
Appeal Decision

Site visit made on 2 September 2015

by Jonathan Manning BSc (Hons) MA MRTPI

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

Decision date: 9 November 2015

Appeal Ref: APP/X1118/W/15/3081123

Land off Velator Close, Braunton, EX33 2DT

- 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 Pearce Homes against the decision of North Devon District Council.
 - The application Ref 58119, dated 12 September 2014, was refused by notice dated 29 April 2015.
 - The development proposed is erection of 12 open market dwellings and 4 affordable dwellings, BMX track and school learning facility with associated roads, infrastructure and planting.
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Decision

1. The appeal is allowed and planning permission is granted for erection of 12 open market dwellings and 4 affordable dwellings, BMX track and school learning facility with associated roads, infrastructure and planting at Land off Velator Close, Braunton, EX33 2DT, in accordance with the terms of application ref: 58119, dated 12 September 2014, subject to the conditions in the attached schedule.

Application for Costs

2. An application for costs was made by Pearce Homes against North Devon District Council. This application is the subject of a separate decision.

Procedural Matter

3. During the appeal process, the Council raised concerns with regard to the wording of some aspects of the submitted Unilateral Undertaking (the UU), which made provision for: affordable housing; the implementation of a management company for the storm water drainage scheme; financial contributions for public open space, sports, recreation and leisure facilities; the transfer of the BMX track land to the Braunton BMX Club; and the transfer of the school facility learning zone land to Braunton Southmead School, if they wish to take up the option. The appellant was given the opportunity to provide a revised version of the UU to address the Council's concerns, which was subsequently provided. The Council has now confirmed that it is satisfied with the content and wording of the UU, although did raise a query with regards to paragraph numbering. However, I agree with the appellant that this does not affect the lawfulness of the UU. Given the above, I have not considered these matters any further in my decision.

Main Issue

4. The main issue of the appeal is the effect of the proposal on the character and appearance of the area.

Reasons

Policy context and background

5. The appeal site is located outside of any settlement boundary and therefore can be considered to be in the countryside. Policy HSG2 of the North Devon Local Plan (2006) (the LP) promotes development within the designated settlement boundaries and consequently the proposal runs contrary to this policy.
6. The Government is seeking to significantly boost the supply of housing, as set out in Paragraph 47 of the National Planning Policy Framework (the Framework). Further to this, the Framework at Paragraphs 14 and 49 identifies that there is a presumption in favour of sustainable development. Paragraph 49 of the Framework sets out that relevant policies for the supply of housing should not be considered up-to-date if the local planning authority cannot demonstrate a five year supply of deliverable housing sites. The Council has accepted that it cannot currently demonstrate a five year housing land supply. Consequently, the Council's policies that relate to the supply of housing are out-of-date, which in this case I consider to be Policies HSG1, HSG2 and HSG8 of the LP.
7. In these circumstances, Paragraph 14 of the Framework advises that permission should be granted unless any adverse impacts of doing so would significantly and demonstrably outweigh the benefits, when assessed against the policies in the Framework taken as a whole. This balancing exercise is undertaken at the end of my decision.

Character and appearance

8. The appeal site is currently an open area of land that is set between the settlements of Braunton and Wrafton. The site slopes gently from north east to south west. The boundary of the site is largely defined by a relatively mature hedgerow. Knowle Water to the south east is separated from the site by a flood defence bank, which accommodates a public right of way. The site would be accessed via Velator Road to the west of the existing roundabout. The proposal would deliver 16 new dwellings on the northern part of the site, a BMX track on the south eastern section of the site and a proposed school learning facility on the western part of the site.
9. The Council are of the view that the proposal would cause harm to the landscape insofar that it forms an important visual break between the settlements of Braunton and Wrafton. Policy ENV1 of the LP seeks to protect or enhance the beauty of the countryside and the diversity of its landscape character. The proposal would result in built development on a currently open site and therefore there will be a material change to the appearance of the site, which I consider in this case, would result in some harm to the character and appearance of the area.
10. Notwithstanding this, the proposed housing would be located on a relatively small section of the appeal site closest to the existing surrounding built

development, which I consider minimises the extent the proposed housing would encroach into the open gap between Braunton and Wafton, particularly given the neighbouring development to the west, north and east. It was evident from my site visit that the site is largely well contained, given the existing vegetation and viewpoints are relatively localised and this is accepted by the Council. Further, I consider that the proposed architectural style of the proposed dwellings would reflect those in the wider area.

