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## Appeal Decision

Site visit made on 13 April 2015

by **Veronica Bond LLB (Hons), Solicitor**

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

Decision date: 02 September 2015

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**Appeal Ref: APP/U1105/W/14/3001140**

**Land adjacent to Addlepool Farm, Woodbury Road, Clyst St. George, Exeter EX3 0NR**

- 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 Ashcom Developments Ltd against the decision of East Devon District Council.
  - The application Ref 14/0167/MFUL, dated 24 January 2014, was refused by notice dated 30 October 2014.
  - The development proposed is described as 'Twenty five houses (including affordable housing) with associated roads and other works'.
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### Decision

1. The appeal is allowed and planning permission is granted for twenty-five houses (including affordable housing) with associated roads and other works at Land adjacent to Addlepool Farm, Woodbury Road, Clyst St. George, Exeter EX3 0NR in accordance with the terms of the application, Ref 14/0167/MFUL, dated 24 January 2014, subject to the conditions contained in the attached Schedule.

### Background and Main Issues

2. The National Planning Policy Framework (the Framework) seeks to boost significantly the supply of housing. Paragraph 49 of the Framework indicates that housing applications should be considered in the context of the presumption in favour of sustainable development and that policies for the supply of housing will not be considered up-to-date where local planning authorities cannot demonstrate a five year supply of deliverable housing sites. Paragraph 14 of the Framework explains that where this is the case, planning permission should be granted unless the adverse impacts would significantly and demonstrably outweigh the benefits, when assessed against the Framework's policies, taken as a whole.
3. The Council conceded originally that it did not have a deliverable five year housing land supply. However, a Housing Monitoring Update later submitted sought to demonstrate a five year supply. Subsequently though, the Council confirmed that it currently cannot demonstrate a five year housing land supply, accepting the approach taken by my colleague Inspector in a recent appeal decision<sup>1</sup> - amongst other things that the new objective assessment of housing need has not yet been properly tested by the local plan process. As such, and

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<sup>1</sup> APP/U1105/A/14/2229080

whilst I acknowledge the progress made towards addressing the shortfall, I consider that the operation of paragraph 14 of the Framework, as outlined above, is triggered in this case.

4. Accordingly, I am required to determine whether the adverse impacts of granting planning permission for the proposed development would significantly and demonstrably outweigh the benefits when assessed against the policies of the Framework as a whole. The main issues in this respect are whether the appeal site is in a sustainable location for the proposed residential development and whether the proposed development would make appropriate provision for affordable housing.

## **Reasons**

### *Policy context*

5. In its decision notice, the Council relies on policies from the East Devon Local Plan, (adopted in 2006) (LP). This forms part of the statutory development plan for the district and had a plan period up to 2011. The LP policies relied upon are S5 (countryside protection) and TA1 (accessibility of new development). These policies are broadly in line with objectives contained in the Framework and so are due considerable weight. This remains the case in respect of Policy S5 on the basis that, although this relates to the supply of housing, it does not make provision for housing and so does not fall within the ambit of paragraph 49 in this way.
6. Policies of the emerging New East Devon Local Plan (ELP) are also relied upon. These comprise Strategy 1 (spatial strategy for development in East Devon), 7 (development in the countryside) and 27 (development at the small towns and larger villages) together with Policy TC2 (accessibility of new development). Policy TC2 and Strategy 7 are consistent in broad terms with the related aims and objectives of the Framework and so the weight attributable to these policies is increased in this respect. However, as regards Strategy 27, this has been found unsound by the Inspector examining the ELP on the basis that the allocations are not based upon the ability of the small towns and villages to accommodate growth. The weight that I can accord to this policy is thus considerably reduced for this reason.

### *Locational sustainability*

7. The appeal site is a field which lies close to the existing built form of Clyst St George, which I understand is a village falling within the lowest tier of villages and rural areas under Strategy 2 of the ELP as regards its sustainability of location. However, a primary school, cricket ground and community hall are located extremely close to the appeal site, within a couple of minutes' walk, and there is a church serving the village also. A public house is further afield at around 800m walk away but the route primarily benefits from fairly wide footpaths and so would encourage pedestrian activity.
8. There is also a large retail facility at Darts Farm which is a few minutes walk beyond the public house, using a similar route. Although fairly 'high-end', Darts Farm offers a wide range of products and so would no doubt be reasonably well-used by future occupants of the proposed development. The fact that part of the return journey on foot would be uphill would be unlikely to unduly deter pedestrians given that this would be for a relatively short

