



## Appeal Decision

Site visit made on 18 August 2015

**by Jennifer Tempest BA(Hons) MA PGDip PGCert Cert HE MRTPI IHBC**

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

**Decision date: 09/02/2016**

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**Appeal Ref: APP/F1230/W/15/3024325**

### Land at Hollymoor Lane, Beaminster, Dorset

- 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 Summerfield Developments (SW) Ltd against the decision of West Dorset District Council.
  - The application Ref WD/D/14/002796, dated 10 October 2014, was refused by notice dated 19 March 2015.
  - The development proposed is erection of 23 dwellings (including 8 affordable) creation of an access from Hollymoor Lane, provision of landscaping, parking and associated works.
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### Decision

1. The appeal is dismissed.

### Preliminary Matters

2. On 22 October 2015 the Council adopted the joint West Dorset, Weymouth and Portland Local Plan 2011-2031 (Local Plan). This supersedes the policies of the West Dorset Local Plan 2006 (WDLP) referred to in the Council's reasons for refusal.
  3. The Council has confirmed the Local Plan policies which are relevant to the proposals and the main parties have been provided with the opportunity to comment on the changed development plan position.
  4. A draft S106 obligation in the form of a Unilateral Undertaking (UU) was submitted with the appeal and a completed UU was later provided. This obligation relates to the provision of affordable housing, contributions towards the provision of leisure facilities and open space, and a traffic management scheme. I address these matters below.
  5. The Council's decision making process has been queried as the parties notified in relation to the certificate of ownership process vary between the application and the appeal. The purpose of the certificates is to ensure that parties have been given an opportunity to express their views and that their interests have not been prejudiced. I am satisfied that there would be no prejudice in my determining the appeal.
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## **Main Issues**

6. These are (i) the effect of the proposal on highway and pedestrian safety and (ii) whether the proposal would preserve or enhance the character or appearance of the Beaminster Conservation Area.

## **Reasons**

### *Development plan*

7. Section 38(6) of the Planning and Compulsory Purchase Act 2004 requires planning decisions to be made in accordance with the development plan policies in force at the time of the decision unless material considerations indicate otherwise.
8. Policy INT1 of the Local Plan sets out the presumption in favour of sustainable development that will improve the economic, social and environmental conditions in the area. Beaminster is defined under Policy SUS2i of the Local Plan as one of the towns which will be a focus for future development. Policy SUS2ii permits development within defined development boundaries whilst Policy SUS2iii states that development outside defined development boundaries will be strictly controlled, having particular regard to the need for protection of the countryside and environmental constraints. Various types of development are specified under Policy S2iii as being acceptable outside defined development boundaries including specific allocations in a development plan document and affordable housing.
9. Defined settlement boundaries for Beaminster have been carried forward from the previously adopted WDLP. The appeal site lies outside the defined development boundary. At the time the Council considered the original application and in the absence of an up to date development plan the Council were unable to demonstrate a 5 year supply of housing land. The Council's reasons for refusing the proposal relate to specific concerns associated with the proposed development.
10. In the light of the recent adoption of the Local Plan, the housing policies must be considered as up to date. The Inspector's report into the Local Plan concludes that sufficient sites have been allocated in the Local Plan to meet the Council's five year housing land target. I have noted the Inspector's comments that there is very little margin should circumstances change and that it is imperative that the Council does not ignore new opportunities which come forward in sustainable locations and are consistent with other policy provisions. He also advises that the Council takes advantage of every reasonable opportunity to improve their short term housing supply position as well as the overall amount of housing for the plan period. Nonetheless, the development proposal is contrary to Policy SUS2 of the Local Plan as it lies outside the defined development boundary of Beaminster.

### *Highway and pedestrian safety*

11. The appeal site lies on the eastern edge of Beaminster and the principal access route to the site is along Whitcombe Road and East Street which leads into Hollymoor Lane. Woodswater Lane connects through to North Street and provides an alternative link to the centre of Beaminster; however this is a less direct route to the appeal site than via East Street and involves a ford and some stretches of narrow road which lack footways in places.