11. Turning to the BMX track, I acknowledge that the BMX track will include the construction of 4 straight sections of track, a number of ramps/jumps and berms linking them, plus starting and finishing points at either end. However, the track will have an outward appearance of undulating grass banks, up to 3 metres in height and a surface of compacted gravel. I accept that this would alter the landform, but the BMX track would not include any built development or lighting. Given this and having regard to the elevations of the BMX track shown on Drawing No 308 54, I consider that proposed BMX track would retain the open nature of the appeal site. Further, the proposed footpaths across the site would also maintain the open nature of the appeal site.
12. I agree with the Council's landscape officer that further improvements could be made to the proposed landscaping scheme to soften the impact of the development. However, I consider that this can be suitably addressed by a planning condition that requires a revised scheme to be agreed with the Council.
13. Given my findings above, I consider that there will be some harm to the character and appearance of the area as a result of the proposed built development and associated works, contrary to Policy ENV1 of the LP and the Framework. However, this would be localised and limited. Further, I consider that the open gap in built development between Braunton and Wafton would in the large part be maintained. Consequently, I consider that the identified harm carries a limited level of weight against the proposal in the planning balance.
14. The Council has also referred to Policy BRA03 of the emerging Local Plan (the eLP). However, the eLP is at a relatively early stage of production and the policy could be subject to change or found to be unsound. I have therefore afforded little weight to Policy BRA03 of the eLP.

Other matters

15. The scheme would make a reasonable contribution of 16 dwellings towards much needed housing in the District, of which 4 would be affordable units. The proposed development would provide some associated modest economic benefits, such as those generated from construction and the spending of future occupants. Further, the proposal provides for community facilities in the form of a BMX track and the potential for a school learning facility if the school wishes to take up the option. I consider that these social and economic benefits in combination attract substantial weight in favour of the proposal.
16. Interested parties have raised a number of concerns with regard to: flood risk, drainage and the merits of the sequential test; highway safety, access and parking; contaminated land; impact on ecology; the loss of green open space; the effect of the proposal on the UNESCO heritage site; maintenance; the proposed school facility; the effect of the BMX track on neighbours through disturbance, litter and anti-social behaviour; the effect on living conditions of

the occupants of neighbouring properties, most notably No 34 and No 36 Velator Close, from overlooking and subsequent loss of privacy; the effect on local infrastructure; other housing developments permitted in the area and that there is no need for more; and loss of property value.

17. I have considered each of these matters carefully and with the imposition of suitable planning conditions, there is no evidence that leads me to conclude that the proposal would result in any unacceptable harm in relation to any of the above concerns or otherwise alter my view that the appeal should succeed. I am also mindful that the Council do not share any of the above concerns.
18. It has been set out that the users of the BMX track are likely to seek to hold regional events, which has raised concerns with regard to overflow parking. The appellant has set out that there are potential sites within the area to accommodate parking for such an event, although these are not identified. In any event, it has been identified that such an event would require an events licence from Devon County Council that would consider matters such as suitable parking facilities. This matter would therefore be controlled by other non-planning legislation.

