



Appeal Decisions

Hearing held on 31 March and 19 and 20 May 2015

Site visit made on 31 March 2015

by Chris Preston BA (Hons) BPI MRTPI

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

Decision date: 24 August 2015

APPEAL A

Appeal Ref: APP/U1105/A/14/2223944

Weeks Farm, Talaton, Exeter EX5 2RG

- 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 Mrs W Adams and Mrs M Broom against the decision of East Devon District Council.
 - The application Ref 13/1832/MOUT, dated 12 August 2013, was refused by notice dated 09 April 2014.
 - The development proposed is described on the application form as: Development of ten houses.
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APPEAL B

Appeal Ref: APP/U1105/A/14/2223948

Weeks Farm, Talaton, Exeter EX5 2RG

- 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 Mrs W Adams and Mrs M Broom against the decision of East Devon District Council.
 - The application Ref 13/1833/MOUT, dated 12 August 2013, was refused by notice dated 04 April 2014.
 - The development proposed is described on the application form as: Development of twenty five houses.
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Decisions

1. **Appeal A** is dismissed.
2. **Appeal B** is dismissed.

Application for costs

3. At the Hearing an application for costs was made by Mrs W Adams and Mrs M Broom against East Devon District Council. This application will be the subject of a separate Decision.

Preliminary Matters

4. The Hearing was held in relation to two appeals. I shall refer to them as Appeal A and Appeal B, as set out in the banner heading above. Appeal A relates to an outline application for the construction of 10 dwellings, with all matters reserved apart from the means of access. Appeal B is also an outline application for the construction of 25 dwellings, with all matters reserved apart

from access. The site of the smaller proposal for 10 dwellings covers part of the larger site for the 25 dwelling proposal. Consequently, the proposals are put forward as alternative options in that respect and the total number of dwellings that could be constructed on the site, even if both appeals were allowed would be 25.

5. In addition to the site location plan, illustrative plans were submitted in relation to both proposals to indicate how the site could be laid out to accommodate the number of dwellings proposed and to indicate potential house types, floor plans and elevations (drawing numbers 1604/sk05 and sk10, rev A, in relation to Appeal A, and 1604 sk04 and sk11 in relation to Appeal B). Those plans were submitted for illustrative purposes and I have considered them on that basis.
6. Prior to the opening of the Hearing, it was common ground between the Council and appellants that the Council could not demonstrate a five-year supply of deliverable housing sites, as required by paragraph 47 of the National Planning Policy Framework (the Framework). Upon opening the Hearing it was brought to my attention that the Council had published the Housing Monitoring Update to 30 September 2014 (March 2015) (the March 2015 HMU) and that the information within that document suggested that the Council could demonstrate a five-year supply of deliverable housing sites.
7. Following discussion with those present I determined that the Hearing should be adjourned to allow the evidence to be submitted and considered, and to allow representations on the new information. I also agreed to seek the views of the main parties on whether the appeals should be determined by way of an Inquiry, as opposed to a Hearing, based upon the evidence in relation to housing land supply. Further to the adjournment, the Council amended its case in relation to the appeals and now considers that it can demonstrate a five-year supply of deliverable housing sites, including a 20% buffer. The appellant does not concur with that position and the matter of housing land supply remained therefore in dispute. Notwithstanding that point, both parties were satisfied that the Hearing procedure remained appropriate. Based on the evidence before me I agreed with that position and held the reconvened Hearing over 19 and 20 May.
8. Signed and executed s.106 agreements, together with supplemental agreements, also signed and executed, were submitted at the Hearing on 19 May 2015. The agreements are multi-lateral, having been signed by the appellants, the District Council and Devon County Council.
9. The obligations in relation to Appeal A include the provision of 4 affordable houses, three of which would be affordable rented units, with one in shared-ownership. An area of on-site open space would also be provided. Financial contributions are also proposed in terms of primary education provision (£2,840.36 per dwelling), secondary education (£2,052 per dwelling), off-site open space provision (£2,248 per dwelling), and a contribution (£626 per dwelling) to mitigate the effect of the proposal on the East Devon Pebblebed Heaths Special Area of Conservation (SAC) and Special Protection Area (SPA) (the SAC/SPA). Following agreement at the Hearing, the Council forwarded an electronic copy of The South-East Devon European Site Mitigation Strategy (the Mitigation Strategy)¹ along with a list containing projects upon which they

¹ South East Devon European Site Mitigation Strategy, Footprint Ecology, 29 April 2014

envisaged the contribution would be spent. I have taken those documents into account in reaching my decision.

10. The obligations in Appeal B also include financial contributions towards the provision primary and secondary education, and mitigation for the impact upon the SPA, at the same rate per dwelling that is applicable to Appeal A. 40% of the dwellings would be affordable units, with 7 affordable rented units and 3 in shared ownership. The obligation in relation to the 25 unit scheme also includes provision of on-site open space. The off-site open space contribution in Appeal B (£1,409.32 per dwelling) is less than that proposed in Appeal A. In addition, the agreement would place an obligation on the appellant to offer to construct a car park for the village hall, and transfer ownership of the car park to the Parish Council. If the Parish Council were to decline the offer of the car park, the obligation states that the land upon which the car park would have been constructed would be offered to the Parish Council as additional on-site open space.

