



Appeal Decision

Hearing held on 8 October 2014

Site visit made on 8 October 2014

by Joanne Jones BSc(Hons) MA MRTPI

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

Decision date: 11 November 2014

Appeal Ref: APP/H3320/A/14/2221931

Land off Hopcott Road, Minehead, Somerset

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a failure to give notice within the prescribed period of a decision on an application for outline planning permission.
 - The appeal is made by the Williams Partnership against West Somerset Council.
 - The application Ref 3/21/13/120, is dated 13 December 2013.
 - The development proposed is an outline application (with all matters except access reserved) for residential development up to 71 dwellings (including 35% affordable housing), access, landscaping and associated works.
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Decision

1. The appeal is allowed and outline planning permission, with all matters except access reserved, is granted for residential development up to 71 dwellings (including 35% affordable housing), access, landscaping and associated works at Land off Hopcott Road, Minehead, Somerset in accordance with the terms of the application, Ref 3/21/13/120, dated 13 December 2013, and the plans submitted with it, subject to the attached schedule of conditions.

Procedural Matters

2. A Statement of Common Ground (SCG), dated September 2014, sets out the issues that are not in dispute between the main parties, which can be summarised as: housing land supply, ecological impact, vehicular access, foul and surface water drainage and flood risk, landscape impact, residential amenity, location of development and the heads of terms under a S106 Planning Obligation. I have taken account of this document in determining the appeal.
3. The Council sets out in its 'Statement of Case' that at the Committee meeting held on the 31 July 2014, it was resolved that the areas of dispute for the appeal were the detail of the S106 and the lack of a master plan for the wider site at Hopcott Road.
4. The proposal is accompanied by two planning obligations in the form of a deed of agreement under the provisions of Section 106 of the Town and Country Planning Act 1990 (as amended) between, firstly, the appellant and West Somerset Council (Doc 3) and, secondly, between the appellant and Somerset County Council (Doc 4). Planning obligations are a material consideration and this is a matter to which I will return later in this decision.

5. This is an outline application with all matters other than access reserved for future consideration. However, an illustrative master plan, including some landscaping detail has been provided. Nevertheless, the application form seeks approval of access only at the outline stage, I have considered the appeal on this basis, with the master plan being illustrative only.

Application for costs

6. At the Hearing an application for costs was made by the Williams Partnership against West Somerset Council. This application is the subject of a separate Decision.

Main Issues

7. The main issues in this case are:
 - Whether, without a master plan for the wider site at Hopcott Road, the appeal proposal would prejudice the development of the area in a planned and sustainable manner.
 - Whether the particular contributions sought in respect of affordable housing, community facilities, and travel and transport facilities would be necessary to enable the development to go ahead.

Reasons

Background and policy framework

8. The appeal site is located on the southern edge of the town of Minehead, adjacent to the A39 and comprises approximately 2.1 hectares of agricultural land, predominately used for the grazing of sheep. The land slopes upwards in a southerly direction, resulting in a slope of approximately 1:8. Due to the local topography the site is prominent in views from the north, east and west, which includes views from Exmoor National Park.
9. The Council rely to some extent on saved Policies SP/1 and SP/5 of the West Somerset District Local Plan 2006 (Local Plan) in opposing the proposed development. Both Policies SP/1 and SP/5 set out the Council's approach to sustainable development in terms of locational strategy and development proposals. In this respect the policies are relevant and are consistent with current national policy in the Framework, which has at its heart a presumption in favour of sustainable development.
10. However, the Council does not have a five year housing land supply and, in light of paragraph 49 of the National Planning Policy Framework (the Framework), this tempers the weight that can be attached to these Local Plan Policies.
11. The Council also refers to the emerging West Somerset Local Plan 2012 – 2032 (ELP), in particular Policy MD2 (Doc 01). The appeal site forms part of MD2, which is a key strategic development allocation at Minehead/Alcombe. The Policy states that a mixed use development will be delivered subject to an indicative master plan incorporating approximately 750 dwellings.
12. The Framework states (paragraph 216) that decision makers may also give weight to relevant policies in emerging plans according to three criteria, the first of which relates to the stage of preparation. The third addresses the

consistency with national policy, with housing clearly playing a key role. Given the early stage in the preparation of the ELP and the fact that it has not been examined by an Inspector, I can therefore give little weight to the ELP.