12. East Street has housing on both sides. There are footways on both sides at the western end of the street at the junction with Whitcombe Road but the majority of East Street has a footway on one side only or no footways. The houses in some parts of East Street open directly onto to the carriageway with no intervening footway. Some houses have a front step or small porch and some have planters or a narrow planted area alongside house walls. In places there are gulleys with flagstone crossings.
13. Whilst there is a small group of garages opposite the entrance to The Brit, East Street is used for on-street parking on one or other side of the road. This is not formally regulated parking, but from what I observed during my site visit, relies on parking adjacent to or partially upon pavements, or adjacent to walls where there is no planting directly outside houses and no entrance doors. At the eastern end of the street, where East Street meets Hollymoor Lane and Woodswater Lane, the character of the road changes. From this point, the road has footpaths on each side and the housing is of more recent date with front gardens and off street parking.
14. The narrow width of East Street means that the on-street parking reduces the width of the carriageway to a width which precludes vehicles from passing one another. The highway authority advise a traffic management scheme (TMS) needs to be implemented along East Street to mitigate the impact of the additional traffic on East Street which would arise from the proposed development. The application proposals include a traffic impact assessment and suggestions for a TMS whilst the appeal proposals are supplemented by a more detailed drawing. These proposals involve work to the public highway.
15. The UU provides that development on the appeal site would not be commenced until a TMS has been submitted to and approved by the County Council and has been implemented. The UU provides for the costs of such works to be met. The appellant points to avoiding unnecessary expense in drawing up a detailed TMS should the proposed development on the appeal site be refused.
16. The Highway Authority's most recent comments are that the UU would offer sufficient flexibility to secure an acceptable scheme. However, in other comments the authority have made clear that any scheme would require full public consultation prior to its approval and implementation. The Highway Authority have previously recommended the proposal be refused in the absence of an agreed traffic management solution for East Street to mitigate the impact of traffic generated by the development and to address the problems resulting from the narrow sections of East Street.
17. The appellant has indicated that the increase in the level of traffic would not be severe for a development of 23 dwellings and contend that it would be compliant with the National Planning Policy Framework (Framework) in this regard. The transport assessment suggests that there would be a total of twenty five vehicle movements during the morning peak hour resulting from the development and that additional movements would be modest and imperceptible.
18. There are existing issues regarding highway conditions and pedestrian safety in East Street. However, it is clear from the evidence that mitigation of the effects of additional traffic has for some time been considered by the Highway Authority to be a pre-requisite to further development on Hollymoor Lane. The

appellant's submission of the UU providing for the TMS is acknowledgment of this need. From the evidence, and from what I observed during my site visit, I consider measures to mitigate the effects of additional traffic using East Street are essential given the narrowness of the street which is reduced by parked cars, the inadequacy of pavements and the number houses which open directly onto the street.

