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## Appeal Decision

Site visit made on 14 May 2019

**by I Bowen BA(Hons) BTP(Dist) MRTPI**

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

**Decision date: 12 June 2019**

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**Appeal Ref: APP/Y1138/W/18/3218602**

**Land at Moor Lane, Westleigh, Burlescombe, Tiverton**

- 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 & Mrs Fry against the decision of Mid Devon District Council.
  - The application Ref 18/00964/MOUT, dated 15 June 2018, was refused by notice dated 15 November 2018.
  - The development proposed is fifteen dwellings (including seven affordable dwellings) with estate road and all associated works.
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### Decision

1. The appeal is dismissed.

### Preliminary Matters

2. The application was made in outline with all matters reserved for subsequent consideration except for access. The application was accompanied by a site layout plan which sets out a possible layout. Whilst illustrative only, I have nevertheless had regard to it as a helpful guide as to how the development might take place.
3. During the appeal, the appellants submitted a draft, unsigned, Unilateral Undertaking (UU) marked December 2018, setting out provision for seven affordable housing units on the site, including two serviced affordable custom-build plots. The draft UU also proposes to make provision for public open space and education contributions. I consider these matters below.

### Main Issues

4. Given the above, the main issues are:
  - Whether the appeal site would be suitable for the development having regard to national and local planning policies on the location of residential development and accessibility to day-to-day facilities and services; and
  - Whether the proposal would make necessary provision for affordable housing and infrastructure for public open space and secondary education.

### Reasons

#### *Suitability of the location for housing*

5. The appeal proposal comprises fifteen dwellings which would be located on agricultural land on the edge of the village of Westleigh.

6. Policy COR1 and COR9 of the adopted Mid Devon Core Strategy 2026 (2007) (the MDCS) establish a strategy for the achievement of sustainable communities through, amongst a range of other objectives, providing accessible forms of development that reduce the need to travel by car and which are integrated with public transport and other sustainable modes of travel.
7. In line with this approach, MDCS Policy COR12 concentrates development in Tiverton, Cullompton and Crediton with a limited role for Bampton. The Policy makes clear that other settlements will have only very limited development that is required to meet local needs and promote rural regeneration, including affordable housing. To this end, MDCS Policy COR17 establishes Burlescombe (which includes Westleigh) as a village with some local facilities and employment and access to public transport where development is limited to minor proposals within its defined settlement limits. Specifically, in terms of housing, development is permitted for affordable housing meeting a local need.
8. As part of this overall approach, MDCS Policy COR18 strictly controls development in the countryside outside of those defined settlement limits.
9. Whilst the site is not isolated in the countryside, it lies on the edge of the village of Westleigh, outside the defined settlement limit. Moreover, although a limited range of services and facilities are available locally, including a school at nearby Burlescombe and an infrequent bus service, the village is not well served by day-to-day facilities and services.
10. In summary therefore, the proposal is not for minor development and, in any event, lies outside albeit adjacent to, the defined settlement limit. As such, the development would not accord with the overall locational strategy of the Development Plan, nor would it accord with the objectives of the strategy in failing to provide accessibility to services and facilities.
11. Nevertheless, the National Planning Policy Framework (the Framework) supports, exceptionally, the development of rural sites that would provide affordable housing to meet identified local needs. In this regard, the appellants have described the development as a rural exception site to meet local housing needs in the Parish of Burlescombe.
12. However, I have been provided with no substantive evidence of the extent of such identifiable local need. In this regard, I have noted that the Design, Access and Planning Statement submitted as part of the planning application was accompanied by some information relating to housing needs in connection with an unrelated planning application<sup>1</sup>. Nonetheless, this evidence appears to be an extract from the local housing waiting list and this, in itself, does not amount to compelling evidence of a specific local housing need. Similarly, whilst the evidence includes a Housing Needs Survey undertaken in 2013, no firm details of that research has been provided, including the extent to which its findings remain up-to-date.
13. Moreover, whilst the Framework allows consideration of the provision of some market housing on rural exceptions sites, I have seen no justification over the extent to which this would be necessary in this case in order to facilitate the development.

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<sup>1</sup> Ref 18/00504/OUT

14. I have also carefully considered the policy of the Framework which makes provision for entry-level housing where such needs arise. However, no clear evidence has been provided in respect of this appeal which would indicate whether the need for such housing is already being met within the Authority's area in line with the requirement of the Framework.
15. In any event, whilst a draft UU has been submitted which indicates the appellants' willingness to provide affordable and affordable custom build housing (a matter I consider in the second main issue below), there is no executed agreement before me to secure this. I cannot therefore be confident that such housing would be provided, even if such a need could be demonstrated.
16. My attention has been drawn to planning application ref 17/00353/FUL. That scheme was for a housing scheme on land south east of Oakfield in Burlescombe (the Oakfield scheme) and was granted planning permission by the Planning Committee despite elected members having given consideration, amongst other issues, to the lack of locally available services. However, I do not have full details of the Oakfield scheme before me and therefore cannot be certain it represents a reasonable comparison with the appeal scheme. Moreover, I note that the Oakfield scheme had been solely for the development of six affordable dwellings. In any event, individual proposals should be considered on their own merits, and I have done so in determining this appeal.
17. In conclusion on this main issue, therefore, the proposed development would comprise major development in the countryside, outside of, albeit adjoining, the defined settlement limit of the village, for which no strong justification has been provided. The appeal site would not therefore be suitable for the development which would conflict, or not accord with, MDCS Policies COR1, COR9, COR12 and COR18.
18. Whilst not cited in the refusal notice, the proposal would also fail to accord with Policy COR17. That is because it, together with the MDCS Policies referred to above, aims to achieve sustainable development through reducing the need to travel by private car for day-to-day services and facilities and, in rural areas, concentrating development within the development limits of named settlements. As a site lying outside the defined boundary of Westleigh, the proposal fails to accord with this approach. Furthermore, insufficient local housing needs evidence has been submitted which would, in line with Framework, exceptionally justify departing from the locational strategy of the Development Plan as set out above.