13. Where a Council cannot demonstrate a five year housing land supply, its Policies for the supply of housing should not be considered up to date. In such cases, the Framework sets out a presumption in favour of sustainable development unless any adverse impacts of doing so would significantly and demonstrably outweigh the benefits. Sustainability is not just about distance to services. The Framework advises at paragraph 7 that there are three dimensions to sustainability: economic, social and environmental.

Master plan

14. The Council considered that the appeal proposal, without a master plan for the wider Hopcott Area, would prejudice the planned and sustainable development of the wider site allocation.
15. Whilst I sympathise with the Council's desire to 'master plan' the entire site allocation, the appeal proposal would represent a relatively small part of the housing numbers, at approximately 9.5%. There is also no development plan policy requirement to undertake such an exercise.
16. To my mind it would be unreasonable to expect a developer with a small interest in the wider site to delay any reserved matter submissions until such a time that other developers with an interest in the land come together to formulate a master plan, particularly where the Council has an under-supply of housing. Furthermore, the appellant has already demonstrated that play facilities and open space can be accommodated within his site and highway linkages can be made¹. A concept plan (Doc 02) was also provided by Richard Stevens (on behalf of LandBank South West Ltd) to show how accessibility could be achieved through the wider allocation area.
17. Assessing whether or not the proposals would amount to sustainable development, the Framework at paragraph 7 requires consideration of the three dimensions to this. With regard to the economic role, there was no dispute that the construction of new housing would create jobs and support growth.
18. New housing, and 35% affordable housing in particular, would contribute to the social role in the Framework. Moreover, subject to conditions and the provisions in the S106 obligation, the scheme would include contributions towards community facilities and extend the length of cycle paths. Finally, the site is located close to the existing services within Minehead, including schools, shops, pubs and community facilities and it is probable that these would be better supported, and so flourish, or at least be less likely to close through lack of patronage.
19. Turning to the environmental role, whilst the local landscape would undoubtedly change, including views of the site from the National Park, the extent of this would depend in part on the quality of the details to be submitted at the reserved matters stage. However, I find no reason why the proposed development should not achieve a high quality design. The Ecological report submitted by the appellant also demonstrates that that adequate measures can

¹ Illustrative Masterplan Drawing No. 3

be put in place to ensure that there would not be a net loss in biodiversity, and these measures, as well as any ecological enhancements, could be controlled by conditions.

20. Accordingly, I do not consider that the wider site allocation, promoted in the ELP, would be prejudiced by allowing the proposed development to go ahead without a wider site master plan. The development would be sustainable in isolation and the evidence submitted as part of this appeal highlights that suitable linkages could be made to join together further housing developments should they come forward. The use of conditions would also ensure that the Council could make sure that the development achieved high quality design.
21. To conclude on this main issue, the proposed development is therefore in accordance with Local Plan Policies SP1, SP/5, BD/1 and BD/2 and the Framework. These require, amongst other things, that developments function well and add to the overall quality of the area, not just for the short term but over the lifetime of the development.