Background to Main Issues

11. The reasons for refusal in relation to both proposals are identical and the matters in dispute are essentially the same in relation to both appeals. However, there is disagreement over whether the proposed offer to provide a car park for the village hall, in connection with Appeal B, is a community benefit that should be taken into account in the decision making process.
12. Following the adjournment of the Hearing on 31 March, I contacted the main parties (via an email from the case officer, dated 02 April) requesting a signed copy of the s.106 agreement(s), drawing attention to the limitations in the use of pooled contributions, post 06 April, having regard to the requirements of Regulation 123(3) of the Community Infrastructure Levy (CIL) Regulations 2010 (the CIL Regulations), and seeking their views on the possible implications. The content of the s.106 agreements was subsequently discussed at a round table session during the Hearing.
13. The issue of mitigation proposed through the s.106 agreement and, specifically, compliance with the CIL Regulations with regard to pooled contributions was not a matter of dispute between the main parties and was not identified as a main issue at the Hearing. However, as a result of discussions at the Hearing, the content of the s.106 agreements, and the written submissions of the main parties, the approach to the mitigation of impacts with regard to the SAC/SPA, education provision, and open space provision has a bearing upon my overall conclusions and the question of whether the proposals would amount to sustainable development. Accordingly, I have identified those matters as a main issue in the determination of the appeal.
14. In view of the above, the main issues in relation to both appeals are:
 - i) Whether the Council is able to demonstrate a five-year supply of deliverable housing sites, including a 20% buffer, as required by the Framework and, in the context of any conclusions in that regard, the weight that should be afforded to the provision of housing, including affordable housing, taking account of any identified local need for housing within Talaton;

- ii) Whether the proposals would result in sustainable patterns of travel by virtue of the location of the appeal site in relation to shops, services and employment opportunities;
- iii) Whether it would be appropriate to take account of any community benefit resulting from the provision of a car park for the village hall (in relation to Appeal B alone);
- iv) Whether the submitted planning obligations would provide adequate mitigation as may be necessary to off-set any harm that would result from the proposals in terms of the effect on the Pebblebed Heaths SAC/SPA; the effect on education provision; and the effect on the provision of open space, including playing pitch provision the children's play facilities, having regard to the provisions of saved policy RE3 of the East Devon Local Plan; and
- v) Whether the proposals would constitute sustainable development;

Planning Policy Context

15. The development plan for the area is the East Devon Local Plan (2006) (the LP). The plan period for the LP ran up to 2011 and therefore it is now out of date, and silent, with regard to the location of new residential development beyond the plan period, albeit that a number of policies have been 'saved' following a direction from the Secretary of State. The reason for refusal in both appeals refers to two saved policies; S5 (Countryside Protection) and TA1 (Accessibility of New Development).
16. Policy S5 relates to all land outside of the Built-Up Area Boundaries (BUAB's), as defined by the LP. It is a policy of restraint which limits the type of development that will be permitted beyond BUAB's and, as such, has direct implications for the location of housing across the district. To my mind, read in the context of the plan as a whole, policy S5 is a policy that is relevant to the supply of housing.
17. I am satisfied that I am satisfied that policy TA1 is consistent with the aims of the Framework, including the core principle at paragraph 17 which is to actively manage patterns of growth to make the fullest possible use of public transport, walking and cycling. Paragraph 29 of the Framework recognises that opportunities to maximise sustainable transport solutions will vary from urban to rural areas but I find nothing inconsistent in that statement with the aims of policy TA1 which seeks to locate development to appropriate locations in the local context. Accordingly, I attach substantial weight to the policy in accordance with paragraph 215 of the Framework.
18. The Council also rely upon policies within the emerging New East Devon Local Plan (the ELP) including Strategy 1 (Spatial Strategy for Development in East Devon), Strategy 7 (Development in the Countryside), Strategy 27 (Development at Small Towns and Larger Villages), and TA2 (Accessibility of New Development). The examination into the ELP has commenced but, following the concerns of the examining Inspector, the Council is currently consulting on a number of proposed modifications. That consultation seeks views on a number of matters, including the objectively assessed need (OAN) for housing within the area, the spatial strategy put forward in Strategy 1 and the approach to development in small towns and villages in Strategy 27.

19. The outcome of that consultation is unknown and the content of those policies is yet to be examined. I cannot predict the level of response or the eventual findings of the Inspector. Consequently, in-line with paragraph 215 of the Framework, I can give little weight to Strategy 1 or 27 of the ELP. The outcome of the examination in terms of the OAN for housing, the spatial strategy for the district and the approach to development within small towns and villages may have consequences for development currently allocated as countryside, beyond BUAB's. It appears to me that the approach to development within the countryside is directly linked to the assessment of overall housing need and the strategy of where the housing to meet that need will be accommodated. Thus, I also attach little weight to Strategy 7 of the ELP.
20. Policy TA2 of the ELP replicates the wording of policy TA1 of the LP. For the reasons set out above, I am satisfied that the policy is consistent with the Framework and shall afford it weight accordingly.

