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## Appeal Decision

Site visit made on 18 June 2019

**by M Bale BA (Hons) MA MRTPI**

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

**Decision date: 10 July 2019**

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### **Appeal Ref: APP/Y1138/W/18/3215743**

#### **Land at Exeter Hill, 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 Dial Holdings Ltd against the decision of Mid Devon District Council.
  - The application Ref 17/00942/MOUT, dated 7 June 2017, was refused by notice dated 24 October 2018.
  - The development proposed is outline application for the erection of circa 50 dwellings (Use Class C3) – means of access to be determined only (all other matters reserved).
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#### **Decision**

1. The appeal is dismissed.

#### **Procedural matters**

2. The application is in outline. Approval has been sought for access at this stage and detailed plans have been provided showing a vehicular access from Exeter Hill and pedestrian access from Canal Road. An illustrative site layout plan has been provided which I have considered as indicative.

#### **Main issues**

3. The main issues are:
  - (i) the effect of the development on highway safety;
  - (ii) whether the site is in an appropriate location in terms of accessibility to services and facilities with particular regard to the characteristics of the pedestrian access route;
  - (iii) the effect on off-site flood risk with particular regard to the adequacy of the proposed surface water drainage mechanisms;
  - (iv) whether the proposal makes appropriate provision for affordable housing, primary education provision and public open space including children's play; and
  - (v) whether there are any other material considerations that might indicate a decision other than in accordance with the development plan.

## Reasons

### *Highway safety*

4. The site is accessed via Exeter Hill, a steep road leading from Tiverton to the rural area beyond. It is relatively narrow with passing places and no footway. It serves a number of residential properties, including the cul-de-sac developments of Butterleigh Drive and Castlebar Close as well as some individual houses. The Council refer to the gradient and alignment of Exeter Hill, but raise no substantive evidence to suggest that it could not provide an acceptable vehicular access to the site.
5. However, Exeter Hill meets Canal Hill at an angled junction and on a gradient. The alignment of the two roads is such that the manoeuvre required to turn right from Exeter Hill into Canal Hill and left from Canal Hill into Exeter Hill involves a tight turn. During my site visit, I witnessed a car entering the opposing running lane on Canal Hill to execute the turn in to Exeter Hill and a van making a reversing manoeuvre back into Canal Hill part way through the same turn.
6. There are, therefore, clear shortcomings in the operation of the Canal Hill/Exeter Hill junction through which most traffic is likely to access the site. That said, it is part of the existing highway network and, although the difficulties presented by the alignment may cause some inconvenience, the accident data provided with the appellant's Transport Statement does not indicate that it is unsafe for current levels of traffic. There is also no substantive evidence that any inconvenience caused by these unorthodox manoeuvres have any other severe effect on the network at the present time.
7. The Council contend that the proposal would result in a significant increase in traffic using the junction. Whilst the actual numbers of additional movements through the junction at peak times are predicted by the appellant to be low, there is no clear comparison of this to the existing baseline flows through the junction. Accordingly, I cannot be assured that the increase is not significant. A significant increase in flows could undermine the safety of the junction or create other harmful effects on the highway network due to the shortcomings that I have identified.
8. The Council have suggested that the resulting harm could be mitigated by alterations to the junction and the appellant suggests that a negatively worded condition to secure those works prior to development commencing could be imposed. The Council contend that the required 'triangle' of land between the roads is not in public nor the appellant's ownership and so is not available to mitigate the harm to highway safety.
9. I am mindful that the Planning Practice Guidance (PPG) advises that such conditions should not be used where there are no prospects at all of the action in question being performed within the time-limit imposed by the condition. That is a very high bar. Whilst I note that concerns of the Council, Local Highway Authority and local residents about the status of the land, I find no substantive evidence that the land could not become available for the required works. The very high bar set for not imposing a condition in the PPG is therefore not met and I find that one could be used to prevent any development commencing until the junction improvements had been provided. I therefore, find that a condition could mitigate the identified harm.

10. I note that the Council has indicated in the fourth reason for refusal and its appeal statement that a planning obligation would be required in respect of these highway works. However, as I have found that a condition could be used, there is no substantive evidence as to why an obligation would be required as well. The lack of proposed obligation in this respect does not, therefore, weigh against my findings.
11. In light of the above, the development would cause no harm to highway safety and no conflict with those aspects of Policies COR1 and COR9 of the Mid Devon Core Strategy (2007) ("CS"), or Policy DM2 of the Mid Devon Local Plan Part 3: Development management policies (2013) ("LP3") that seek to enhance road safety and provide safe travel environments.