Planning balance and conclusion

19. As noted above, relevant policies for the supply of housing in the adopted development plan are out-of-date. Paragraph 14 of the Framework, which sets out the presumption in favour of sustainable development, states that (unless material considerations indicate otherwise) where the development plan is absent, silent or out-of-date, planning permission should be granted unless: any adverse impacts 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.
20. I have found that the proposal would cause some limited harm to the character and appearance of the area and that this environmental harm carries a minor level of weight against the proposal.
21. On the other hand, the proposal would deliver a clear social benefit, and some modest economic benefits, from 16 new dwellings, including 4 affordable housing units towards much needed provision in the District. Further, the proposal provides for community facilities in the form of a BMX track and the potential for a school learning facility if the school wishes to take up the option. I consider that these benefits in combination carry substantial weight in favour of the scheme. For the avoidance of doubt, even if the school do not wish to take on the school learning facility, the benefits of the scheme are still significant.
22. As a result, I conclude that the identified harm does not significantly and demonstrably outweigh the substantial benefits of the proposal and the scheme represents sustainable development, for which there is a presumption in favour. As set out above, all other matters raised during the appeal by interested parties have been considered but they do not lead me to any conclusion other than that overall, the development would be sustainable. Therefore, despite the concerns of local residents, I consider that the appeal should succeed.

Conditions

23. I have considered the 18 suggested conditions against the tests set out within the Framework and the advice provided by the Government's Planning Practice Guidance and have amended them where required. In the interests of sound planning and for the avoidance of doubt, the standard time commencement condition is imposed and a condition is necessary that ensures the development is undertaken in accordance with the approved plans.
24. To ensure the appropriate appearance of the site and in the interests of ecology, conditions are imposed that require a landscape and ecological management plan to be agreed with the Council and the development to be completed in accordance with the schedule of materials provided.
25. In the interests of flood risk and surface water run-off, a condition is necessary that requires a scheme to assess and repair the entire length of the existing surface water outfall to a good condition to be agreed with the Council. To protect the living conditions of neighbouring residents, conditions are imposed that require: a scheme for the assessment and mitigation of noise, with regard to construction activities and the use of the BMX track; a Construction Management Plan to be agreed with the Council; and the restriction of construction working hours.
26. To ensure sustainable development a condition is necessary that requires energy saving measures. The Council has also suggested a condition that required the proposed dwellings to incorporate water standards previously required to achieve Level 3 of the Code for Sustainable Homes. However, from 1 October 2015, the new Building Regulations Optional Requirements are in force. As there is a relevant development plan policy (DVS1A of the LP) requiring water efficiency, I have revised the condition to require compliance with the new Building Regulations Optional Requirement with regard to water efficiency.
27. To ensure the appropriate development of the site, a condition is imposed that requires full details of the proposed estate roads, footways, footpaths, verges, junctions, street lighting, sewers, drains, retaining walls, service routes, surface water outfall, road maintenance/vehicle overhang margins, embankments, car parking and street furniture to be provided and agreed with the Council.
28. In the interests of highway safety, conditions are necessary that require: the access road, the visibility splays, the footway on the public highway frontage, construction traffic roads, site compound and staff car park to be laid out before any other part of the development is commenced; relevant highway infrastructure for each dwelling to be completed before it is first occupied; communal parking spaces to be provided and not allocated to any individual dwellings; and provision to be made within the curtilage of each dwelling for the disposal of surface water so that none discharges onto the highway.
29. With regard to the above conditions, I consider that there was a significant level of repetition within the Council's suggested conditions 10, 12, 13, 14, 15 and 16. I have therefore revised and where appropriate combined these conditions to avoid unnecessary duplication. Further, I consider that the suggested condition 11 is not necessary, as the condition requiring the

development to be undertaken in accordance with the approved plans will secure the proposed parking provisions.