- distance. Although the route would involve crossing some busy roads, it can be crossed safely at a number of points.
9. There is a bus stop located within a few minutes walking distance of the appeal site but this appears to offer only a limited service. That said, a more regular service operates from near the public house which, I understand, provides access to larger settlements with a greater range of services and facilities. The decisions in the Offwell appeal<sup>2</sup> and Newtown appeal<sup>3</sup> cited can thus be distinguished in this regard in that those locations had a poor level of public transport accessibility. The appeal site is also close to the A376, and a relatively short distance from Exeter and close to Topsham, where a local train station is located.
  10. Further, as regards the appeal site, there would potentially be some employment opportunities available locally at Darts Farm, the Fire Service HQ and Addlepool Business Centre which could also reduce the need for journeys by private car to an extent. The fact that statistics cited by the Council indicate the majority of travel to work in the area to be by private car, and at a level slightly higher than levels in other areas, does not alter the fact that some local job opportunities are available, with further employment accessible by public transport connections.
  11. I have considered comments from the Council and others in relation to the effect of the proposed development in terms of the resultant increase in the number of homes within the village. Although the proposed dwellings would clearly represent new development within the village, they would be closely related to existing housing and village facilities and so would not function as a separate 'add on' from the village. I accept that the Inspector in the Feniton appeals<sup>4</sup> was concerned as to the issue of social inclusivity but equally, the Inspector made it apparent that she did not find this consideration of itself enough to outweigh concerns regarding the housing shortfall in the district.
  12. Further, I have no detailed evidence such as to indicate that the impact of the proposed development on local services would be to the detriment of those services. Indeed, increased patronage is likely to have the opposite effect. I accept that the housing proposed would represent a relatively large increase in the number of dwellings within the village itself but again, there is nothing to indicate that harm would result from this. Further, I have very little substantive evidence supporting the contention that there would be harm to social inclusivity or vitality in this regard. Indeed, the proposal would have positive effects in this respect by adding to the type and mix of housing in the locality.
  13. The appeal site was, I gather, indicated as a developable site in the draft Villages Development Plan Document connected to the ELP. I acknowledge though that the Council is currently considering its proposed spatial strategy in respect of small towns and villages given the Examining Inspector's comments regarding Strategy 27. Equally though, the findings of the Examining Inspector in respect of Strategy 27 do not preclude me from considering the locational sustainability credentials of the appeal proposal on its merits, as I have above. Whilst the Examining Inspector may well conclude that other locations are

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<sup>2</sup> APP/U1105/A/14/2222273

<sup>3</sup> APP/U1105/A/14/2215929

<sup>4</sup> APP/U1105/A/13/2191905; APP/U1105/A/13/2197001; APP/U1105/A/13/2197002; APP/U1105/A/13/2200204.

more sustainability located than the appeal site, this does not prevent me assessing whether the appeal site is sustainably located for the proposed development.

14. Given the facilities nearby and the scope for public transport, I conclude on the first main issue that appeal site is in a sustainable location for the proposed residential development. As such, it would comply with Policy TA1 which states that new development should be located so as to be accessible by pedestrians, cyclists and public transport and well related to compatible land uses so as to minimise the need to travel by car. Although it would technically fail to accord with Policy S5 of the LP which seeks to avoid development in the countryside in the absence of a specific local plan policy explicitly permitting such development, I find there to be no harm resultant from this in this instance.
15. I take the same approach as regards successor policies in Strategy 7 and Policy TC2 of the ELP, which include similar aims to those contained in Policies TA1 and S5 of the LP. I also find the proposal to be in line with the aims of paragraph 29 of the Framework which recognises that different transport policies are appropriate to different areas. I find on this basis no harmful conflict with the underlying aims of the settlement strategies contained within Strategies 1 and 27 of the ELP, the latter of which can only be accorded very limited weight given the Examining Inspector's finding of unsoundness.

