



Appeal Decision

Hearing held on 13 May 2014

Site visit made on 13 May 2014

by Michael J Hetherington BSc(Hons) MA MRTPI MCIEEM

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

Decision date: 11 June 2014

Appeal Ref: APP/U1105/A/14/2211701

Land adjacent to Badger Close, Newton Poppleford, 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 Mr David White against the decision of East Devon District Council.
 - The application ref. 13/1490/MOUT, dated 5 July 2013, was refused by notice dated 21 October 2013.
 - The development proposed is: outline application for the development of up to 46 houses and associated infrastructure, including access and landscaping (all matters except access reserved).
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Decision

1. The appeal is dismissed.

Application for Costs

2. An application for costs was made by East Devon District Council against Mr David White. This application is the subject of a separate decision.

Preliminary Matters

3. The application form indicates that all matters of detail apart from access are reserved for future determination. However, the appellant confirmed at the hearing that significant weight should be attached to the 46 dwelling figure. My decision takes this into account.
4. It is not disputed that the Council is unable to demonstrate a five year housing land supply, as required by the National Planning Policy Framework (the Framework). It follows from paragraph 49 of the Framework that relevant policies for the supply of housing cannot be considered to be up-to-date. It is common ground that such policies include those provisions of policies S2, S3 and S5 of the East Devon Local Plan 1995 to 2011 (the LP) that relate to the supply of housing, including the definition of built-up area boundaries.
5. In such cases, paragraph 14 of the Framework states (unless material considerations indicate otherwise) that permission should be granted unless: any adverse impacts of doing so would significantly and demonstrably outweigh the benefits, when assessed against the policies in the Framework taken as a whole; or specific policies in the Framework indicate development should be restricted. Footnote 9 to paragraph 14 gives examples of such specific policies: these include those policies relating to sites protected under the Birds and

Habitats Directives and/or designated as Sites of Special Scientific Interest and land designated as an Area of Outstanding Natural Beauty (AONB). Paragraph 119 states that the presumption in favour of sustainable development does not apply where development requiring appropriate assessment under the Birds or Habitats Directives is being considered, planned or determined.

6. Subsequent to the Hearing, a planning obligation under Section 106 of the Act, signed by the appellant, East Devon District Council and Devon County Council, was submitted. It is the Council's view that this is sufficient to address the matters raised in its 2nd and 5th refusal reasons, which relate to nature conservation and to affordable housing provision, education and open space contributions respectively. In respect of the 5th refusal reason, I have no reason to disagree with the Council's assessment. I comment in more detail on the nature conservation contribution (2nd refusal reason) below.
7. Also following the Hearing, a further statement was received from the Council confirming that it issued a planning permission for residential development in outline at King Alfred Way, Newton Poppleford (ref. 13/0316/MOUT) on 16 May 2014.

Main Issues

8. The main issues in this appeal are:
 - (a) whether the appeal site represents a sustainable location for the proposed development; and
 - (b) the effect of the proposal on the area's character and appearance, bearing in mind the site's location in the East Devon AONB.

Reasons

Whether the appeal site represents a sustainable location for the proposed development

9. The village of Newton Poppleford is in the fourth tier of the settlement hierarchy contained in LP policies S2 and S3: the latter policy states that such 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 future development. Specific facilities within Newton Poppleford include a primary school, post office/convenience store, public house, restaurants, a village hall, church and playing fields. The village is served by several bus routes.
10. The Council notes that Newton Poppleford lacks employment opportunities, giving rise to the necessity to commute to work. It considers that the village should only accommodate a limited scale of development, as defined by its built-up area boundary. It contends that this view is consistent with the approach to sustainable development set out in the Framework, for example at paragraphs 30, 34 and 54. However, the Council's stance in this regard appears at odds with its recent decision to grant outline planning permission for the above-noted King Alfred Way development, which involves up to 40 houses and associated infrastructure (in outline) outside the village's built-up area boundary. The scale of that development is not dissimilar to that of the appeal scheme.