Jonathan Manning

INSPECTOR

Richborough Estates

Schedule of Conditions

- 1) The development hereby permitted shall be begun before the expiration of three years from the date of this permission.
- 2) The development hereby permitted shall be carried out in accordance with the following approved plans: 308 01, 308 10 Rev G, 308 20 Rev F, 308 21, 308 22, 308 30, 308 31, 308 32, 308 33, 308 34, 308 35, 308 40, 308 41, 308 42, 308 43, 308 52, 308 53 Rev A, 308 54 and 1023-SK01.
- 3) No development shall take place until a landscape and ecological management plan (LEMP) has been submitted to and approved in writing by the local planning authority. The content of the LEMP shall include the following:
 - a) Description and evaluation of features to be managed;
 - b) Ecological trends and constraints on site that might influence management;
 - c) Aims and objectives of management;
 - d) Appropriate management options for achieving aims and objectives;
 - e) Prescriptions for management actions;
 - f) Preparation of a work schedule (including an annual work plan capable of being rolled forward over a 10- year period);
 - g) Details of the body or organization responsible for implementation of plan;
 - h) Ongoing monitoring and remedial measures;
 - i) Hard landscape proposals including proposed finished levels or contours, means of enclosure; car parking layouts; other vehicle and pedestrian access and circulation areas; hard surfacing materials; minor artefacts and structures (e.g. furniture, play equipment, refuse or other storage units, signs, lighting etc.); proposed and existing functional services above and below ground (e.g. drainage, power, communications cables, pipelines etc. indicating lines, manholes, supports etc.).
 - j) Soft landscape proposals including planting plans; written specifications (including cultivation and other operations associated with plant and grass establishment); schedules of plants (noting species, plant sizes and proposed numbers/densities); implementation and management programme.

The LEMP shall also include details of the mechanism(s) by which the long-term implementation of the plan will be secured by the developer with the management body(ies) responsible for its delivery. The plan shall also set out (where the results from monitoring show that conservation aims and objectives of the LEMP are not being met) how contingencies and/or remedial action will be identified, agreed and implemented so that the development still delivers the fully functioning landscape and biodiversity objectives of the scheme. The development shall be implemented in accordance with the approved details.

- 4) The proposed development shall be constructed in accordance with the schedule of materials set out in the amended Development Finishes Schedule (approved plan 308 52).

- 5) No development shall take place until a scheme to assess and repair the entire length of the existing surface water outfall to a good condition has been submitted to and approved in writing by the local planning authority. Prior to the first occupation of the site, it shall be demonstrated in writing to the local planning authority that relevant parts of the scheme have been completed in accordance with the details and timetable that were agreed. The scheme shall thereafter be managed and maintained in accordance with the approved details.
- 6) No development shall take place until a scheme for the assessment and mitigation of noise has been submitted to and approved in writing by the local planning authority. The scheme shall be prepared by a suitably qualified person (Member of the Institute of Acoustics or equivalent) and include the following elements:
 - a) An assessment of predicted noise levels at existing dwellings associated with the use of plant for ground clearance, excavation and construction together with proposals for any necessary noise mitigation measures required to protect the amenity of local residents, to be undertaken with reference to relevant guidance; and
 - b) An assessment of predicted noise effects, particularly arising from the proposed BMX track, at dwellings, both proposed within the site and existing housing adjoining the site at the time permission was granted.

The assessment shall describe any required noise mitigation measures necessary to ensure that the development does not adversely affect amenity enjoyed by existing and future residents. Such mitigation measures shall be implemented prior to the first occupation of the site and maintained thereafter.

- 7) Prior to the commencement of development, a Construction Management Plan (CMP) to manage the impacts of construction during the life of the works, shall be submitted to and approved in writing by the local planning authority. For the avoidance of doubt, the CMP shall include the following details:
 - a) measures to regulate the routing of construction traffic;
 - b) the times within which traffic can enter and leave the site;
 - c) the importation of spoil and soil on site;
 - d) the removal /disposal of materials from site, including soil and vegetation;
 - e) the location and covering of stockpiles;
 - f) details of measures to prevent mud from vehicles leaving the site, including wheel washing facilities;
 - g) control of fugitive dust from earthworks and construction activities (dust suppression);
 - h) a noise control plan which details hours of operation;
 - i) details of any site construction office, compound and ancillary facility buildings
 - j) specified on-site parking for vehicles associated with the construction works and the provision made for access thereto;

- k) a point of contact (such as a Construction Liaison Officer/site manager) and details of how complaints will be addressed

Development shall be undertaken in accordance with the approved details.

