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## Appeal Decision

Site visit made on 19 May 2015

by **C J Ball** DArch DCons RIBA IHBC

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

Decision date: 29 May 2015

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### Appeal Ref: APP/U1105/A/14/2229080 Land at Down Close, Newton Poppleford EX10

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant planning permission.
  - The appeal is made by Strongvox Homes, Robert Compton, Susan Stephenson, Christine Sanders and Valerie Olliff against the decision of East Devon District Council.
  - The application Ref 14/1303/MFUL, dated 27 May 2014, was refused by notice dated 27 October 2014.
  - The development proposed is the residential development of 15 dwellings.
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#### Decision

1. The appeal is dismissed.

#### Planning Obligation

2. The appellants submitted a unilateral undertaking as a deed of planning obligation under s106 of the Act. This would effectively secure contributions of £9,390 towards the mitigation of the recreational impact of the development on the nearby Pebblebed Heaths Special Protection Area (SPA) and Special Area of Conservation (SAC) and £23,060.40 towards the future maintenance of Public Open Space within the vicinity. The undertaking would also require the provision of 6 affordable housing units as part of the development. This would ensure that the proposal complies with the Council's relevant development plan policy objectives, overcoming the 4<sup>th</sup> reason for refusal, so I take these matters no further.
3. The appellants also offer up to £10,000 towards improving the Farthing Lane footpath between Exmouth Road and King Alfred Way and off-site biodiversity mitigation measures to mitigate the ecological impact of the development, intended to address the 3<sup>rd</sup> reason for refusal. I consider these matters later.

#### Main issues

4. The main issues to consider are:
  - whether the Council can demonstrate a 5 year supply of deliverable housing sites;
  - whether the site is in a sustainable location for residential development;
  - the impact of the proposed development on the rural character and appearance of the area, which lies within the East Devon AONB; and
  - the ecological impact of the proposed development.

## Policy background

5. The East Devon Local Plan (EDLP), adopted in 2006, had a plan period to 2011 so is now out of date. The saved policies relied on by the Council include policy TA1 (accessibility of new development), policy S5 (countryside protection), policy D1 (design and local distinctiveness), policy EN1 (Development affecting AONBs) and policy EN6 (Wildlife habitats and features). These policies are all essentially consistent with National Planning Policy Framework policy objectives so, in accordance with Framework 215, I give them great weight. The successor policies in the emerging New East Devon Local Plan (NEDLP) include policy TC2 (accessibility of new development), policy D1 (design and local distinctiveness), Strategy 7 (Development in the countryside), Strategy 46 (Landscape conservation and enhancement and AONBs) and policy EN5 (Wildlife habitats and features). These policies are similarly consistent so, in accordance with Framework 216, I also give them great weight.
6. For clarification, in the light of the judgement in *Cheshire East Council v SSCLG and Richborough Estates Partnership*<sup>1</sup> I consider EDLP policy S5 and NEDLP policy Strategy 7 not to be policies which make provision for housing; while they might have an indirect effect of restricting housing development, these are not relevant policies for the supply of housing which fall to be considered under Framework 49.

## Reasons

*Whether the Council can demonstrate a 5 year supply of deliverable housing sites*

7. At the time of considering the application the Council acknowledged that it could not meet the Framework requirement to demonstrate an up-to-date 5 year supply of deliverable housing sites. Just before my site visit the Council submitted a housing monitoring update purporting to show that it can now demonstrate a 5.45 year supply, including a 20% buffer due to previous under-supply.
8. I have reservations about this. Following significant objections by the Local Plan Inspector, proposed modifications to the NEDLP are currently out to consultation; the new objective assessment of housing need has not been fully tested; and the appellants raise serious concerns about the development timescales of several major sites relied on by the Council, throwing doubt on their deliverability within the 5 year period. These are matters to be tested and resolved by the Local Plan Inspector. For this appeal, as things stand, I do not consider that it is possible to conclude with any confidence that the Council can demonstrate a 5-year supply of deliverable housing sites.
9. As a result, as indicated in Framework 49, current policies for the supply of housing should not be considered up to date. The Council is clearly taking steps to address the housing shortfall but, in accordance with Framework 14, the current policy position means that permission should be granted for this scheme unless any adverse effects 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.
10. Framework 49 makes it clear that housing applications should be considered in the context of the presumption in favour of sustainable development; with that in mind I go on to consider the matters at issue before coming to a balanced overall conclusion.