Reasons

i) Whether the Council is able to demonstrate a five-year supply of deliverable housing sites, including a 20% buffer, as required by the Framework and, in the context of any conclusions in that regard, the weight that should be afforded to the provision of housing, including affordable housing, taking account of any identified local need for housing within Talaton

21. The Council maintains that it can demonstrate a 5.45 year supply of deliverable housing sites, including a 20% buffer to take account of persistent under-delivery in previous years. That figure is set out within the March 2015 HMU and is derived from calculations regarding the objectively assessed housing need for the area in the Strategic Housing Market Assessment (SHMA) for the period 2013 to 2033. The SHMA for East Devon comprises a number of reports prepared on behalf of the Council as part of its evidence base for the emerging New East Devon Local Plan (ELP)². On the basis of those reports, the Council predicts that the OAN for East Devon for the period 2013-31 is 17,100 dwellings, equating to a need of 950 per annum.
22. As stated, the evidence put forward by the Council with regard to housing need has been prepared as part of the evidence base in relation to the ELP. That has yet to be tested through examination in public (EiP). The Council is currently consulting on the evidence based upon a number of questions set out by the Local Plan Inspector. Amongst other things, the consultation seeks views on whether the evidence base provides a robust and reliable assessment to support the revised target of 17,100 dwellings for the period 2013-2031.
23. I am not in a position to predict the level of response to the consultation, or the outcome of the Local Plan process. It would not be appropriate for me, in the context of determining specific appeals, to attempt to perform the function of the EiP in seeking to determine the objectively assessed need for the district. To do so would run contrary to advice within the Planning Practice Guidance (PPG) which states that the examination of local plans is intended to ensure

² Including the *Exeter Housing Market Area Strategic Housing Market Assessment Final Report 2014/15*, produced by DCA; *Employment Projections for East Devon, Supporting Technical Advice*, Ash Futures Ltd, February 2015; and the 'Policy-On' Sub-Scenario Report, produced by Edge Analytics.

that housing requirements are tested in a way that cannot be replicated in the course of determining individual applications³.

24. Thus, in view of the fact that the evidence has yet to be tested, and the fact that the response to the current consultation exercise is unknown, I can give little weight to the housing requirement of 17,100 within the proposed modification to the ELP. Until that figure has been properly tested through the EiP I cannot conclude that it forms a robust and reliable basis from which to derive the OAN for the area.
25. In effect, the current position results in a hiatus, with no up-to-date housing needs assessment that has been tested through the local plan process. In such situations, the PPG advises that the household projections published by the Department for Communities and Local Government should be used as the starting point for assessing future need, albeit that the weight to be attributed should take account of the fact that those figures have not been tested or moderated against relevant constraints⁴.
26. Neither party produced evidence to the Hearing to show the five-year supply position, when set against the latest (2012) DCLG Household Projections. Consequently, it is not clear if the Council is able to demonstrate a five-year supply against those projections.
27. Moreover, I have a number of concerns with regard to the way in which the Council have calculated the supply position within the March 2015 HMU. Firstly, there is no indication of how the shortfall from the previous plan period has been addressed. As set out above, the proposed plan period for the ELP is 2013-2031. The calculation within the March 2015 HMU includes an allowance for a previous shortfall in delivery, but only back to 2013; a shortfall of 139 dwellings.
28. The appellant has calculated the shortfall over the five year period up to 2014 as 1161 dwellings, based upon annual monitoring reports produced by the Council. The Council accepted these figures at the Hearing. It is not clear how, if at all, the previous under-delivery from that period has been considered in terms of the supply calculation within the March 2015 HMU. The Council stated at the Hearing that the previous under-delivery had been subsumed within the wider calculations of the SHMA and that it was therefore addressed in the estimated overall need of 17,100 between 2013 and 2031. However, they were unable to direct me to any text or figures within the published SHMA to show the methodology to support that statement or demonstrate this exercise has actually been carried out.
29. At the request of the examining Inspector, the current consultation regarding the proposed modifications to the ELP seeks views on the implications of altering the proposed start date of the plan (from 2006 to 2013) on meeting any un-met housing need. The PPG is clear that Council's should seek to address any previous under-delivery and that they should aim to do so within the first five years of the plan period, where possible⁵, an approach often referred to as the 'Sedgefield' method.

³ Reference ID: 3-033-20150327.