S106 contributions

22. The appeal was accompanied by two deeds of agreement under the provisions of Section 106 to the Town and Country Planning Act 1990 (as amended). Policy PO/1 of the Local Plan sets out the Council's broad policy basis for Section 106 obligations. The policy is supported by a supplementary planning document regarding planning obligations². In essence, the obligations are intended to meet a range of local policy objectives, with the aim of overcoming, or substantially mitigating the impact of the development in a number of respects.
23. Consideration of the obligation must be undertaken in the light of the advice at paragraph 204 of the Framework and the statutory requirements of Regulation 122 of the Community Infrastructure Levy Regulations. These require that planning obligations should only be accepted where they meet the following tests: they are necessary to make the development acceptable in planning terms; are directly related to the development; and are fairly and reasonably related in scale and kind to it. Both obligations are conditional upon the appeal succeeding and planning permission being granted.
24. The shortfall in housing delivery within the District has also resulted in an under provision of affordable housing to meet an identified need within the area. The obligation with West Somerset Council would secure the on-site provision of 35% affordable housing units, in accordance with Local Plan policy H/4 and the associated SPD.
25. It is argued that the contributions offered to improve community facilities within Minehead would be greater than are required to mitigate the direct consequences of the proposed development. Furthermore, that they would be required to ameliorate a current situation, rather than one which would arise as a result of permitting this appeal scheme. However, in the light of the discussions heard at the Hearing, I consider that given that much of the accommodation would be family housing, that such a contribution would be necessary to meet the additional need for community facilities arising from the development.

² West Somerset Council Planning Obligations Supplementary Planning Document December 2009 (SPD)

26. Accessibility to the surrounding area for future residents by means other than the private car would be important in terms of the sustainability of the site. To this end, the obligation with Somerset County Council would secure the provision of bus stops, cycle path, pedestrian/cycle crossing and a travel plan. All those obligations would help promote the use of public transport, reducing reliance on the private car.
27. Objections have been raised about the impact of the proposed development on the local road network and road safety. The Highway Authority has not objected to the proposal subject to a new vehicular access. The S106 Obligation would secure such an access.
28. Lastly, the obligation would secure the payment to the County Council of what is, in effect, security against the possibility of a failure to achieve the targets, referred to in the Travel Plan submitted with application. Again, that arrangement would be necessary to help promote the use of more sustainable methods of transport.
29. For the reasons given, I consider that the contributions and obligations secured by the S106 agreements would meet the Framework tests and comply with the Community Infrastructure Levy Regulations.

Other Matters

Living Conditions

30. A significant matter of local concern is the potential impact of the development proposed on the living conditions of those occupiers residing opposite the proposed site access, as well as the occupiers of properties abutting the western site boundary, in terms of visual impact and light intrusion.
31. Whilst the existing verdant outlook of those with views across the appeal site would clearly change were the development proposed to go ahead, it is well established that there is no right to a view in terms of planning legislation. Moreover, change does not, necessarily, equate to material harm. Were the appeal to succeed, it would be for the Council, in the first instance, to ensure that there would be sufficient separation between properties to ensure that the new dwellings would not be seen as unduly dominant or overbearing.
32. The illustrative masterplan drawing demonstrates that the access to the appeal site would be opposite the existing houses. As I saw on my site visit this arrangement would be no different to the relationship that exists between dwellings and estate roads in the surrounding area. Accordingly, I am satisfied that the living conditions of those residents could be adequately protected through, for example, landscaping.

Safety and Free Flow of Traffic

33. Although not a matter pursued by the Council, local residents remained very concerned in relation to the safety and free flow of traffic on this part of the A39 (Hopcott Road) a major route into and out of Minehead.
34. The appellant has worked with the Highway Authority to design a suitable junction with Hopcott Road, which also includes contributions and arrangements secured by the planning obligation. Accordingly, the Highway

Authority is satisfied that the proposal would not result in a significant impact on the surrounding highway network.

35. I recognise that there may well be problems with congestion and speeding in the locality, particularly during the morning and evening peak hours. Indeed, the trip data used in the transport evidence of the appellant is based on the peak periods in order to present robust 'worst-case' scenarios. However, the technical evidence before me is that this part of the highway network is neither at, nor near capacity; that there is not an existing accident problem on this part of Hopcott Road; and that the proposed site access would be able to operate within capacity, with no significant queuing. Those conclusions were unchallenged by any objective evidence to the contrary. In the absence of any substantiated evidence to support the concerns of local residents, and given the stated position of the Highway Authority, I'm not persuaded that the development proposed would be likely to result in material harm to the safety or free flow of traffic in the area.

