



Appeal Decision

Hearing held on 9 May 2014

Site visit made on 9 May 2014

by Colin Cresswell BSc (Hons) MA MBA MRTPI

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

Decision date: 15 July 2014

Appeal Ref: APP/Y1138/A/13/2209264

Durban Works and Former West Country Private Ambulance, South View Road, Willand, Cullompton EX15 2RU.

- 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 West of England Developments (Taunton) Ltd; Growen Estates Ltd against the decision of Mid Devon District Council.
 - The application Ref 13/00304/MOUT, dated 26 February 2013, was refused by notice dated 19 September 2013.
 - The development proposed is demolition of existing buildings, site clearance, remediation and residential development.
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Decision

1. The appeal is dismissed.

Procedural Matters

2. The application was made in outline, with all details reserved for future determination. The original application proposed 42 dwellings but this was subsequently revised to 36 dwellings, as reflected in the Council's refusal notice. I have therefore determined this appeal on the basis that a development of 36 dwellings is being proposed.
3. The *Local Plan Part 3 Development Management Policies* (the Local Plan Part 3) was adopted on 30 October 2013. As a consequence, Policy DM/2 has been renamed DM2 and Policy DM/15 has been renamed DM14.
4. I have not had regard to Policy S6 of the *Mid Devon Local Plan* within this decision as it is no longer extant.
5. At the Hearing, the appellant confirmed that the financial information which is marked within the appeal documentation as 'confidential' is now within the public domain.
6. The Council has confirmed that the *Community Infrastructure Levy Charging Schedule* was not implemented on 1 June 2014 as originally anticipated.

Applications for Costs

7. Both main parties have applied for costs. These applications are the subject of separate decisions.

Background

8. The appeal site is an industrial area surrounded on three sides by residential development. It contains a variety of storage buildings and commercial premises, including some which were in active use at the time of my site visit. A survey has established evidence of contamination which would require remediation works if the site were to be developed in accordance with the appeal proposal. The appellant argues that this has significant implications for the viability of the development.
9. The appeal proposal for 36 dwellings is accompanied by an indicative site layout plan and a signed unilateral undertaking. Amongst other things, the development would potentially provide 6 on-site affordable homes, a £40,000 contribution towards off-site affordable housing provision, educational contributions and a £36,000 contribution towards off-site play space if none were to be provided on-site at reserved matters stage.

Main Issues

10. The main issues are:

- whether the proposal makes adequate provision for affordable housing, having particular regard to the viability of development.
- the effect of the proposal on the character and appearance of the area, having particular regard to site density.
- whether the proposal would provide adequate living conditions for future occupiers in respect of the provision of outdoor space.

Reasons

Affordable housing and viability

11. Policy AL/DE/3 of the *Allocations and Infrastructure Development Plan Document* (the Local Plan Part 2) establishes a target of 35% affordable housing on residential developments of over 2 dwellings. The policy states that affordable housing is a high priority but if evidence is submitted which proves that the target is unachievable a reduced level of provision will be negotiated. According to the Council, the proposed on-site and off-site contributions would amount to 18% affordable housing provision and would therefore represent around half of the target figure. The appellant's principal justification is that the site is contaminated and that necessary remediation costs would make the development unviable if the contribution were to be any higher.
12. A spreadsheet has been provided by the appellant showing estimates of the costs and returns of the proposed development. I understand that this was the subject of negotiations between the parties during the application process and that some revisions to the figures were agreed. Although the Council accept the principle of a 20% developer profit, it was argued at the Hearing that various components of the spreadsheet are inaccurate, including build costs and sales figures, and that there is significantly more profit in the development than indicated. Whilst I find the evidence in this regard to be largely inconclusive, it is nonetheless clear that the £355,000 cost of remediation is a very significant variable in the appellant's justification for a 18% affordable housing contribution.