⁴ Reference ID: 3-030-20140306

⁵ Reference ID: 3-035-20140306

30. From the information in front of me, the Council has not demonstrated that previous under delivery has been accounted for within its five-year supply calculations. Even if the previous under-delivery has been accounted for within the estimated need of 17,100 identified within the SHMA, which is not certain, the way in which the Council have addressed the previous under-supply is not consistent with the aim of addressing it within the first five years, where possible. In the Council's projection the 17,100 has been split evenly over the plan period, 'the 'Liverpool' method. Whilst the PPG is not prescriptive in stating that any under-deliver must be recovered within the first five years it sets a clear preference for this approach, 'where possible'. No evidence was presented by the Council to suggest that it would not be possible to recover any previous under-supply over the next five years and the Local Plan Inspector has previously written to the Council to advocate the 'Sedgefield' approach with the aim of boosting housing supply⁶.
31. Moreover, I have concerns that the projected delivery rates for the new settlement at Cranbrook are not supported by clear evidence. The predicted completion rate for the two phases of the development over each of the following five years is 467 dwellings per annum. However, the March 2015 HMU identifies that there had been 757 completions between 'summer' 2012 and August 2014. It is not clear when development commenced but the published completion rate suggests a figure in the region of 350 to 375 dwellings per year over the two year period. The Council suggested orally at the Hearing that there is evidence to suggest that delivery rates are likely to increase but no firm evidence was submitted to show how the predicted delivery rates had been derived. In effect, those predictions show an increase of approximately 100 dwellings a year at the site, over and above the published rate of completion to date. That rate of delivery is not supported by the evidence presented to me.
32. The appellant also queried the Council's assumptions regarding the delivery rates of a number of other large sites; the assumption that every small site with planning permission will be developed; and approach to sites with 'development potential'. It is difficult, on the limited information presented, to draw any firm conclusions on those matters. However, based on my concerns regarding the lack of clarity over the approach to past under-supply and the use of delivery rates at Cranbrook that are unsupported by firm evidence, the Council has not satisfactorily shown that it can demonstrate a five-year supply of deliverable housing sites, even based upon its own assessment of need.
33. However, fundamentally, the OAN of 17,100 cannot be relied upon as a robust basis for predicting the future housing need until it has been tested through the EiP. The EiP will also assess the approach to past under-supply of housing and the implications of altering the proposed start date for the plan period. Until those matters are resolved, on the evidence presented to the Hearing, it is not possible to conclude that the Council can demonstrate a five-year supply of housing sites for the purposes of the appeals before me.
34. In the absence of a demonstrable five year supply policies for the supply of housing should not be considered up-to-date, including policy S5 of the LP which is a relevant policy for the supply of housing. Thus, I can give limited weight to the conflict with that policy which seeks to restrict development

⁶ Letter from Inspector Thickett to Mr M Dickins, Planning Policy Manager, dated 31 March 2014 (paragraphs 5, 6 and 7). Produced at Appendix 1 of the Council's appeal statement.

outside of the defined settlement boundary for the village. Similarly, until such time as the OAN for the district has been subject to EiP, I can give little weight to policies Strategy 1, 7 and 27 of the ELP. In the context of the need to boost significantly the supply of housing and the persistent under-delivery within the district, the benefit in terms of the provision of housing represents a material consideration in support of both appeals. Those benefits would apply to the provision of general market and affordable housing.

35. There is a pressing need for affordable housing across the District, as set out in saved policy H4 of the LP, the pre-ambles to policy Strategy 34 of the emerging NELDP, and the SHMA. At a local level, I have been referred to the housing needs survey for the village, published in 2008⁷. In summary, that report identified that there were 9 households with a local connection to Talaton that were considered to be in need of affordable housing. No evidence has been presented to suggest that the need within the village has diminished since 2008.
36. No affordable housing has been constructed in the village since that time, although planning permission has been granted for a development of six units at The Firs. The appellant has raised concerns over the deliverability of that scheme due to a restrictive covenant affecting the site and alleged concerns over ground conditions. Those concerns relate to a letter sent to the Parish Council by an agent acting for an alternative development proposal and no information is before me to verify the accuracy of the claims made. Consequently, I cannot discount the possibility of that scheme being developed.
37. Nonetheless, even if that scheme were developed, there would be a residual need for three further units, based on the 2008 survey. The affordable units within either scheme would cater for that residual need and deliver housing to meet the specific needs of the village. The four units proposed as part of Appeal A would, in combination to the scheme at The Firs, broadly correspond to the need identified in 2008. On the basis of the 2008 survey there is insufficient need from those with a local connection to Talaton to justify the requirement for 10 affordable units that are proposed under Appeal B, assuming that the 6 unit scheme at The Firs was also developed.
38. However, provision of more units than may be needed to cater for those with a specific local connection would not be detrimental in the context of the substantial need for affordable housing within the district as a whole. A cascade mechanism is contained within the s.106 agreement, as recommended by the Council's Housing Strategy Officer to give priority to those with a local connection to the village, followed by those with a connection to neighbouring parishes, and then those with a district wide connection. Consequently, the proposal would benefit those with a specific local need and those within adjacent parishes.
39. The level of affordable housing proposed (40%) is consistent with the requirements of saved policy H4 of the LP. However, the decision of the Secretary of State in relation to a proposal at Pinn Court Farm⁸ concludes that policy H4 is out-of-date and that Strategy 34 of the ELP should be given a considerable degree of weight. That policy requires a 50% level of affordable

⁷ Parish of Talaton *Local Housing Needs Report* The Community Council of Devon, August 2008

⁸ APP/U1105/A/13/2208393

housing for sites in rural villages, subject to viability, and the proposed level of affordable housing would not comply with that emerging policy.