#### *Affordable housing*

16. During the course of the application, appraisals were made as to the viability of the proposed development taking into consideration contributions and planning obligations requested by the Council. The Viability Appraisal submitted was assessed on behalf of the Council and it was accepted that the proposal was only viable based on one of two obligations packages, neither of which fully met with the Council's original requests. The Council did not though initially raise any policy objection on this basis, presumably given that the related LP Policy H4 requirement in respect of affordable housing provision was explicitly expressed as to be 'negotiated', with the reasoned justification referring to viability considerations.
17. As part of the appeal process, the appellant duly submitted a completed Section 106 Agreement (the Agreement) incorporating a requirement for four affordable housing units, along with other obligations which I consider below. The Council subsequently made additional submissions connected to a Secretary of State decision at Pinn Hill<sup>5</sup> which indicated that emerging Strategy 34 of the ELP, which details new percentage requirements for affordable housing, should be accorded greater weight than the relevant LP policy. This was essentially on the basis that Policy H4 is out of date for the reasons cited in the Pinn Hill Inspector's report.
18. However, whilst I concur with the comments of the Secretary of State contained within that decision, I share the appellant's view as regards this case – essentially that the requirements of both Policy H4 and Strategy 34 are subject to viability considerations. As such, on the basis that the affordable housing provision in this case was deemed appropriate given the viability considerations, I find also on the evidence before me no conflict with Strategy 34 of the ELP, nor indeed with Policy H4 of the LP. Thus, I conclude on the

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<sup>5</sup> APP/U1105/A/13/2208393

second main issue that the proposed development would make appropriate provision for affordable housing.

*Planning Obligation*

19. Although not a disputed matter, I am required also to consider whether the obligations in the Agreement meet the statutory tests within Regulation 122 of the Community Infrastructure Levy (CIL) Regulations 2010 and the policy tests within paragraph 204 of the Framework in order to assess whether they can be taken into account in a grant of planning permission. The obligations essentially must be necessary to make the development acceptable, directly related and fairly and reasonable related in scale and kind to the development in question.
20. Firstly, as regards the affordable housing provision, a need has been identified locally for affordable housing and on this basis and given my assessment on the second main issue also, I consider that the obligation related to affordable housing meets the Regulation 122 tests.
21. The appeal site lies within relatively close proximity of the Exe Estuary and Pebblebed Heaths Special Protection Areas and the Council has outlined in its statement the detrimental impacts on these areas through recreational use. Accordingly, the Council has sought a contribution of £950 per dwelling to mitigate against the resultant harm of the proposed development. Given the relatively close proximity of the appeal site, I share the Council's view that the additional housing proposed would be likely to have some adverse impact and that the contribution sought and obligation provided in the Agreement therefore meets with the Regulation 122 requirements.
22. The appeal site is located opposite the local cricket ground and concerns were raised during the application process as to the effect of the proposed development on the viability of the cricket club including cricket balls potentially damaging the proposed dwellings and related increased insurance costs. The Agreement therefore includes an obligation for the erection and maintenance of netting to guard against balls hitting the proposed houses. I consider this obligation to be necessary given the relative positions of the cricket ground and appeal site, and potential adverse effects as outlined. The provision made in the Agreement for the removal of the netting in the event of the cricket club ceasing operation prevents this obligation going beyond what is necessary to mitigate against the harm cited. These obligations thus can be taken into account.
23. Obligations are also included in the Agreement in respect of on-site open space provision, along with the construction of new footpath links. Although I recognise the benefits of these to residents, I have little evidence before me to suggest that these are necessary to render the development acceptable in planning terms. In particular there is nothing to indicate that there are existing public open space or access deficiencies, nor that these would be fairly and reasonably related in scale and kind in the sense of requiring no more than is necessary to overcome any such deficiencies. On the evidence before me, I do not therefore consider that these obligations meet the Regulation 122 tests in these regards and so I am unable to take these into account.
24. The County Council sought, during the application process, a contribution towards secondary school transport costs. This was not offered in the Agreement due to viability considerations. However, as I have no detailed

evidence in support of this requested contribution, the failure of the Agreement to secure this also therefore does not weigh against the development.