#### *Accessibility*

12. There is no dispute that Exeter Hill would not provide an appropriate pedestrian access route to the site. A route to Canal Hill via an existing private access that currently serves a small number of dwellings is, therefore, proposed. There is no suggestion that the distance to facilities and services, including the town centre and public transport connections would be excessive. However, whilst some works are proposed to reduce the steepest parts of the access so as to provide a more even slope, that route would remain very steep.
13. Although the overall length of the pedestrian link would be relatively short in terms of the overall journey to facilities, it is likely to be too steep to be manageable by wheelchair users and difficult for those with infant pushchairs and the like. It is also likely to present a barrier to others with limited mobility. It may be that the gradients referred to by the Council as benchmarks for inclusive accessibility are only guidance, but there is no substantive evidence to suggest that the characteristics of this proposed route would make it manageable by all people.
14. The pedestrian link would be shared with those dwellings that already use it for vehicular access. Whilst the access might be technically wide enough to accommodate a pedestrian alongside a car, given the steep nature of the route and challenges that would present to all users, I am not convinced that a car could comfortably pass a pedestrian. Whilst, likely traffic volumes would be low, reducing the potential for any conflict, this would likely act as a further deterrent to its use by pedestrians. Accordingly, I find that the proposed pedestrian access would not be suitable for all users.
15. The Framework makes clear that in order to promote sustainable transport, a genuine choice of transport modes should be offered. Suitable access to sites should be achieved for all users and the needs of people with disabilities should be addressed. It also indicates that priority should be given to walking and cycling and then public transport. Due to the nature of the pedestrian access route, the proposal does not meet these objectives.
16. Notwithstanding the relatively close proximity of the site to facilities, I therefore find that the site is poorly located with regard to accessibility and would not encourage non car-based trips. My attention has been drawn to a number of other developments in the vicinity that have similar footway gradients to the proposed route. I saw these at my site visit. Clearly, residents of these developments, like those whose dwellings are already accessed from the proposed pedestrian link contend with the gradients on a

daily basis. However, I do not have details of the planning policy environment in which they were permitted, nor do I have any clear evidence that residents of those developments frequently walk or cycle, or that they are accessible by all people. I, therefore, attach little weight to them.

17. The proposal would, therefore, conflict with those parts of CS Policies COR1 and COR9, and LP3 Policy DM2 which seek to reduce reliance on the private car through matters including the provision of accessible forms of development that allow for ease of movement and creating environments that are accessible to all users.

#### *Flood Risk*

18. The gradient of the site is such that any increase in surface water run-off could lead to an increase in off-site flooding. The submitted flood risk assessment (FRA) indicates that surface water drainage infrastructure would be designed to mimic existing greenfield runoff rates. Whilst there is mention within the FRA of a 1:30 year storm event design standard to enable South West Water to requisition a new sewer from the development, the report is otherwise based upon a 1:100 year storm event plus a 40% allowance for climate change.
19. The Council, following advice from the Lead Local Flood Authority (LLFA), have pointed to uncertainty within the FRA that the capacity of the proposed attenuation facilities that may not be sufficient. This is said to be because the stated required capacity for attenuation is greater than the capacity of the storage shown on the submitted drawings. The Council point to other shortcomings in the FRA which include a lack of detail surrounding an additional storage basin that would collect excess overland flow.
20. There is also uncertainty over the proposed discharge point and whether a connection to the Great Western Canal would be permitted. I note that the appellant suggests that other points of discharge may be available but it is not clear whether these would have sufficient capacity to avoid an increase in off-site flood risk. There has been no substantive rebuttal to the Council's concerns, so I attach significant weight to them.
21. I note that detailed design requirements may change as a scheme is fully developed following any grant of outline planning permission. Planning conditions can, therefore, be used to secure full details of the final design and storage requirements. However, the Framework indicates that regard should be given to the advice of the LLFA, who have identified a number of uncertainties. The topography of the site is such that an inadequate drainage system could have significant off-site effects. It is, therefore, imperative that any claim that appropriate infrastructure can be provided is supported by robust evidence.
22. Whilst I find no compelling evidence that a suitable management and maintenance regime could not be agreed at a later date, it is not appropriate to leave so much of the scheme design to planning conditions as there is no certainty that an appropriate scheme can be devised. I note that there may be some betterment, including the ability to intercept overland flow from uphill of the appeal site. However, the identified shortcomings call into question the robustness of the FRA and the ability of the proposals to prevent an increase in off-site flood risk.

23. LP3 Policy DM2, amongst other things, seeks to ensure that appropriate surface water drainage facilities are available. I note that the broad aims of the policy are concerned with securing high quality design, which is largely the concern of reserved matters applications. However, there is no substantive evidence that it should not also apply to matters that go to the principles of a development such as preventing increases in flood risk. For the above reasons, I find Policy DM2 to be relevant, and the proposal to conflict with it.