40. However, the decision was raised late in proceedings, following the adjournment and, whilst the recent decision was drawn to my attention, the Council did not suggest, in writing or at the Hearing, that the level of affordable housing proposed was of a level that would warrant the refusal of the application. Moreover, I note that the 50% requirement within Strategy 34 is subject to viability constraints and it would have been difficult for the appellant to consider the implications in that regard in the short timescale available.
41. Notwithstanding the fact that the level of affordable housing would be slightly below that required by Strategy 34 of the ELP, the proposals would contribute to the local supply of affordable and market housing. Given the housing supply position and the need for affordable dwellings I attach considerable weight to the benefits of both proposals in this regard.

ii) Whether the proposals would result in sustainable patterns of travel by virtue of the location of the appeal site in relation to shops, services and employment opportunities

42. Talaton is a village with a relatively limited range of shops and services. I have taken account of the assessment of the site within the Draft East Devon Villages Development Plan Document – Sustainability Appraisal Report 2015. That assessment scored the site in a positive manner in relation to access to community services, based upon access to the village shop, public house, the church and parish hall and noted that bus stops are within walking distance from the site. However, although the site is close to bus stops, the services themselves are limited, with two routes passing through the village; the 863 (Broadhembury to Exeter) and the 382 (Sidmouth to Whimple). The 863 runs on one day a week, whilst the 382 is a daily service with five buses per day. The nature of the surrounding road network, with narrow, undulating, and enclosed lanes is not conducive to walking or cycling.
43. Furthermore, whilst there are some services available within the village, residents would be required to travel further afield for a full range of shops, education facilities, healthcare services, leisure facilities and places of employment. The sustainability appraisal report referred to above produced a negative score in relation to access to education and employment needs and a mixed score in relation to the ability to promote and encourage non-car based travel modes.
44. Notwithstanding the content of that report, based upon the information before me, I consider it likely that the majority of residents of the proposed developments would be heavily reliant upon the private car for regular journeys to day to day services. This is borne out by data produced by the Office for National Statistics showing the mode of travel to work of those living within the parish of Talaton⁹. Whilst distances to surrounding villages with a larger range of facilities, such as Feniton which has a broader range of shops, a school and train station, are relatively short, the tight and winding nature of the road network is such that even relatively short distances take some time to cover, even in a private car; a matter that I was able to gauge for myself on an unaccompanied site visit. Even in the context of a rural area, having regard to

⁹ Appendix 6 of the Council's Statement

paragraph 29 of the Framework, sustainable transport options for residents of the proposed dwellings would be limited.

45. Consequently, I conclude that the location of the site is such that the proposed developments would result in unsustainable travel patterns resulting in an increase in the use of the private car. The harm resulting from those unsustainable travel patterns would be comparatively greater for the proposed development in Appeal B due to the greater number of dwellings in that scheme. Both proposals would be contrary to the requirements of policy TA1 of the LP and policy TC2 of the ELP, which state that new development should be located so as to be accessible by pedestrians, cyclists and public transport and well related to compatible uses to as to minimise the need to travel by car.
46. As set out above, I am satisfied that those policies accord with the aims of the Framework, including the core principle relating to travel patterns at paragraph 17 and the aims of paragraphs 29, 30 and 37.

iii) Whether it would be appropriate to take account of any community benefit resulting from the provision of a car park for the village hall.

47. As set out at paragraph 204 of the Framework, planning obligations should only be sought where they are necessary to make the development acceptable in planning terms, directly related to the development, and reasonably related in scale and kind to the development proposed. The parking requirements of the village hall are not directly related to the proposed development. The hall is directly adjacent to the appeal site and residents would be able to park on their own driveway and walk to the facility. Therefore, demand for parking spaces would not increase as a result of the proposal.
48. Neither would the proposal result in the loss of any existing dedicated parking provision. There may be an informal arrangement where people park in front of the access gate to the field in the location of the proposed access. However, any parking in that location would amount to one or two cars; a level of car parking that could easily be accommodated elsewhere, or even on the carriageway within the proposed scheme.
49. Consequently, to my mind, the proposed car park is not directly, or even indirectly, related to the impact of the proposed scheme and is not necessary because of it. Thus, the offer to provide the car park is not a matter that I can take into account in reaching my decision, having regard to paragraph 204 of the Framework and regulation 122 of the Community Infrastructure Levy Regulations (2010). Whether an individual landowner or developer chooses to offer the car park to the Parish Council is a matter for their consideration. It is not a factor that can be taken into account in reaching my decision.

iv) Whether the measures within the submitted planning obligations would provide adequate mitigation that may be necessary to off-set any harm that would result from the proposals in terms of the effect on the Pebblebed Heaths SAC/SPA, the effect on education provision, and the effect on the provision of open space, including playing pitch provision the children's play facilities

50. Under Regulation 61 of The Conservation of Habitats and Species Regulations 2010 (the Habitats Regulations), prior to deciding to grant planning permission for a plan or project that is likely to have a significant effect on a European site