### **Other Matters**

25. I have considered comments in relation to the effect of the proposal on highway safety in view of the proximity of the local school and business park and availability of on street parking provision. Given the number of off street parking spaces proposed, I do not consider that any limited overspill parking arising from the development proposed would result in highway safety concerns. Thus I have no reason to disagree with the Council's assessment that the proposed development would be acceptable in terms of highway safety effects and that access from the A376 is not therefore required.
26. Comments in relation to loss of agricultural land and of hedgerows housing protected species have been taken into consideration. The former weighs slightly against the development. I consider though that the proposed mitigation and enhancement strategy would result in an overall positive ecological outcome. Concerns in relation to possible damage to nearby listed buildings can be dealt with by a condition requiring the Council to approve a scheme in relation to the construction.
27. Any increase in pollution from car fumes and indeed, light and noise, would be very modest given the fairly small scale of the development and its residential nature, and so I find there to be no material harm in this regard notwithstanding comments as to existing traffic fume pollution levels in the area. Equally, I have no evidence to suggest that the noise bund proposed would result in any increased traffic noise for other houses in the village and so can accord this concern only limited weight.
28. The proposed development would no doubt have some effect on the character and appearance of the area. However, I share the view that both the proposed density and design of the dwellings would be appropriate to the character of the village, with interest added by means of the varied site layout. Thus, I do not consider that this aspect weighs against the proposal. The amenity land proposed would, I accept, not provide specific play space. However, it would be close to other village facilities and easily accessible and thus I do not consider it would be underused. The spacing between proposed dwellings and separation distances to existing housing would in most cases be sufficient to prevent any harm from a loss of privacy. A condition can be imposed in respect of the plots furthest south in order to ensure an acceptable relationship with the neighbouring dwellings as regards overlooking.
29. I have considered residents' desires for a smaller number of dwellings, along with comments in relation to the Clyst St George Parish Plan and emerging Neighbourhood Plan, although I have no detailed documentation in relation to either of these documents in evidence before me. As regards the Parish Plan, for the reasons outlined above, I have no reason to disagree with the Council's assessment that there would be no harm to the character and appearance of the area. In respect of the emerging Neighbourhood Plan, there is nothing to suggest that this has moved beyond a very early stage of preparation, significantly limiting the weight that can be accorded to this. Although I have considered the implications of paragraph 54 of the Framework as regards rural areas, comments as to an absence of need based on other nearby development coming forward are not supported by detailed evidence and indeed the absence

of need would not be a reason to prevent an otherwise acceptable development.

30. As such, although the proposal would be in a sustainable location and would make adequate provision for affordable housing, I find that there are a small number of matters weighing very slightly against the proposed development.

#### *Planning Balance*

31. Turning then to the overall planning balance, the Framework outlines sustainable development in tri-partite terms as including mutually dependent social, economic and environmental dimensions and I assess the proposal on this basis.
32. I have identified in the previous section a limited number of matters which weigh very slightly against the proposal. As to the aspects offering weight in favour of the proposal, the proposed development would make a fairly small but notable contribution to the shortfall of residential units in the district and would offer a further benefit in providing four of these units as affordable housing. I acknowledge in this regard also the appellant's comments that people currently travel into the village school from elsewhere as there is little affordable housing in the village and that the proposal would, to a modest extent, reverse this trend and would improve the local social mix also.
33. There would be some additional support for local services arising from the development and clearly there would be short term benefits for the construction industry also. A number of services and facilities would be available within a fairly easy walking distance, along with good public transport connections from the nearby public house. Thus, I consider that future residents would have options available other than the use of the private car for a number of journeys.
34. On this basis, I find that there are a number of aspects which together offer fairly significant weight in favour of the proposal.

#### **Conclusion and Conditions**

35. Drawing all of the above together, the proposal would meet with the three interdependent dimensions of sustainable development and would not result in any harmful conflict with either the LP or ELP policies cited. As such, in assessing the proposal against the policies in the Framework taken as a whole it would represent a sustainable form of development and I consider that the very slight adverse effects of the proposed development would not significantly and demonstrably outweigh the resultant benefits. For the reasons given, I conclude that the appeal should succeed.
36. I have imposed conditions requiring compliance with the submitted Flood Risk Assessment, as updated, and Ecological Report Mitigation and Enhancement Plan in order to ensure that appropriate measures are taken in respect of flood risk and as regards ecological interests on site. Conditions in relation to visibility splays and related to parking and accesses are imposed in the interests of highway safety. I have not imposed a condition related to security lighting or secure boundary treatment in the absence of any substantive evidence to indicate a requirement for these.
37. Conditions related to construction and requiring the submission and implementation of a Construction and Environment Management Plan and Construction Method Statement are required in the interests of ensuring that

impacts related to highway safety and the living conditions of nearby residents are adequately safeguarded during the construction period. I impose a condition related to internal noise levels within the approved residential units with the aim of ensuring acceptable living conditions for future occupants of the proposed development and I refer to the more recent industry document in this regard. I also impose a condition requiring obscure glazing to the first floor south facing side windows of plots 19 and 25 to prevent undue overlooking of neighbouring properties. Hours of working and deliveries, noise from on site vehicles and the burning items on site are controlled or prohibited in the interests of the living conditions of the surrounding residents. Conditions imposed are amalgamated and modified where appropriate in the interests of clarity and enforceability.