Flooding

36. Other local concerns related to flooding. The Flood Risk Assessment (FRA) submitted with the planning application confirms that the appeal site is located within Flood Zone 1 and is not at risk of reservoir flooding.
37. The FRA confirms that, in order to mitigate flood risk, the design of the new development should include sustainable drainage techniques. Indeed, the proposed drainage strategy is outlined in the FRA, which provides for attenuated run-off rates. All these are matters that could be secured by condition were the appeal to succeed. On that basis, I am satisfied that the development proposed would not be at risk from flooding and neither would it increase the risk of flooding elsewhere.

Overall Conclusion

38. The Framework sets out a presumption in favour of sustainable development, to which there are three, mutually dependent dimensions: economic, social and environmental. For the reasons set out above, I consider that all three dimensions would be met by the appeal scheme without the requirement for a wider master plan. The proposal would also make a strategic contribution towards addressing the shortfall of housing, and especially affordable housing, within the District of West Somerset.
39. There is no doubt that there is strong local feeling about this proposal, as reflected by the volume of objections received at every stage and the vocal opposition demonstrated at the Hearing itself. I recognise that this decision will be disappointing for local residents and am mindful, in this regard, of the Government's 'localism' agenda. However, even under 'localism', the views of local residents, very important though they are, must be balanced against other considerations. The starting point in this case is the development plan. In coming to my conclusions on the issues that have been raised, I have taken full and careful account of all the representations that have been made, which I have balanced against the provisions of the development plan and the Framework.

40. For the reasons set out above, I find no conflict with the development plan, nor any other material harm. On balance, therefore, the evidence in this case has led me to conclude that the appeal should be allowed.

Conditions

41. The Council has put forward a list of suggested planning conditions that could be attached to a planning permission in the event of the appeal being allowed. I have looked at these in the light of the six tests set out at paragraph 206 of the Framework.
42. There is no reason to attach anything other than the usual time limits for commencement of development and the submission of details for subsequent approval. It is necessary that the requirements for the reserved matters are set out and that the development be carried out in accordance with the approved plans, for the avoidance of doubt and in the interests of proper planning.
43. The Council's suggested conditions No's 5, 6 and 8 involve the requirement for a master plan and associated design code. For the reasons set out above I do not consider that a master plan is required; accordingly it would not be reasonable or necessary to attach these conditions.
44. However, the Council's condition 7 requires, amongst other things, that the site layout should provide access to the wider ELP allocation. At the Hearing the concept plan (Doc 02) was discussed to highlight how accessibility could be achieved through the wider site allocation area and the practicality of providing a circulation route for traffic. It is therefore reasonable and necessary to require a scheme to include provision for access to the other sections of the allocation area.
45. The S106 agreement with Somerset County Council requires a travel plan and sets out targets for its implementation and operation. Therefore condition 9 put forward by the Council is not necessary.
46. To safeguard the surface state of the public highway, conditions to avoid dirt and debris transferring from construction vehicles on to the public highway and a survey of the public highway prior to commencement of the development are necessary.
47. In order to ensure that the development takes place with the minimum of disturbance to local residents and interference with other users of the highways it is necessary to ask for a Construction Environmental Management Plan (CEMP) to be submitted for approval and for that agreed plan to be subsequently complied with during the course of works taking place on the site. As agreed at the Hearing, the Council's suggested condition 27 will be subsumed in to the CEMP.
48. Given the access arrangements to the site and its prominent position in the wider landscape, I consider it reasonable, relevant and necessary in the interests of highway safety and sustainability to impose the Council's suggested conditions 14, 15, 16 and 23 relating to highway works and lighting. However, the Council's conditions 13 and 18 are similar in many regards and therefore I have amalgamated their requirements.