*Affordable housing, education and open space*

24. A submitted planning obligation seeks to provide 35% of the dwellings as affordable housing. Whilst the obligation would leave the Council tied to a particular housing mix, the Council does not indicate that the stated mix would fail to meet identified needs. There is, however, no reference to the affordable housing tenure within the obligation. Whilst the appellant indicates that they would be willing to accept a condition dealing with this, I am not able to amend the obligation to achieve this and I am not convinced that a planning condition is a suitable mechanism with which to control housing tenure. I, therefore, find that the submitted obligation does not satisfactorily address affordable housing need.
25. The appellant indicates that public open space and children's play would be provided on site. Whilst there is no planning obligation in connection with it, there is no substantive evidence that it could not be secured by conditions.
26. There is an obligation relating to off-site sports pitch provision. However, the Council have suggested that such might not actually be required. Whether or not it would breach pooling restrictions as set out in the Community Infrastructure Levy Regulations 2010 ("the Regulations"), therefore, I do not attribute any weight to that obligation.
27. There is also an obligation relating to education. Whilst it is not expressed in the manner usually expected by the Council, there is no substantive evidence that it would be defective or fail to provide the required mitigation. However, there is no compelling evidence that there is a shortfall in education capacity in Tiverton and so the proposed contribution would not be required. The obligation is not, therefore, necessary so in accordance with the Regulations, I should not attach any weight to the contribution.
28. Even if I am wrong about the need for the sports provision and education obligations, they only serve to mitigate the impact of development and so would be neutral in the planning balance in any event.

*Material considerations*

29. The proposal would bring economic and social benefits through the provision of housing, including affordable housing (regardless of tenure), associated construction jobs and others from increased spending in the local economy. However, the site is outside the settlement limits defined in the development plan for Tiverton. It should, therefore, be considered as open countryside where CS Policy COR18 places a general restraint on development. The proposal conflicts with the development plan in this regard.
30. The harm caused by that Policy conflict is tempered by the fact that the proposal will provide additional housing at the largest settlement and main focus for growth in the Mid Devon district. That matter is a significant benefit

that receives substantial weight but would not outweigh the conflict with the development plan on a conventional planning balance.

31. There is dispute over whether the Council can demonstrate a 5 year supply of deliverable housing land. However, regardless of that, the Council has indicated that relevant policies for the supply of housing are out of date because they do not conform with the Framework. Therefore, the 'tilted balance' outlined in paragraph 11(d) of the Framework is engaged.
32. The contribution to housing supply clearly accords with those parts of the Framework that seek to boost significantly the supply of housing. If I were to accept the appellant's position that there was a shortfall in housing supply this would increase the weight that I would attribute to the housing supply benefits as it would indicate that some land should be released outside defined settlement limits in Tiverton in order for the development plan to deliver its housing objectives.
33. In the face of that, though, I note the Council's position that work has commenced on the largest development site at Tiverton. Even if there may be delays in meeting the housing supply targets, there is no conclusive evidence that the site will not now ultimately deliver the anticipated housing. This, in turn, tempers the weight I give to the benefits.
34. In any case, and even if I am wrong about housing delivery in Tiverton, I find that the Framework does not expect housing to be provided at the expense of inclusivity of access for all future users. The Framework should be read as a whole, and I find the shortcomings in accessibility to be sufficiently harmful to bring the proposal into conflict with it. There are also the uncertainties about drainage and my consequential findings that the proposal may give rise to an increase in off site flood risk. I, therefore, find that reading the Framework as a whole, this harm significantly and demonstrably outweighs the benefits outlined above. Accordingly, the proposal does not benefit from the presumption in favour of sustainable development outlined in paragraph 11 of the Framework.
35. My attention has been drawn to an appeal decision in Uffculme<sup>1</sup> where the Inspector found that the presumption in favour of sustainable development did apply. However, the circumstances and alleged harm, which was broadly related to concerns over the scale of the proposed development, appear to be different in that case and so I attribute it very limited weight.

### **Planning balance**

36. Whilst the proposal may conform with the broad spatial strategy outlined in the development plan, being adjacent to the existing urban area of Tiverton, it does not provide a suitable access for all future users. This, and the harm in respect of flood risk presents a conflict with the development plan. There are no compelling reasons that I should not attribute significant weight to those policy conflicts relevant to these issues.
37. There is also the harm arising from the conflict with the plan in terms of the site being outside the defined settlement limit, although that harm only receives limited weight by itself due to the lack of conformity of the development plan with the Framework in terms of the overall housing strategy.

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<sup>1</sup> APP/Y1138/W/15/3025120

38. Whilst it may not be necessary for any given proposal to comply to the letter with each and every policy in order for it to be in accordance with the development plan, I find that the harms I have identified bring the proposal into conflict with the plan taken as a whole.
39. The benefits that I have identified would not outweigh the conflict with the development plan. Given this and my findings in respect of the presumption in favour of sustainable development, this does not indicate a decision other than in accordance with the development plan.

**Conclusion**

40. For the reasons given above, the appeal is dismissed.

*M Bale*

INSPECTOR

Richborough Estates