*Veronica Bond*

INSPECTOR

### **SCHEDULE – CONDITIONS**

- 1) The development hereby permitted shall begin not later than three years from the date of this decision.
- 2) The development hereby permitted shall be carried out in accordance with the following approved plans: Drawing Numbers (all prefixed 12.42): SP.34; SP.36; SP.40; SP.41; SP.42; SP.43; P01; P02; P03; 04; P05; P06; P07; P08; P09; P10; P11; P12; P13; P14; P15.
- 3) The development hereby permitted shall be undertaken in accordance with the submitted Flood Risk Assessment dated January 2014 (Rev P01), Addendum dated May 2014 and letter dated 24 June 2014.
- 4) The development hereby permitted shall be undertaken in accordance with the submitted Ecological Report and Mitigation and Enhancement Plan dated June 2014.
- 5) No development shall take place, including any works of demolition, until a Construction Method Statement has been submitted to, and approved in writing by, the local planning authority. The approved Statement shall be adhered to throughout the construction period. The Statement shall provide for:
  - (a) the timetable of the works;
  - (b) daily hours of construction;
  - (c) any road closure;
  - (d) the number and sizes of vehicles visiting the site in connection with the development and the frequency of their visits, and hours during which delivery and construction traffic will travel to and from the site;
  - (e) the compound/location where all building materials, finished or unfinished products, parts, crates, packing materials and waste will be stored during the demolition and construction phases;
  - (f) areas on-site where delivery vehicles and construction traffic will load or unload building materials, finished or unfinished products, parts, crates, packing materials and waste with confirmation that no construction traffic or delivery vehicles will park on the County



highway for loading or unloading purposes, unless prior written agreement has been given by the Local Planning Authority;

- (g) hours during which no construction traffic will be present at the site;
  - (h) the means of enclosure of the site during construction works;
  - (i) details of proposals to promote car sharing amongst construction staff in order to limit construction staff vehicles parking off-site;
  - (j) details of wheel washing facilities and obligations;
  - (k) the proposed route for all construction traffic exceeding 7.5 tonnes;
  - (l) details of the amount and location of all construction worker parking;
  - (m) photographic evidence of the condition of the adjacent public highway prior to commencement of any work.
- 6) Prior to the commencement of the development hereby approved, a scheme to demonstrate that internal noise levels within all residential units will conform to the "good" design range identified by BS 8233:2014 Guidance on sound insulation and noise reduction for buildings shall be submitted to and approved in writing by the Local Planning Authority. The development shall thereafter be carried out in accordance with the approved details and be retained thereafter.
- 7) A Construction and Environment Management Plan (CEMP) shall be submitted to and approved in writing by the Local Planning Authority prior to any works commencing on site, and shall be implemented and remain in place throughout the development as approved. The CEMP shall include the following matters: Air Quality, Dust, Water Quality, Lighting, Noise and Vibration, Pollution Prevention and Control, and Monitoring Arrangements.
- 8) There shall be no burning of any kind on site during construction, demolition or site preparation works and no construction or demolition works shall be carried out, or deliveries received, outside of the following hours: 0800-1800 Monday-Friday. 0800- 1300 on Saturdays and not at all on Sundays or public holidays.
- 9) No high frequency audible reversing alarms used shall be permitted to be used on any vehicle working on the site.
- 10) Before the first occupation of the buildings labelled as plots 19 and 25 on Drawing Number 12.42 SP.34 hereby permitted the first floor side windows on the south facing elevations of these buildings shall be fitted with obscured glass and fixed shut and shall be permanently retained in that condition.
- 11) No dwelling shall be occupied until the: accesses, parking facilities, turning area, access drive, visibility splays and access drainage have been provided in accordance with details that shall have been previously submitted to, and approved in writing by, the Local Planning Authority. The approved accesses, parking facilities, turning area, visibility splays, access drive and access drainage shall be permanently retained for those purposes thereafter.
- 12) The existing accesses shall be effectively and permanently closed in accordance with details and a timescale which shall previously have been submitted to and approved in writing by the Local Planning Authority.