- 8) During the construction phase no machinery shall be operated, no process shall be carried out and no deliveries taken at or dispatched from the site outside the following times: Monday to Friday 08.00 and 18.00, Saturday 09.00 and 13.00, nor at any time on Sundays, Bank or Public holidays.
- 9) The dwellings hereby approved shall be constructed to incorporate energy saving measures. The details of these shall be submitted to the Local Planning Authority prior to the commencement of the construction of any dwelling and shall specifically include an energy statement describing how each property achieves a 15% reduction in the Dwelling Emission Rate (DER) (measured against Part L of the Building Regulations Standards 2013) through either improvements in energy efficiency performance or onsite low carbon technologies, or both. The statement should include formal Building Regulations compliant (SAP) calculations to demonstrate compliance with this target. Within 3 months of the final dwelling being occupied a post construction report shall be submitted to and agreed in writing by the local planning authority demonstrating that the 15% requirement has been met.
- 10) Before occupation, the dwellings shall comply with Building Regulations Optional Requirement 36. (2) (b) for water efficiency in new dwellings. Evidence of compliance shall be notified to the building control body appointed for the development in the appropriate Full Plans Application, or Building Notice, or Initial Notice to enable the building control body to check compliance.
- 11) No development shall take place until plans and sections, indicating, as appropriate, the design, layout, levels, gradients, materials and method of construction for the proposed estate roads, footways, footpaths, verges, junctions, street lighting, sewers, drains, retaining walls, service routes, surface water outfall, road maintenance/vehicle overhang margins, embankments, car parking and street furniture has been submitted to and approved in writing by the local planning authority. Such provisions shall be laid out, constructed and completed in accordance with the approved details and in accordance with a detailed programme that is to be submitted to and approved in writing by the local planning authority.
- 12) No other part of the development hereby approved shall be commenced until: the access road has been laid out, kerbed, drained and constructed up to base course level for the first 20 metres back from its junction with the public highway with the ironwork set to base course level; the visibility splays required by this permission have been laid out; the footway on the public highway frontage required by this permission has been constructed up to base course level; and construction traffic roads, site compound and staff car park have been constructed in accordance with details to be submitted to and approved in writing by the local planning authority.
- 13) The occupation of any dwelling, in an agreed phase of development, shall not take place until the following works have been carried out in

accordance with details submitted to and approved in writing by the local planning authority:

- i) the spine road and/or cul-de-sac carriageway including the vehicle turning head within that phase shall have been laid out, kerbed, drained and constructed up to and including base course level with the ironwork set to base course level and the sewers, manholes and service crossings completed;
- ii) the spine road and/or cul-de-sac footways and footpaths which provide that dwelling with direct pedestrian routes to an existing highway maintained at public expense have been constructed up to and including base course level;
- iii) all visibility splays have been laid out to their final level;
- iv) the street lighting for the spine road and/or cul-de-sac and/or footpaths has been erected and commissioned;
- v) the car parking and any other vehicular access facility required for the dwelling by this permission have been completed;
- vi) the verge, service margin and vehicle crossing on the road frontage of the dwelling has been completed with the highway boundary properly defined;
- vii) the street nameplates for the spine road and/or cul-de-sac have been provided and erected.

Once constructed such areas shall be maintained free of obstruction to ensure the free movement of vehicular and pedestrian traffic and the street lighting and nameplates maintained in accordance with the approved details.

- 14) Any car parking spaces within any communal parking area to be provided as part of the development shall not be allocated to individual dwellings and shall be maintained free of obstructions, to allow their use by all occupiers of the estate and their visitors.
- 15) Provision shall be made within the curtilage of each dwelling for the disposal of surface water so that none discharges onto the highway.