19. The appeal proposals are the subject of considerable local concern with regard to additional traffic using East Street and the implications of a TMS for the residents within East Street. The appellant points to the 1:1000 drawing at A3 submitted with the planning application which indicate virtual footways, contrasting surface treatments, bollards and crossing points. I have also noted that the appellant carried out a public consultation prior to the application being submitted which included the principles of a TMS.
20. The appellant states that detailed design of any TMS can only be resolved through Section 278 of the Highways Act and this process would follow the grant of planning permission. Whilst the S278 process may itself involve public consultation, and an agreement under S278 may not be entered into in the absence of a planning permission for development, I cannot agree that it is beyond the appellant's control to progress or consult upon a detailed design in advance of planning permission being granted. The cooperation of the Highway Authority in this process in advance of public consultation on a more detailed scheme would clearly be beneficial.
21. Changes to on-street parking and creation of virtual footways are valid concerns for East Street residents given the layout of the houses in relation to the road and the lack of off-street parking. I have noted the appellant's comments in response to these concerns which are made in the context of the 'proposed' scheme. However, the TMS is not part of the application. The drawings are indicative and are not endorsed by the highway authority. In the absence of a detailed scheme, the effects of the scheme cannot be fully assessed. I have noted that the Highway Authority considers the completed UU provides sufficient flexibility to agree the details at a later date. I also note that the Highway Authority clearly consider that there are effective means of installing a traffic calming or management system that would enhance highway safety.
22. With the exception of construction traffic, on the basis of the available evidence the nature of any additional traffic generated by the proposal would be similar to that of the existing traffic using East Street. However, there would be an increase in the number of vehicles using East Street. Given the lack of agreement regarding the details of a TMS, I cannot be certain that the measures in any subsequent TMS would not result in harm to the living conditions of residents in East Street, particularly in relation to 'virtual' pavements and any alterations to the carriageway and footways. Consequently, there is no certainty that the proposals would not be contrary to Local Plan Policy ENV16 in relation to vibration or detrimental emissions.
23. Overall, I conclude that in the absence of an agreed TMS the proposal would be detrimental to highway and pedestrian safety. The Framework advises that development should only be prevented or refused on transport grounds where the residential cumulative impacts of development are severe. I acknowledge that existing development has taken place alongside Hollymoor Lane which

utilises East Street for access. However, the evidence is also clear that further development requires resolution of highway and pedestrian conditions on East Street commensurate with the level of development proposed. For the reasons given above, I consider this needs to be resolved with as great a degree of certainty as possible at application stage.

### *Conservation Area*

24. East Street lies within the Beaminster Conservation Area. Section 72 of the Planning (Listed Buildings and Conservation Areas) Act 1990 imposes a general duty in exercising planning functions with respect to any buildings or other land in a conservation area that special attention shall be paid to the desirability of preserving or enhancing the character or appearance of that area.
25. East Street is relatively free from signage, street furniture and road markings. The buildings on East Street are close to the carriageway and a number of the houses open directly onto the road. Much of the housing on East Street is in the form of older, terraced cottages. The proximity of the buildings and stone boundary walls to the road contributes in no small way to East Street's special character. Modest features such as doorsteps, porches and drainage gulleys add to the character and appearance of the street.
26. Although the development proposals on the appeal site itself would not affect the conservation area, the associated traffic would pass through part of the conservation area. In addition, the conservation area appraisal identifies a number of listed buildings at the western end of East Street including buildings around the junction with Whitcombe Road.
27. Notwithstanding the existing constraints of East Street, a TMS may involve changes to carriageway width and footways, shared surfaces, surface treatment, on-street parking, signage and bollards. I have noted the appellant's contention that the constraints would limit the number of interventions which would be possible and that the indicative scheme would not necessarily be harmful. However, in the absence of more developed scheme, measures in a TMS have the potential to affect the character and appearance of the conservation area. Consequently I cannot be certain that the proposals would preserve or enhance the character or appearance of the conservation area.
28. The proposed development would therefore conflict with Policy ENV4 of the Local Plan which, amongst other matters, requires that the impact of development on a designated heritage asset must be thoroughly assessed against the significance of the asset. Development should conserve and where appropriate enhance the significance. Applications affecting the significance of a heritage asset are required to provide sufficient information to demonstrate how the proposals would positively contribute to the asset's conservation. The appeal proposals fail to satisfy this requirement.
29. The Framework attaches great weight to the conservation of heritage assets. Whilst, in the context of Paragraph 134, it is likely that the proposal would result in less than substantial harm to the significance of designated heritage assets, this must be weighed against the public benefits of the proposal. As I am unable to make clear conclusions on the extent of any harm to heritage assets, I cannot be satisfied that any harm would be outweighed by public benefits.