13. A report by T&P Regeneration Ltd was submitted with the application which found evidence of contamination within the site and recommends potential remediation work based on further investigation. The estimate of £355,000 within the spreadsheet was provided by Elite and was considered to be a reasonable estimate within the Committee Report dated 18 September 2013. Nonetheless, it emerged during the Hearing that this estimate reflects the uncertainties of the report by T&P Regeneration Ltd in that further site investigations would be required to refine the estimate further.
14. During the Hearing, the appellant indicated that a further report had been prepared to justify the original remediation costs. I was unable to accept this written evidence as the Council would not have been given an opportunity to have considered its implications in any depth, even with a lengthy adjournment. However, the appellant verbally indicated that it shows total remediation costs to be £551,000 which would represent a £467,000 cost within the spreadsheet after allowances are made for double counting. Whilst there was some verbal breakdown of these figures, I can only give these costs limited weight in the absence of a detailed written justification. Nonetheless, I understand that the latest estimates would also require additional site investigation work to be carried before more precise costs can be established. As such, there would have remained a degree of uncertainty about the likely costs of remediation even if I had accepted the written evidence.
15. There are very large differences between the remediation costs that were anticipated during the application process and those which were discussed at the Hearing. Based on the evidence before me, the reasons for this are not entirely clear. Nor is it clear how any additional remediation costs could be accounted for within the spreadsheet which, if accurate in all other respects, already indicates tight margins. These matters clearly have a significant impact on the viability of the development and hence the level of affordable housing which the Council could reasonably aim to negotiate.
16. With regard to contaminated land, the *Planning Practice Guidance* indicates that information sought should be proportionate to the decision at outline stage. In this particular case, the appeal site has potential to deliver a significant quantity of affordable housing which the development plan states has a high priority. Therefore, clear evidence needs to be provided to justify an affordable housing contribution significantly below the 35% target. Although the appellant goes some way to providing this evidence, there remain doubts over the accuracy of the remediation costs and whether any follow up studies are necessary to refine them further. While there may be a limit as to how precisely remediation costs can be estimated at outline stage, there nonetheless remains further scope for the appellant to justify the figures quoted within the spreadsheet.
17. I therefore conclude on this issue that the proposal does not make adequate provision for affordable housing having regard to the viability of the scheme. There is conflict with policy AL/DE/3 of the Local Plan Part 2 because there is inadequate justification for providing a level of affordable housing that is significantly below the specified target. There is also conflict with the aim of the *National Planning Policy Framework* (the Framework) to ensure that the objectively assessed needs for market and affordable housing are met. As I am dismissing the appeal for these reasons, I have not had further regard to the unilateral undertaking submitted by the appellant.

Character and appearance

18. Although there are no design details, the main parties agree that the scheme would result in a residential density of approximately 45 dwellings per hectare. The Council argue that this would be out of character with the surrounding area where the density of housing is typically 30 to 40 dwellings per hectare. During the site visit, I saw that the surrounding development has a generally mixed architectural appearance with semi-detached dwellings and terraces prevailing.
19. The appeal site is most visually exposed along its northern boundary, which forms the main street frontage with South View Road. From here, it is possible to look directly into the interior of the site. This is likely to remain the case even if future development were to incorporate further screening along this frontage, especially as a new road junction would have to be formed. Nonetheless, the site is directly opposite a large industrial estate and therefore the street scene along this particular part of South View Road is not dominated by any particular dwelling types or densities. As such, the proposed density would be acceptable, in visual terms, when seen from this perspective.
20. Although the site cannot be accessed from other streets, it is visible from some of the surrounding housing. Whilst there are direct views into the rear of the site from a hard surfaced area in Fir Close, I understand that this area has extant permission for residential development. Nothing has been put forward to suggest this permission will not be implemented and the resulting development would effectively screen views into the appeal site from this part of Fir Close. However, even if it were not developed as anticipated, it would be possible for screening to be improved along this boundary of the appeal site. Whilst the site can be seen from South View Close to the north-east and Somerlea to the south-west, it is mostly visible to the rear of existing development where it is not particularly prominent.
21. Therefore, whilst the adjoining residential areas may be relatively spacious, development of the appeal site for housing would not necessarily undermine the street scene within these localities. The indicative plan suggests that the density being proposed may result in some terracing or flats within the site which would not necessarily reflect that of neighbouring housing. However, as there is already a mix of architectural styles in the vicinity, this would not automatically be harmful provided any new development was designed to respect the character of the surrounding areas.
22. The implications of the proposed density are likely to be most apparent within the site itself, which would create its own sense of place. During the Hearing, it was argued by the Council that it would be very difficult to construct a scheme at this density which would also result in a high quality of design. It was also suggested that a layout based on the indicative plan would not comply with the policies of the *Provision of Parking in New Development Supplementary Planning Document* (the Parking SPD) and that any attempts to alter the layout to overcome this would result in an unacceptably cramped form of development incompatible with policy.
23. However, density is only one variable affecting character and appearance and there is little which conclusively indicates that a good quality development could not be achieved at this density, despite the implications of the Parking

SPD. Furthermore, the Council would be able to consider the suitability of any reserved matters proposal on its individual merits.