*Provision of infrastructure including affordable housing*

19. There is no dispute between the main parties that, in order to make the development acceptable in planning terms, planning obligations would be necessary for affordable housing, public open space and secondary education. I consider these in turn below.
20. Policy AL/DE/3 of the adopted Mid Devon Allocations and Infrastructure Development Plan Document (2011) (AIDPD) sets out a requirement for 35% of dwellings to be provided as affordable homes on schemes above a threshold of 2 dwellings in rural areas.

21. In terms of open space, AIDPD Policy AL/IN/3 requires the provision of at least 60 square metres of equipped and landscaped space per market dwelling, to include children's play areas, sports areas, informal open space and allotments in appropriate proportions. The Policy also makes clear that where it would be appropriate for provision to be made off-site, financial contributions will be sought in accordance with advice set out in an adopted Supplementary Planning Document<sup>2</sup>.
22. As regards education provision, AIDPD Policy AL/IN/5 requires development to cover the cost of additional educational facilities where they would be oversubscribed. In this regard Devon County Council has requested monies relating to pressures on educational infrastructure including additional transportation costs.
23. On the evidence before me, it appears that the need for the planning obligations sought by the Council arises from the development and would satisfy the 3 tests in Regulation 122(2) of the CIL Regulations 2010. Whilst the appellants do not dispute the need to make such contributions, and show how some on-site public open space provision could take place, in the absence of an executed UU I conclude that the proposal would fail to secure appropriate contributions. As such it would not comply with AIDPD Policies AL/DE/3, AL/IN/3 and AL/IN/5.

### **Planning Balance**

24. At the time of the LPA's determination of the planning application, it was confirmed that the Authority was unable to demonstrate a five-year housing land supply (5YHLS), as required by the Framework. However, the LPA submitted evidence at the appeal stage indicating that the latest calculation, as at 16 April 2019, was a 5YHLS of 7.43 years. This takes into account the Government's published Housing Delivery Test results. The appellants have had opportunity to challenge this figure but has not done so. On the basis of the submitted evidence, I see no good reason to dispute that the LPA can show a 5YHLS in the terms of the Framework.
25. Nevertheless, I am mindful that the policies most important for determining the appeal were adopted a considerable period of time ago. The LPA suggests that MDCS Policies COR3<sup>3</sup>, COR17 and COR18 are, for the purposes of the Framework, out of date. Whilst I regard the overall spatial strategy as being consistent with the Framework in seeking to make provision for appropriate levels of development in rural areas, I conclude that insofar as those Policies rely on defined development boundaries to meet housing requirements, they are out of date. Consequently, in line with paragraph 11d) of the Framework, the so called 'tilted balance' is engaged.
26. As noted above, in the absence of a clear mechanism for providing affordable and custom-build housing, I attach little weight to the benefits of the scheme in that regard. Nevertheless, the scheme would provide a total of fifteen additional dwellings which would align with one of the overall objectives of the Framework to significantly boost the supply of homes.

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<sup>2</sup> The Provision and Funding of Open Space through Development – May 2008, updated September 2010.

<sup>3</sup> MDCS Policy COR3 was not cited as a reason for refusal. However, a copy was provided and it sets out a numerical annual housing requirement of 290 dwellings, including 100 affordable dwellings, for the period 2016-2026.

27. However, whilst the LPA's housing requirements should not be regarded as maximum targets, the benefits of the scheme in this regard would nevertheless be tempered by the fact that the LPA, as noted above, is able to demonstrate a surplus relative to its 5YHLS and the scheme would, for the reasons outlined above, be unlikely to promote walking, cycling and public transport in line with objectives of the Framework.
28. The scheme could be designed to a high standard and could incorporate significant landscaping. It could also, subject to suitable conditions, take place without giving rise to harm to highway safety or the operation of the local road network, landscape, ecology, archaeology, drainage or flood risk. I am also satisfied that it could take place in such a way as to safeguard the living conditions of the occupiers of neighbouring properties. It would also make provision for public car parking which would be displaced as a result of the creation of the new access. However, the absence of harm in these respects is a neutral consideration in weighing the overall planning balance.
29. Given the significant harm identified above and the associated Development Plan conflict relative to the modest contribution that the proposal would make to the supply of housing and the limited wider benefits of the appeal scheme, I conclude that the adverse impacts of the development would significantly and demonstrably outweigh the benefits, when assessed against the policies of the Framework as a whole.

### **Other Matters**

30. I understand from the appellants' submissions that attempts were made without success to engage the LPA during the course of the planning application on heads of terms for planning obligations and in relation to other matters. However, these are matters away from this appeal which I have determined on the basis of the submitted evidence and the individual merits of the proposal.

### **Conclusions**

31. For the reasons given, the appeal should be dismissed.

*Ian Bowen*

INSPECTOR