I have been given little evidence to show that the proposed development would have a significantly beneficial affect on the social fabric of the local community or that, conversely, without it, there would be a detrimental effect.
21. In economic terms the proposed development would provide a number of jobs during the construction phase and the proposed residents would spend some of their income within the village. However, these benefits would be no different or greater than those generated by similar developments in more transport sustainable locations and therefore limited weight if any can be attributed to this matter.

Conclusion on sustainability

22. I have found that the proposed development would be in an unsustainable location in transport terms, and on balance I am not persuaded that this is outweighed by the social and economic benefits that it would produce. The proposed development cannot therefore be considered to be sustainable in terms of the requirements of the Framework. As such it cannot derive support from the presumption in favour of sustainable development. Furthermore, I have found that the LP policies still carry considerable weight and consequently the conflict with these policies is the overriding factor in this decision. In arriving at this conclusion I have taken note that the EEDLP is likely to be delayed and the need for affordable housing in the district as a whole. However, given my previous findings, these matters do not lead me to an alternative conclusion.

Contributions

23. The Council's second reason for refusal related to the provision of contributions to mitigate the effects of the proposed development on local infrastructure. To this end I have been supplied with a signed and dated copy of a Section 106 Agreement which would see the provision of these contributions. This would satisfy the requirements of the second reason for refusal.
24. It would normally be necessary to apply the tests contained within CIL Regulation 122 in relation to these contributions. These tests are that planning obligations should only be sought where they are necessary to make the development acceptable in planning terms, are directly related to the development and fairly and reasonably related in scale and kind to the development. However, as I have found against the proposed development on the first main issue it is not necessary for me to apply these tests.

Conclusion

25. In light of my above findings, and having regard to all other matters raised, I conclude that the appeal should be dismissed.

John Wilde

INSPECTOR

Richborough Estates