24. I therefore conclude on this issue that the proposal would have an acceptable effect on the character and appearance of the area. In terms of this issue, there would be no conflict with policies DM2 and DM14 of the Local Plan Part 3 which both aim to achieve high quality design. There would also be no conflict with the design objectives of the Framework in this particular regard.

Provision of outdoor space

25. The Council's concerns regarding private garden space are also associated with the proposed density and, to a certain extent, cover similar arguments to those already addressed in the first issue, above. The indicative plan shows garden sizes of between 30 and 40 square metres with a negligible amount of public open space also being provided. During the Hearing, the appellant emphasised that this plan is only an approximation of one potential design solution and that some properties may be designed without private garden space whilst others may have more generous plots.
26. Although the Council did not refer to any particular size standards, it was argued that the development would be likely to result in gardens that would be too restricted in size to provide good quality private amenity space, especially any that were north facing. However, as with character and appearance, a great deal depends on the nature of the design submitted at reserved matters stage. Even if outline permission for 36 dwellings were to be granted, the Council would have grounds to refuse any detailed proposals if they would not result in adequate levels of private outdoor space being provided in conflict with development plan policies. However, at this stage, there is little before me to conclusively show that it would be impossible to provide an adequate level of private amenity space within the site.
27. Paragraph 3 of *The Provision and Funding of Open Space through Development Supplementary Planning Guidance* (the Open Space SPD) indicates that for schemes of below 50 dwellings it is often impractical to provide on-site open space, with large numbers of very small provisions resulting in difficulties with maintenance and other issues. I understand that the proposed financial contribution was agreed with officers as part of negotiations which took place during the application process. However, the Parish Council, in particular, question how this money could be spent in practice.
28. During the site visit I saw a nearby park which was approximately 5-10 minutes' walk from the appeal site. The Parish Council indicated that much of the visible open space here is occupied by a football club and that a play area has already been provided. It was also argued that there is a pressure on open space within Willand as a result of previous developments and that many areas are small, badly maintained and subject to fly tipping. However, the proposed financial contribution, especially if it were to be pooled with other contributions, has the potential to provide better quality open space for the local community than that which is likely to be achievable within the site itself for the reasons anticipated in the Open Space SPD.
29. I therefore conclude that the proposal would provide adequate living conditions for future occupiers in respect of the provision of outdoor space. There would be no conflict with policies DM2 and DM14 of the Local Plan Part 3 with regard

to this issue. There would also be no conflict with the core principle of the Framework to seek a good standard of amenity for all existing and future occupants of land and buildings.

Other Matters

30. During the Hearing, concerns were raised by the Parish Council that the proposed development would lead to the loss of employment land. Whilst the Committee Report of 18 September 2013 indicates an excess capacity on nearby industrial estates, I heard that the site is currently occupied by a number of businesses that could not necessarily afford to rent units on modern estates or would be incompatible in terms of their use. I also heard that plans to relocate the garage had fallen through and that the business was likely to cease trading in the event of the site being developed. However, whilst these may be legitimate concerns, the evidence before me in this appeal is not sufficiently conclusive to show that the proposal would conflict with the development plan in this regard.

Conclusion

31. Although I have found that the proposal would be acceptable in terms of its effect on character and appearance and living conditions, this is not sufficient to outweigh my concerns regarding affordable housing provision. For the above reasons, and having regard to all other matters raised, I therefore conclude that the appeal should be dismissed.

Colin Cresswell

INSPECTOR

Richborough Estates

APPEARANCES

FOR THE APPELLANT:

Peter Smith	Peter Smith Design Services
Andy Lehner	West of England Developments
Ewan Tweedie	Tweedie Evans Consulting

FOR THE LOCAL PLANNING AUTHORITY:

Thea Billeter	Mid Devon District Council
Simon Newcombe	Mid Devon District Council
Councillor Linda Holloway	Mid Devon District Council
Councillor Diane Brandon	Mid Devon District Council
Councillor Peter Heal	Mid Devon District Council
Councillor Ray Stanley	Mid Devon District Council

INTERESTED PARTIES:

Councillor Barry Warren	Willand Parish Council
Tracy Land	K & S Auto Services
Jane Bolle-Jones	
Eddie Dennis	

DOCUMENTS SUBMITTED FOLLOWING THE HEARING:

1. Application for costs on behalf of Appellant, 11 May 2014
2. Application for costs on behalf of the Council, 12 May 2014
3. Council's response to application for costs, 15 May 2014
4. Appellant's response to application for costs, 16 May 2014
5. Email from the Council regarding CIL Charging Schedule, 29 May 2014