11. In recommending approval of the King Alfred Way proposal, the Council's case officer report assessed the scheme in terms of the three dimensions of sustainable development – economic, social and environmental – set out in the Framework (paragraph 7). In economic terms, the report noted the potential for new jobs to be created, both through construction work and through the increased numbers of residents in Newton Poppleford supporting local businesses. In social terms it referred to the provision of affordable housing and a new doctor's surgery: however, I was told at the Hearing that the planning obligation that has now been concluded does not require the surgery's provision. In environmental terms, it was considered (in summary) that significant harm to the AONB would not be caused.
12. Clearly, each proposal should be assessed on its own merits. However, the Council's economic arguments in respect of the King Alfred Way scheme are general in nature and, as such, could also apply to the present development. I consider the matter of affordable housing later on this decision: for the reasons set out below, I feel that the appeal scheme would provide benefits in that respect. I deal separately with the effects in respect of the AONB in the second main issue: however, it will be seen that my conclusion in that regard relates to the specific circumstances of the appeal development. The presence of the AONB does not, in itself, amount to a prohibition on new development. Bearing these factors in mind, and noting that relevant provisions of policy S3 including the definition of the built-up area boundary are deemed out of date, I consider that the Council has unable to satisfactorily demonstrate that, as a matter of principle, the village of Newton Poppleford is an unsustainable location for a residential development of the scale that is now proposed.
13. Nevertheless, I share some of the Council's concerns about the particular relationship of the appeal site to the above-noted services and facilities within the village. Newton Poppleford has a somewhat linear built form, and the appeal site is located towards the western end of the settlement. The majority of local services and facilities lie towards the middle or eastern end of the village. The main linkage is provided by the High Street: this is a busy road (the A3052) on which footways are intermittent or absent on the section between its junctions with Exmouth Road (which leads to the appeal site) and King Alfred Way. In particular, there is a length of road to the east of the Exmouth Road junction where footways are absent on both sides, with very little space for pedestrians to take refuge from the traffic. To my mind, this represents a seriously inadequate pedestrian linkage.
14. An alternative is provided by a footpath running to the south of the High Street between Farthings Lane and King Alfred Way. Although avoiding the potential conflicts on the above-noted section of the High Street, the footpath is unlit, partially unsurfaced and has little passive surveillance from neighbouring properties. It would be unlikely to be an attractive option after dark during the winter months. As such, it also represents a substandard route. Drawing these factors together, and notwithstanding the proximity of bus stops to the appeal site, it seems to me that the poor quality of the pedestrian linkages between the appeal site and the village's main services and facilities represents a serious failing. In my view, the resulting arrangements are likely to encourage movements by the private car within the village. This conflicts with LP policy TA1, which requires new development to be located so as to be accessible by pedestrians, cyclists and public transport and also well related to compatible land uses so as to reduce the need the need to travel.

15. It is accepted that the above-noted routes already serve residential properties towards the western end of the village. There is an extant planning permission for three dwellings on the part of the appeal site that lies within the built-up area boundary. However, the appeal scheme would be of a markedly greater scale than that proposal, with a consequently greater potential to generate vehicular movements. For these reasons, and notwithstanding my view that the Council has failed to demonstrate that the village of Newton Poppleford is in itself an unsustainable location for residential development of the scale now proposed, I conclude that the appeal site does not represent a sustainable location for the proposed development. While I note the outcome of an appeal decision at West Hill, Ottery St Mary mentioned by the appellant in relation of sustainability matters, my conclusion is based upon the particular nature of the access routes in Newton Poppleford, as described above.