- (either alone or in combination with other plans or projects), a competent authority must undertake an assessment of the implications for that site, in view of the site's conservation objectives.
51. The appeal sites are within a 10km radius of the Pebblebed Heaths SAC/SPA. The Council have referred to the South East Devon European Site Mitigation Strategy¹⁰ (the Mitigation Strategy) which identifies that planned residential and tourist accommodation development within that radius would, in combination, have a detrimental effect on the integrity of the SAC/SPA, as a result of increased recreational pressure within the designated SAC/SPA boundaries. Both main parties agree that mitigation is necessary in order to off-set the harm caused by the proposed developments and clause 3.3 of the s.106 agreements in relation to both proposals indicates that planning permission should be refused in the absence of the proposed mitigation¹¹. Based upon the findings of the Mitigation Strategy I concur with that view.
52. The proposed mitigation is in the form of a financial contribution of £626 per dwelling. The cost of mitigation across the SAC/SPA is clearly set out within the Mitigation Strategy and the 'per dwelling' contribution is calculated on a proportionate basis, based on the planned number of dwellings. The Mitigation Strategy identifies that the contribution is made up of two elements; on-site measures for the mitigation and management measures within the SAC/SPA boundary and off-site measures towards the provision of Suitable Alternative Natural Greenspaces (SANGs). The objective of SANGs would be to provide alternative provision to draw people away from the designated assets. The PPG identifies that SANGs are open spaces within the levy definition of infrastructure¹².
53. A substantial proportion of the £626 per dwelling contribution (£477), as identified within the Mitigation Strategy, is calculated on the basis that it would be used for the provision of SANGs. The remainder (£149) is calculated on the basis of on-site management and mitigation within the SAC/SPA¹³. The Council maintain that the contributions would be used towards non-infrastructure projects and have provided a list of suggested measures on which they suggest the contributions would be spent. The measures within that list relate to on-site monitoring and management within the SAC/SPA. I am satisfied that those measures would not constitute the provision of infrastructure, as defined by section 216 of the Planning and Compulsory Purchase Act 2008.
54. However, the terms of the obligation do not specify that the contribution would be used towards 'non-infrastructure' elements of the Mitigation Strategy, it simply requires that the money be used 'towards the preservation of the Pebblebed Heaths'. Whilst I note the Council's intentions, based on the terms of the obligation, I cannot be certain that the contributions would not be used for the provision of infrastructure.
55. Under the terms of Regulation 123(3) of the CIL Regulations a planning obligation may not constitute a reason for granting planning permission if it provides for the provision of an infrastructure project, or type of infrastructure, and five or more obligations have previously been entered into that relate to

¹⁰ South East Devon European Site Mitigation Strategy, Footprint Ecology, 29 April 2014

¹¹ As inserted by Supplemental Agreements, dated 18 May 2015.

¹² Paragraph 081 Reference ID: 25-081-20140612

¹³ As set out at page 29 of the Development Management Committee Report, dated 01 July 2014, Appendix 10 of the Council's statement

- planning permissions granted within the area of the charging authority, and provide funding or provision for that project or type of infrastructure, since 06 April 2010. The Council have been unable to confirm the number of obligations that have been entered into in relation to mitigation for the SPA/SAC.
56. Consequently, the terms of the obligation would permit the use of the contribution towards the provision of infrastructure (SANGs), and it is not clear whether five or more contributions for the provision of that type of infrastructure have been entered into since 06 April 2010. Therefore, on the basis of the information before me, I am not satisfied that I can lawfully take the proposed mitigation into account as a reason for granting planning permission, having regard to the requirements of Regulation 123(3) of the CIL Regulations.
57. In addition, if the contribution were only intended to be used for non-infrastructure projects, a proportionate contribution would be £149 per dwelling based on the Council's own figures within the Mitigation Strategy. Thus, the level of contribution, at £626 per dwelling, would not be reasonably related in scale and kind, contrary to the requirements of Regulation 122 of the CIL Regulations and paragraph 204 of the Framework.
58. Moreover, SANGs are identified as a key element of the Mitigation Strategy. If the Council were to use the contributions towards funding non-infrastructure items, it is not clear, from the information presented, how the SANGs would be delivered. Consequently, even if the relevant s.106 obligations were amended to specify that the contributions could only be used for the provision of non-infrastructure items, no mechanism has been identified through which SANGs would be provided. Accordingly, I cannot be satisfied that the necessary mitigation would be delivered.
59. By way of a supplemental deed, the s.106 agreements in relation to both appeals were amended to include a clause to the effect that the obligation would take effect, regardless of my conclusions on whether the contributions comply with the provisions of regulations 122 and 123 of the CIL Regulations. At the Hearing, the appellant explained that this was intended to provide a guarantee that the necessary mitigation was secured, thereby off-setting any harm. However, the fact that the appellant may be willing to make a financial contribution, in any eventuality, does not alter the parameters of my decision. The terms of the obligations would permit the contribution to be used towards the provision of infrastructure. For the reasons given, that would be contrary to the requirements of Regulation 123(3) and I cannot take account of those provisions in reaching my decision.
60. No clear mechanism has been put forward that would ensure the delivery of the SANGs that form an essential element in the Council's Mitigation Strategy. In the absence of appropriate mitigation, in line with the Mitigation Strategy, the effect of the proposed residential development, in combination with other planned development, is likely to give rise to adverse effects on the integrity of the SAC/SPA as a result of additional recreational pressure.
61. Regulation 61(5) of the Habitats Regulations identifies that the competent authority may only agree to a plan or project after having ascertained that it will not adversely affect the integrity of a European site, subject to regulation 62, regarding considerations of over-riding public interest. That approach is