30. Given the range of issues which the illustrative TMS has raised, including potential impact on designated heritage assets, I consider it is necessary for the scope of the TMS and the feasibility of its implementation to be understood before any grant of planning permission.

*Other matters*

31. The UU submitted by the appellant provides for 35% of the housing on the site to be affordable rented units which would be delivered through an affordable housing provider. Policy HOUS1 of the Local Plan requires that where open market housing is proposed, 35% should be affordable housing. The proposal would thus be compliant with Policy HOUS1.
32. The UU provides for a financial contribution towards the provision of open space and for the provision of cultural and leisure facilities. The UU specifies in the definitions that the contributions would be towards Beaminster Swimming Pool and the Beaminster skate park. The Council has confirmed that contributions towards these specific projects would be compliant with the CIL regulations having regard to the numbers of contributions sought. The evidence also indicates that the contributions are in line with the Councils SPD on Planning Obligations. Given my conclusions on the main issues identified above, it is not necessary for me to reach a view on whether the UU meets the relevant legal requirements.
33. I have considered the information provided by both main parties with regard to decisions taken by the Council in October 2015 with regard to sites outside defined development boundaries in other parts of West Dorset. The Council has confirmed that these decisions were made in the context of whether or not each of the proposals provided a reasonable opportunity to improve the housing supply in the short term. As well as location, the sites were assessed against other policy provisions. Given the recent adoption of the Local Plan I attach only limited weight to these Council decisions.
34. The EA have raised no objections in principle to the proposed development but advise that the Council's infrastructure team must be consulted prior to determining the application. The Council subsequently sought the comments of the Lead Local Flood Authority (LLFA). Whilst these have not been supplied for the appeal proposal, a copy of the LLFA response to a subsequent application (since withdrawn) on the appeal site has been provided by an interested party. It is clear from the description of development that the proposal is similar to the appeal proposal. The LLFA acknowledge the supporting drainage calculations, estimations of greenfield run off rates, proposed discharge rates and necessary storage volumes. However, in the absence of a surface water strategy or detailed design based on a suitable assessment of site conditions, they object to the proposal and recommend it be refused.
35. I cannot be sure that the necessary surface water drainage arrangements would be secured in the event that planning permission was to be granted for the scheme. Failure to make such provision could result in an increased risk of flooding. As I have found the proposal to be unacceptable with regard to the highway and heritage issues identified above, drainage has not been a determining factor in this appeal. Had I found that the scheme was otherwise acceptable, this is a matter upon which I would have sought further clarification.

36. I have considered all other matters raised including the location of the site within the Area of Outstanding Natural Beauty, the potential presence of protected species on the site and the need to seek a diversion of a public footpath. The Council have not objected to the proposal on these grounds and they have not been determining factors in my consideration of the appeal. I have not found anything of sufficient weight to alter my conclusions on the main issues.

### **Assessment and Conclusion**

37. The Framework is underpinned by sustainable development. It also supports boosting supply of housing. Sustainable development has economic, social, environmental dimensions giving rise to the need for planning to perform a number of mutually dependent roles.

38. Beaminster is identified as a town which will be a focus for growth. Additional housing including the provision of affordable housing would be of economic and social benefit. However, it has not been demonstrated that there would not be environmental harm arising from the additional traffic associated with the development and the need for this to be mitigated by a TMS within the conservation area. Consequently, I am not satisfied that the proposal would be sustainable development and accordingly the presumption in favour of sustainable development set out in Paragraph 49 of the Framework is not applicable. Furthermore, relevant policies for the supply of housing are up to date in the context of the recently adopted Local Plan.

39. The proposal would not comply with the Local Plan as the appeal site is outside the defined development boundary of Beaminster. Taking all of the above matters into consideration, and having taken into account all other matters raised, I find the material considerations are not sufficient to outweigh the conflict with the development plan. Accordingly, I conclude the appeal should be dismissed.

*Jennifer Tempest*

INSPECTOR