Character and Appearance - Area of Outstanding Natural Beauty (AONB)

16. The appeal site lies within the East Devon AONB, a designation that 'washes over' the settlement of Newton Poppleford. The appellant has submitted a Landscape and Visual Impact Assessment (LVIA), which I have considered in the light of the Council's comments and my own observations.
17. The appeal site comprises pasture land to the rear of housing on Exmouth Road (the B3178) and Badger Close. The southern part of the site rises to an adjoining woodland to the east: further fields lie to the east of the northern part of the site. Site levels range from some 47m AOD in the north-eastern corner to some 67m AOD in the south-eastern corner.
18. Although the Council has not submitted a separate landscape and visual impact assessment, it raises a number of concerns about the appellant's LVIA. These relate particularly to the effect of the scheme when seen from six specific viewpoints – nos. 3, 4, 6, 10, 12 and 15 in the LVIA document. Viewpoint 3 relates to the southern part of the site, which is separated from the B3178 by a low hedge and fence. Existing screening is limited, and views across the site to the adjoining woodland are easily obtained. The resulting effect creates a distinctive and attractive rural setting on an important and well-used approach to the village. The LVIA's visual impact table notes that the appeal scheme would have an impact of major significance in the short and medium term from this viewpoint. I agree. However, the LVIA classes the resulting impact as moderately adverse in the short and medium term, reducing to 'slight adverse' (and of only moderate significance) 15 years following completion when an 'established native hedgerow largely restricts views of terraced housing'.
19. I share the Council's concern that these conclusions understate the likely impact of the scheme when seen from this point. As already noted, the open character of this part of the site plays an important role on this approach to the village. While the scheme's layout is yet to be finalised, it appears unlikely, given the intended number of dwellings, that there would be a substantial degree of separation between the nearest houses and the road. As such, and notwithstanding the intended introduction of a native hedgerow, the new houses would be seen from the B3178. The existing views from the road to the woodland would be lost or substantially reduced, and the expansion of the settlement's built form would be apparent. Given the presently open nature of views from this point, I consider that these factors would amount to a substantial adverse impact in the short, medium and long term.

20. I have similar concerns about the site's visibility from viewpoint 4, which relates to a view from Badger Close. This is less significant in terms of the overall setting of the village, as Badger Close is a cul-de-sac that is less well-used than the B3178. However, the view is important to the setting of this residential development – the layout of which acts to create a 'framed' view from the play area across the appeal site to the above-noted woodland. This view would be lost or substantially reduced. Indeed, the LVIA accepts that the houses would remain visible in the long term, albeit 'filtered' by proposed native boundary planting. Bearing in mind that the 'framed' view across the site towards the woodland is a characteristic and attractive feature of Badger Close, I feel that these factors would also result in a substantial adverse impact in the short, medium and long term in respect of this viewpoint.
21. In respect of close views of the site, the Council also raises concerns about viewpoint 6, where an access is proposed from the B3178. However, the appeal site's road frontage is restricted at this point, and only glimpsed views of the new houses would be possible. I therefore have no reason to disagree with the LVIA's assessment that there would be a moderate adverse impact in the short and medium term, reducing to a slight adverse impact in the longer term. In addition, it seems to me that the resulting effect (in terms of views from the B3178) would not be materially more harmful than that likely to result from the approved housing scheme, which – although markedly smaller than the appeal proposal – would use the same access point and would also result in built development being visible from the road at this point.
22. I also disagree with the Council's comments about the scheme's likely effects in longer distance views – specifically from viewpoints 10, 12 and 15, which lie to the north, west and east of the village respectively. Viewpoints 12 and 15 are well separated from the village. My observations support the LVIA's assessment that at completion the new housing would be 'barely visible' from viewpoint 12. While part of the development might indeed be visible from viewpoint 15 (in contrast to the LVIA's assessment that there would be 'no discernible change to [the] view'), much of the new housing would be screened by the woodland referred to above, while the remainder would be so far from the viewpoint as to not appear as a significant or harmful feature in the wider landscape. In both cases, the impact would be negligible.
23. From viewpoint 10, which is closer to the site than nos. 12 and 15, the lower parts of the appeal site are largely concealed by intervening houses and vegetation. While it is likely that the upper part of the development would be seen from this position, the extent of such visibility would depend upon the scheme's detailed layout – notably how far up the slope the dwellings were to be constructed – and the intended building heights. These details remain to be finalised. Bearing in mind the varied levels of the appeal site, I see no reason why, if matters were otherwise acceptable, a scheme could not be put in place that would minimise visual intrusion from this viewpoint. Bearing in mind that this viewpoint represents glimpsed views only, and notwithstanding the presence of nearby public footpaths, I therefore consider that the scheme – subject to its detailed layout and design – would have, at worst, a slight adverse impact when seen from this location.
24. At paragraph 115, the Framework states that great weight should be given to conserving landscape and scenic beauty in AONBs, which (along with National Parks and the Broads) have the highest status of protection in relation to