- reflected in paragraph 118 of the Framework which advises that planning permission should be refused where significant harm resulting from a development cannot be avoided (through locating on an alternative site with less harmful impacts), adequately mitigated, or compensated for.
62. In this case, there is little information before me to determine whether the proposed level of residential accommodation could be provided in another location, outside of the 10km zone surrounding the SPA. However, even if no alternative solution exists, the proposals are not put forward on the basis of any imperative reasons of over-riding public interest, of a social or economic nature, that would outweigh the harm to the SAC/SPA, having regard to Regulation 62 of the Habitat Regulations. As such, to grant planning permission for the proposed developments would be contrary to the aims of The Habitats Regulations and paragraph 118 of the Framework, both of which dictate that planning permission should be refused.
63. The provision of public open space would amount to the provision of infrastructure. Given the scale of development proposed, I am satisfied that the proposed on-site open space in relation to both appeals is necessary to make the development acceptable in planning terms, directly related to the needs of the development and its future residents and fairly and reasonably related in scale and kind. The open space specifically relates to the appeal site and no other obligations have been entered into to deliver that open space. Consequently, the obligations in that respect are not affected by the restriction in the use of 'pooled' contributions brought about by Regulation 123(3) of the CIL Regulations.
64. The proposed 'Open Space Contribution' within both agreements is a standardised contribution to off-site open space provision, calculated in line with the Council's East Devon Open Space Study (EDOSS). The Council's statement suggests that the EDOSS highlights a need for allotments, outdoor open sports pitches, parks and recreation grounds and play space (children and youth provision) within the parish of Talaton. Policy RE3 of the Local Plan, which provides the policy basis for the EDOSS, requires new residential development to provide for formal playing pitches and children's play space, of a set quantum of floorspace per dwelling, through provision on or off site.
65. An off-site contribution would be required for both schemes in order to comply with the requirements of Policy RE3 and meet the needs of future residents. A full copy of the EDOSS was not provided with the appeal but the Council have provided a breakdown of the formulaic costs for each type of facility at appendix 11 of their statement of case. The appellants have not disputed the need or rationale for the contributions, or the breakdown of the suggested costs.
66. That breakdown, discounts the contribution towards amenity open space, presumably on the basis that this would be provided on site. The average 'per dwelling' contribution for other space typologies would amount to £2,248 per dwelling for both schemes. On the information before me, that figure would be reasonably related in scale and kind to the developments proposed, based upon the proportionate approach of the EDOSS. It is not clear why the contribution proposed in Appeal B (£1,409) is less than the figure of £2,248 per dwelling put forward in relation to Appeal A. On the face of the information

- before me, the level of contribution put forward in Appeal B would be disproportionately low.
67. However, more fundamentally, the agreements do not identify any specific scheme towards which the contribution would be spent; the Council's covenant is simply to use the open space contribution towards the provision of public open space in the vicinity of the development. In that sense, it is not certain that the contributions would be used towards playing pitches or children's play provision, as required by Policy RE3.
68. Moreover, the term 'vicinity of the development' is not defined within the agreement and the lack of clarity in that regard would not preclude the possibility that the contribution could be used outside of the village. In view of this lack of definition, I cannot discount the possibility that the contribution would be pooled with other similar contributions from other proposals, notwithstanding the Council's assertions to the contrary. Consequently, to my mind, the obligations would amount to general pooled funding for the provision of infrastructure. In line with Regulation 123(3) of the CIL Regulations I cannot take the obligations into account as a reason for granting planning permission. In the absence of a mechanism to secure the provision of appropriate facilities, the proposal would be contrary to the requirements of policy RE3 of the Local Plan.
69. The provision of education facilities would constitute 'infrastructure' for the purposes of the CIL Regulations. At the Hearing, the Council confirmed that more than 5 obligations relating to education provision have been entered into since 06 April 2010. Consequently, in view of Regulation 123 of the CIL Regulations the proposed financial contributions towards primary and secondary education cannot be taken into account as reasons for granting planning permission.
70. The consultation response from the education authority identified that the closest primary and secondary schools are forecast to be over-capacity but did not specify at what date that is expected to occur, or to what degree. Consequently, it is difficult to assess the expected impact of the proposed development on education provision from the information provided. The consultation response indicates that pupil yields would be expected to be small, given the modest scale of development proposed. Therefore, despite the fact that I can take no account of the proposed education contribution that position would not warrant the refusal of planning permission in relation to either scheme.

iv) Whether the proposals would constitute sustainable development

71. Paragraph 7 of the Framework identifies three dimensions of sustainable development, based on economic, social and environmental factors. The Framework identifies that these strands are mutually dependent and should not be considered in isolation. In this case, the village is not in a sustainable location in terms of its proximity to shops, services and employment opportunities. Future residents would be largely reliant upon the private car. That reliance would not foster a move towards a low carbon economy and would be contrary to the environmental dimension of sustainable development.
72. The provision of housing to meet future needs is a key element of the social dimension of sustainable development. The market and affordable housing in

both proposals would bring benefits in that regard when set against the need for housing in the district and more defined local needs within the parish. For those without a car, the limited alternative means of transport, may result in difficulty accessing a full range of services, including health and education. This could affect the social well-being of any residents who rely upon alternative means of travel.