49. To ensure that development of the site does not create a risk of flooding across adjoining areas, it is necessary to ask for details of the drainage arrangements to be submitted for detailed approval as set out in the Council's conditions 17 and 25.
50. There is the likelihood that the scheme could disturb local ecological interest on and around the site and it is therefore appropriate to require compliance with the mitigation works identified in the Ecological Appraisal which accompanied the original planning application. Similarly the Council's conditions no's 19, 21, 22 are necessary to safeguard protected species.
51. The ecological mitigation requirements duplicate the Council's suggested condition no 24; accordingly this condition is not necessary.
52. In the interests of sustainability a waste management plan should be submitted and subsequently complied with during the course of works taking place on the site.
53. I have made minor revisions to the wording of the suggested conditions either to improve clarity or to ensure the conditions meet the tests set out in the Framework.

Joanne Jones

INSPECTOR

Richborough Estates

**Schedule of Conditions attached to Appeal Decision APP/H3320/A/14/2221931
Land at Hopcott Road, Minehead, Somerset**

- 1) The development hereby permitted shall begin not later than two years from the date of approval of the last of the reserved matters to be approved.
- 2) Details of the appearance, landscaping, layout, and scale, (hereinafter called "the reserved matters") shall be submitted to and approved in writing by the local planning authority before any development begins and the development shall be carried out as approved.
- 3) Application for approval of the reserved matters shall be made to the local planning authority not later than three years from the date of this permission.
- 4) The development hereby permitted shall be carried out in accordance with the following approved plans: Location Plan 01; Survey 02; 13450/T06; 13450/T07 (rev A); 13450/T08.
- 5) No works shall be undertaken on site until a site waste management plan has been submitted to and approved in writing by the Local Planning Authority. The plan shall be implemented in accordance with the approved details.
- 6) No works shall be undertaken on site unless a scheme for the lighting of the site during construction operations (including the provision of the external lighting on buildings) has been submitted to and approved in writing by the local planning authority. The external lighting of the site shall only be carried out in accordance with the approved scheme.
- 7) No development shall commence unless a Construction Environmental Management Plan (CEMP) has been submitted to and approved in writing by the Local Planning Authority. The works shall be carried out strictly in accordance with the approved plan. The plan shall include:
 - i. Construction vehicle movements;
 - ii. Construction operation hours;
 - iii. Construction vehicular routes to and from site;
 - iv. Construction delivery hours;
 - v. Expected number of construction vehicles per day;
 - vi. Car parking for contractors;
 - vii. Specific measures to be adopted to mitigate construction impacts in pursuance of the Environmental Code of Construction Practice;
 - viii. A scheme to encourage the use of Public Transport amongst contractors; and
 - ix. Measures to avoid traffic congestion impacting upon the Strategic Road Network.

Estate Roads and Highway Works

- 8) During the construction operations all vehicles leaving the site shall be in such condition as not to emit dust or deposit mud, slurry or other debris on the highway. In particular (but without prejudice to the foregoing), efficient means shall be installed, maintained and employed for cleaning

the wheels of all lorries leaving the site, details of which shall have been agreed in advance in writing by the Local Planning Authority and shall be fully implemented prior to the commencement of development and thereafter maintained until construction operations cease.