landscape and scenic beauty. Paragraph 116 explains that planning permission should be refused for major developments in these designated areas except in exceptional circumstances and where it can be demonstrated they are in the public interest. Consideration of such applications should include an assessment of (in summary): the need for the development; the cost of, and scope for, developing elsewhere outside the designated area, or meeting the need for it in some other way; and any detrimental effect on the environment, the landscape and recreational opportunities, and the extent to which that could be moderated.

25. At paragraph ref. 8-005-20140306, the national Planning Practice Guidance (PPG) states that the matter of whether a proposed development in these designated areas should be treated as a major development, to which the policy in paragraph 116 of the Framework applies, will be a matter for the relevant decision taker, taking into account the proposal in question and the local context. It is the Council's view that the appeal scheme comprises a major development in these terms. It was stated at the Hearing that a development of the size of the appeal scheme would be approximately 5% of the size of the existing settlement of Newton Poppleford. In the context of the village, and in the light of the scheme's visibility from a main approach road as described in respect of viewpoint 3, this seems to me to be a significant addition. Accordingly, I agree with the Council's assessment of this matter. The requirements of paragraph 116 of the Framework therefore apply.
26. It was stated at the Hearing that the Council took a different view when assessing the King Alfred Way scheme, which as already noted would be of a similar size to that now proposed. Clearly, that is a matter for the Council. However, I note that, unlike the present scheme, the King Alfred Way does not adjoin a main approach road into the village: it also differs from the appeal site in terms of its site levels and landform. While the appellant refers to an appeal decision in Tetbury within the Cotswold AONB, where a 39 dwelling scheme was deemed to *not* comprise major development, my assessment is based upon the local context of the present proposal, as is required by the PPG.
27. Drawing these matters together, I consider that the appeal scheme would result in a substantial adverse impact in the short, medium and long term in respect of viewpoints 3 and 4. The first of these viewpoints is of particular significance, as it relates to an important approach into the village. As such, I conclude that the area's character and appearance would be unacceptably harmed, to the detriment of the natural beauty of the AONB. This conflicts with relevant LP policies, notably policies D1 and EN1.

Other Matters

Nature Conservation

28. The appeal site lies within 700m of the East Devon Pebblebed Heaths Special Area of Conservation and Special Protection Area (also designated as a Site of Special Scientific Interest). Evidence prepared for the South-east Devon European Site Mitigation Strategy (SEDESMS) indicates that significant effects on the nature conservation interest of this and other nearby European sites are likely as a result of recreational pressures arising from new residential development, including effects arising from the disturbance of breeding birds.

29. Shortly before the Hearing, updated comments from Natural England (NE) were submitted, accompanied by a covering note from the Council. NE continues to object to the proposal on the grounds of uncertainty about the likely delivery of a mechanism to avoid adverse effects on the integrity of these sites. However, the Council's position is that sufficient progress has been made through work on the SEDESMS to overcome NE's concerns. The Council considers, and the appellant agrees, that subject to the payment of a contribution in line with the SEDESMS, there should be no reason to doubt that the funds collected would be spent appropriately on mitigation measures identified as being necessary by the appropriate assessment undertaken by the Council. Provision for such a contribution is secured in the planning obligation that has now been submitted.
30. These mitigation strategies are set out in the SEDESMS. Although the relevant requirements have yet to be incorporated into either its development plan or a supplementary planning document, the Council stated at the Hearing that contributions have been received in respect of other developments in the SEDESMS area. Specific sites to accommodate Suitable Alternative Natural Greenspaces (SANGs) have been identified and a delivery officer is to be appointed. I am satisfied that significant progress has therefore been made in implementing the SEDESMS arrangements. However, NE has not commented on these more recent activities in the context of the present appeal and its objection remains outstanding. Were the proposed development otherwise acceptable, I would seek clarification about NE's position in the light of this updated information. Nevertheless, and in any event, this matter does not overcome my conclusions on the two main issues above.