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<sup>1</sup> [2015] EWHC 410 (Admin)

*Whether the site is in a sustainable location for residential development*

11. The site is a small field on the south-western edge of Newton Poppleford. It lies immediately behind Down Close, a development of 10 houses and bungalows. Access would be through the estate road, off Exmouth Road. The site rises fairly steeply to the west and the proposed 15 houses and bungalows would be located around the perimeter of the site, off a central access road. There would be a mix of small affordable family homes and larger 2 and 3 bedroom bungalows aimed particularly at older people.
12. The site is fairly remote from the village High Street, which has a reasonable range of local facilities and services. There are bus stops within reasonable walking distance on High Street and Exmouth Road, which link the village to the main towns. The hourly frequency of bus services makes short intra-village bus journeys possible, but not particularly convenient.
13. The important facilities of Post Office and convenience store are an almost 1250 metre walk from the site, while the primary school and medical centre are a nearly 1450 metre walk, at the other end of the village. The preferred maximum walk distance indicated in the CIHT guidelines *Providing for Journeys on Foot* is 1200 metres. For the older people and families with young children likely to be living on the site, all these facilities would be at the very limit of, or beyond, a reasonable walking distance.
14. The narrow road and lack of pavements on the High Street, east of its junction with Exmouth Road, make it an unattractive and substandard route for pedestrians and, since it is the busy A3052 Exeter-South Coast road, for cyclists too. There is a potentially safer pedestrian route, the public footpath to the south of the High Street. This varies in quality but parts of it have been, or will soon be, improved in association with other developments taking place in the village. These improvements do not include all of the section between Farthings Lane and King Alfred Way, which would be used by pedestrians approaching from Down Close.
15. However, some improvement works have taken place and the s106 contribution offered by the appellants could be used to further improve this section, so that there would effectively be a paved footpath from the bottom of Exmouth Road to School Lane. That would be a significant benefit. Nonetheless, the footpath would not be lit, for environmental reasons, and parts of it would have no passive surveillance. These factors mean that it is unlikely to be attractive to some users. In any event it would not shorten the distances and would not be available to cyclists. For these reasons I do not consider the footpath to be an entirely satisfactory alternative route.
16. I consider that, because of its fairly remote location on the edge of the village, the site is not well related to local facilities. Some residents on occasion may decide to walk to the post office and shop, or even to the school or medical centre but, realistically, because of the distances involved and the nature of the pedestrian routes, the majority of residents would be likely to choose to travel within the village by car. The development would not therefore properly minimise the need to travel by car, in conflict with the aims of EDLP policy TA1 and the emerging NEDLP policy TC2. The proposal would not be consistent with the Framework objective of providing a realistic choice of sustainable means of transport and so I conclude that the site is not in a particularly sustainable location for residential development.

*The impact of the proposed development on the rural character and appearance of the area, which lies within the East Devon AONB*

17. The site, on the edge of the village, is in the countryside and, because of its topography and natural beauty, makes a key contribution to the rural setting of the village. It lies within the area designated as an AONB. A core principle of the Framework is the recognition of the intrinsic character and beauty of the countryside, while Framework 115 confirms that great weight should be given to conserving landscape and natural beauty in the AONB which, in that regard, has the highest status of protection. While this is not an absolute prohibition of development, it is a restriction so that Framework 14 is not engaged.
18. The proposed development is not of a type explicitly permitted in the countryside by a specific policy so it conflicts with EDLP policy S5 and emerging NEDLP Strategy 7. While the mature hedgerow trees on the perimeter would provide an attractive backdrop, the new development would be visible on rising ground behind Down Close from Exmouth Road, one of the principle routes into the village. There would be a very apparent erosion of the character and beauty of its rural setting.
19. This part of the village is separate from the historic core and, because of the topography and intervening development, the site would be largely screened in middle distance views from within the village. However, from higher land to the east, the developed site would be seen rising above the undulating landscape as an isolated pocket of development, divorced from the village, and undermining the landscape quality of the East Devon AONB, to the detriment of its natural beauty.
20. The appellants argue that much of the new housing in the district will have to be sited within the AONB. However, that would be decided on a balance of considerations as part of the Local Plan process. New development is already taking place in the village and, while some additional housing would be welcome, I find nothing to show that the development of this particular site is so necessary that it outweighs the highest level of protection given to the countryside of the AONB. I find that the proposal would not be consistent with the countryside protection objectives of the Framework and would conflict with the aims of EDLP policy EN1 and emerging NEDLP Strategy 46. I consider that the proposed development would have an unacceptably harmful impact on the rural character and appearance of the area.