- 9) A condition survey of the existing public highway shall be carried out and agreed in writing with the Local Planning Authority prior to any works commencing on site, and any damage to the highway occurring as a result of this development is to be remedied by the developer to the satisfaction of the Local Planning Authority once all construction works have completed on site.
- 10) No development shall commence until a proposed layout scheme to include the provision for access to other parts of the Hopcott Road site as identified in the Emerging Local Plan is submitted for approval in writing by the Local Planning Authority. The layout scheme will be in a form that is adequate to accommodate public transport, vehicles, cycleways and footpath linkages for the future development of the Hopcott Road site. The development shall be carried out strictly in accordance with the approved details.
- 11) No development shall commence until details of the proposed highway works, including: estate roads; footpaths; tactile paving; cycleways; bus stops/bus lay-bys; verges; junctions; street lighting; sewers; drains; retaining walls; services routes; surface water outfall; vehicle overhang margins; embankments; visibility splays; accesses; carriageway gradients; drive gradients; car, motorcycle and cycle parking; street furniture; and a programme of implementation of such highways works, has been submitted to and approved in writing by the Local Planning Authority. The highway works shall be carried out strictly in accordance with the approved details.

For this purpose, plans and sections, including as appropriate, the design, layout, levels, gradients, materials and method of construction shall be submitted to and approved in writing by the Local Planning Authority.

- 12) The proposed estate roads, including footpaths and turning spaces where applicable, shall be constructed in such a manner as to ensure that each dwelling before it is occupied shall be served by a properly consolidated and surfaced footpath and carriageway to at least base course level between the dwelling and existing highway.
- 13) The development hereby permitted shall not be brought use until that part of the service road that provides access to it has been constructed in accordance with the approved plans.
- 14) The gradients of the proposed drives to the dwellings hereby permitted shall not be steeper than 1 in 10 and shall be permanently retained at that gradient thereafter at all times.

Drainage / Flooding

- 15) No work shall commence on the development hereby permitted until an appropriate right of discharge for surface water has been obtained and submitted to and approved in writing by the Local Planning Authority. A drainage scheme for the site showing details of gullies, connections, soakaways, means of attenuation on site and a programme of implementation shall be submitted to and approved in writing by the

Local Planning Authority. The drainage works shall be carried out in accordance with the approved details.

- 16) No work shall commence on the development hereby permitted until a comprehensive site surface water drainage scheme and programme of implementation, incorporating detailed design for all of the sustainable drainage measures, in accordance with the Flood Risk Assessment (RMA C1260 dated December 2013), has been submitted to, and approved in writing by the Local Planning Authority. The scheme shall also specify the future maintenance regimes for the various drainage works on site, and specify who/which organisation will be responsible for their future performance. The scheme shall be constructed in and maintained in accordance with the approved details.

Ecology

- 17) No work shall be undertaken on site until a badger survey of the site is conducted. Such a survey shall be conducted not later than six months before commencement of the development hereby approved. The results of this survey shall be submitted to the Local Planning Authority within two weeks of its completion.

Should there be evidence of badger activity within the site a mitigation strategy shall be submitted to and approved in writing by the Local Planning Authority prior to commencement of development.

- 18) No works shall be undertaken on site unless details of mitigation for impacts of the development on bats has been submitted to the Local Planning Authority. This mitigation should be consistent with that recommended in the report 'Ecological and Protected Species Surveys Hopcott Road, Minehead, Somerset' dated 'December 2013'. Most importantly, a landscape buffer of at least 3 metres width of suitable habitat should be maintained around the development site (with the exception of the single site entrance onto Hopcott Road) at all stages of the development. Any necessary mitigation measures identified by the survey shall be incorporated into the development and subsequently retained.
- 19) No works shall be undertaken on site unless details of a scheme for the retention and/or creation of suitable features and habitat for nesting birds, including details of the proposed timing of any works affecting features or habitat likely to be used by nesting birds, has been submitted to and approved in writing by the Local Planning Authority. This scheme shall include details of a programme of implementation and provisions for the long-term management of features and habitats used by nesting birds. The works shall thereafter be carried out in accordance with the approved scheme.
- 20) No works (including ground clearance works) shall be undertaken on site unless details of a scheme for the avoidance of killing or injuring of slow worms has been submitted to and approved in writing by the Local Planning Authority. The works shall thereafter be carried out in accordance with the approved scheme.