Meeting Housing Needs

31. As noted above, there is an accepted shortfall in the Council's housing land supply. The appeal scheme would contribute towards meeting this need, representing a positive benefit. The scheme would also provide affordable housing, as specified in the submitted planning obligation. Although the affordable housing component of the King Alfred Way development would meet most of the local need identified in the most recent Housing Needs Assessment for Newton Poppleford, this need has only been assessed for the period to 2016. While local needs after 2016 have not been calculated, I have seen no evidence to suggest that there would be no need for affordable housing in the village after that date. Furthermore, there is also evidence of a district-wide shortfall in affordable housing provision. To my mind, the affordable homes provided by the appeal proposal would therefore also represent a positive benefit. These factors weigh in favour of the proposal.

Overall Conclusion

32. Paragraph 119 of the Framework states that the presumption in favour of sustainable development does not apply where development requiring appropriate assessment under the Birds or Habitats Directives is being considered, planned or determined. Given that an appropriate assessment has been undertaken in the present case, and notwithstanding my comments on the progress that has been made in respect of implementing the SEDESMS arrangements, the presumption does not therefore apply in this appeal.
33. For the reasons that I have set out, I consider that the appeal scheme represents major development in an AONB. As already discussed, paragraph 116 of the Framework requires that planning permission should therefore be

refused except in exceptional circumstances and where it can be demonstrated that the scheme is in the public interest. The development's contributions to meeting general and affordable housing needs would, as noted above, represent positive benefits. However, the AONB does not extend over the whole of East Devon District and, as such, there are likely to be opportunities to meet District-wide needs in locations that do not adversely affect the AONB.

34. A strategy broadly along these lines is proposed in the replacement Local Plan (the New East Devon Local Plan), which has recently been subject to examination. However, given the interim findings of the Inspector, little weight can be attached to the housing targets contained in that document. Furthermore, concerns were raised by the Inspector regarding the Council's assessment of the ability of small towns and villages to accommodate growth.
35. Nevertheless, bearing in mind, first, that it is an underlying principle of the Framework that patterns of growth should be actively managed to make the fullest possible use of public transport, walking and cycling, and focus significant development in locations which are or can be made sustainable (paragraph 17) and, second, that the Framework attaches great weight to conserving landscape and scenic beauty in AONBs (paragraph 115), I consider that my conclusions on the two main issues in this appeal are sufficient to overcome the advantages that would result in respect of the provision of general and affordable housing. The exceptional circumstances that are required by paragraph 116 of the Framework have not therefore been demonstrated.
36. For these reasons, and having regard to all other matters raised, I conclude that the appeal should not succeed.

M J Hetherington

INSPECTOR

APPEARANCES

FOR THE APPELLANT:

Mr P Grubb BSc(Hons) MSc MRTPI	Smiths Gore
Mr N Moorhouse RIBA	Architect
Mr D White	Appellant

FOR THE LOCAL PLANNING AUTHORITY:

Mr G Stephenson MRTPI	East Devon District Council
Mr J Brown BSc(Hons) MA FRGS MRTPI	East Devon District Council

DOCUMENTS TABLED AT THE HEARING

Document 1	Draft Planning Obligation.
Document 2	South-east Devon European Site Mitigation Strategy (SEDEMS).
Document 3	Letter from the New East Devon Local Plan Inspector to East Devon District Council dated 31 March 2014.
Document 4	E-mail bundle tabled in support of costs application by East Devon District Council.
Document 5	Letter from Curtis Whiteford Crocker to East Devon District Council dated 10 January 2014 tabled in support of the appellant's costs rebuttal.

DOCUMENTS SUBMITTED AFTER THE HEARING

Document 6	Final version of Planning Obligation.
Document 7	Council update on King Alfred Way planning permission.