73. However, there is also evidence of a strong community within Talaton, as shown by the community led shop and community engagement in the planning process. Therefore, in terms of the social role of sustainable development the location of the site would have disadvantages but also benefits in terms of the opportunity to live in an attractive setting as part of a village community. In economic terms, the provision of housing would have short-term benefits to the local economy during the construction phase, in terms of employment and associated spending and longer term economic benefits as a result of increased spending within the local economy, with a likelihood of increased support for the village shop and public house. I am also mindful of paragraph 55 of the Framework which states that, where there are smaller settlements, development in one village may support services in nearby villages. To my mind that advice can aptly be applied to Talaton, the neighbouring linked parish of Whimble and other nearby villages such as Feniton.
74. The expansion of the village onto undeveloped agricultural land would inevitably involve a change to the character the area. However, the site is well related to the existing built form and, subject to the approval of appropriate details at the reserved matters stage, I am satisfied that development at the site would not result in any significant harm to the character and appearance of the area.
75. Consequently, I find that there would be an even balance in both proposals between the harm caused by unsustainable travel patterns and the benefits to local supply of housing. However, policy RE3 of the Local Plan requires new residential development to make provision for playing fields/ sports facilities and children's play facilities. For the reasons given above, I cannot take account of the proposed 'Off Site Open Space' contributions as a reason for granting planning permission. The absence of a robust mechanism to deliver those facilities would render the proposal contrary to policy RE3 and that is a factor that weighs against the proposal in terms of the social element of sustainable development.
76. Moreover, and more significantly, the proposals would cause harm, in combination with other development, to the SAC/SPA. I cannot take the proposed mitigation with respect of the SAC/SPA into account in reaching my decision. Harm to a designated European site would represent a substantial environmental concern in relation to the three stranded definition of the Framework and the degree of that harm and importance of the designated site are such that the proposals would not represent a sustainable form of development. In any event, paragraph 119 of the Framework identifies that the presumption in favour of sustainable development does not apply where development requiring appropriate assessment under the Habitat Directives is being planned or determined.

Other Matters

77. In terms of foul drainage, the local network has capacity to accommodate flows from the 10 dwellings scheme (Appeal A) but capacity may require upgrading to accommodate the larger scheme of 25 units (Appeal B). The exact details of any upgrade, or the eventual method of foul discharge would therefore require further investigation in advance of the commencement of work. From the information before me, this matter could be adequately dealt with through the imposition of a condition in relation to Appeal B to ensure that a detailed foul drainage scheme is provided in accordance with details that shall be submitted to and approved in writing by the local planning authority prior to the commencement of work.
78. I have noted comments regarding another, as yet undetermined, appeal in relation to proposed residential development at Lees Farm, on the opposite side of the village. I do not have the full details of that scheme but, in any event, I have considered the proposals before me on their individual merits. I find no reason to assume that my decision would prejudice any decision on the Lees Farm scheme or prevent that scheme being considered on its individual merits.
79. Similarly, both parties have referred to other appeal decisions relating to residential developments within the District. From the information in front of me, I cannot be certain that the considerations in any of the cases referred to were directly comparable to the proposals before me, particularly having regard to the approach to 'pooled' infrastructure contributions. Therefore, reference to other decisions has not altered my conclusions on the merits of either appeal.

Overall Conclusions

80. The proposals would bring significant benefits in terms of the provision of housing to meet local needs, both in terms of market and affordable provision. That would have economic and social benefits commensurate with the scale of development proposed. The village contains a limited range of shops and services and is not well connected by alternative means of travel. Future residents would therefore be heavily reliant upon the private car; a factor that would result in environmental harm as a result of unsustainable travel patterns and potential social harm through isolation of those who may not have access to a car. The positive and negative factors are evenly balanced in those respects. The lack of a suitable mechanism to secure off-site playing pitch and children's play provision is contrary to the requirements of policy RE3 of the Local Plan and would fail to meet the needs of future residents.
81. Furthermore, the proposals would cause harm to the integrity of the SAC/SPA, in combination with other planned development within the area. For the reasons given I cannot take the provisions of the proposed s.106 agreements into account as a reason for granting planning permission. In view of the likely harm to the SAC/SPA, the provisions of the Habitats Regulations and paragraph 118 of the Framework indicate that planning permission should be refused. Paragraph 119 of the Framework is clear that the presumption in favour of sustainable development does not apply.
82. Accordingly, in view of the above, and having regard to all other matters raised, I conclude that both appeals should be dismissed.

Chris Preston

INSPECTOR

APPEARANCES

FOR THE APPELLANT:

Mr John Milverton MA MRTPI	John Milverton Planning
Mr Paul Cairnes	of Counsel

FOR THE LOCAL PLANNING AUTHORITY:

Mr Chris Rose BA (Hons) BTP MRTPI	Principal Planning Officer
Mr Graham Thompson	Planning Policy Officer

INTERESTED PERSONS:

Mr Don Higgs	Local resident
Lady Anne Boles	Local resident
Mr Mark Sanders	Local resident
Mr Chris Harwood	Local resident
Mr Philip Moir	Local resident
Mr Andrew Peters	Local resident
Mrs Bridgett Smith	Local resident
Mrs Linda Janus-Harris	Local resident
Mr Colin Janus-Harris	Local resident
Ms Nicola Janus Harris	Local resident
Ms Sybil Mealing	Local resident
Mr Nigel Scarr	Local resident
Mr Barry Kingdom	Local resident
Mr Mark Vanstone	Local resident

DOCUMENTS

- 1 Appeal decision reference APP/C1760/A/14/2222867
- 2 Updated Statement of Common Ground, signed and dated 19 May 2015
- 3 Exeter Housing Market Area Strategic Housing Market Assessment, Final Report 2014/15
- 4 Planning Advisory Service technical advice note *Objectively Assessed Need and Housing Targets* June 2014