*The ecological impact of the proposed development*

21. Framework 115 says that, in the AONB, the conservation of wildlife is an important consideration while Framework 118 makes it clear that the aim should be to conserve and enhance biodiversity. The appellants' habitat survey shows that habitats within the site support (or have the potential to support) a range of protected species including bats, dormice, birds, reptiles and badgers. The site, with its boundary trees and overgrown hedgerows, is considered to be of medium to high ecological importance. The grassland on the site, which supports a range of invertebrates, is of medium ecological importance. A traditional orchard in the north-western quadrant of the site contains aging fruit trees, many of which are decaying. The orchard is a priority habitat under s41 of the Natural Environment and Rural Communities (NERC) Act and is of high ecological importance due to its range of habitats and its mature, unmanaged state. The NERC Act entails a duty to conserve biodiversity. The site clearly has a high ecological value.

22. A Tree Preservation Order (TPO) proposed for the site, encompassing the orchard and the boundary trees, was challenged by the appellants and appears to have not been confirmed. While 'green' boundary corridors would remain, development of the site would mean the loss of several important wildlife habitats, including the orchard, reducing biodiversity and severely diminishing the nature conservation value of the site. The proposed development would have a significantly harmful ecological impact, entirely in conflict with Framework biodiversity conservation objectives, with the NERC Act duty and with the aims of EDLP policy EN6 and emerging NEDLP policy EN5.
23. The appellants offer mitigation and compensation for the significant harm by providing a new orchard of local apple trees on an adjoining site to provide a replacement habitat. This would be secured by the s106 undertaking. Other measures would include a suitable habitat for the translocation of reptiles, including a log pile, and the provision of roosting boxes for bats and nesting boxes for birds. These measures are assessed as having a neutral effect on wildlife, although the bat and bird boxes would provide a slight positive gain.
24. This seems to me to underestimate the high ecological value of the orchard on the site. The mature and decaying trees are likely to provide a rich and diverse habitat and food source for birds, insects, invertebrates and fungi. There has been no detailed assessment of their particular value, but it is unlikely that the orchard could be replaced in any meaningful way by new planting, which would take decades to mature. I recognise that the existing orchard trees are in some cases over-mature and will in the fairly short term decay and die, but that in itself will provide a useful ecological feature. I am not convinced that a log pile, using the old trees, would replace that. The new orchard would not provide an equivalent habitat so I do not consider that the appellants' Biodiversity and Mitigation Strategy would be entirely successful.

### **Conclusions**

25. There is no doubt that the provision of a mixed development of 15 open market bungalows and affordable dwellings would make a small but significant contribution to the district's shortfall in housing supply and to meeting a pressing need for affordable dwellings. New development would also bring social and economic benefits for the village. However, the site is on the limits of what could be called a sustainable location, so that residents would be likely to rely on the use of their cars for most journeys. The development would erode the characteristic landscape setting of the village and would not conserve the landscape and natural beauty of the AONB, a national and local policy objective which carries great weight. Despite mitigation measures, the proposed development would not conserve the orchard as a priority habitat, undermining the ecological value of the site and diminishing its nature conservation value. The proposal would not achieve all 3 dimensions of sustainable development. It would conflict with key EDLP and NEDLP policies and, assessed against the policies in the Framework taken as a whole, including the specific policies intended to protect the AONB, I consider that the adverse effects of the proposed development of this site would significantly and demonstrably outweigh the benefits it would bring. For the reasons given above I conclude that the appeal should be dismissed.

*Colin Ball*

Inspector