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## Appeal Decision

Inquiry Held on 19 July – 26 July 2021

Site visit made on 22 July 2021

**by H Butcher BSc (Hons) MSc MRTPI**

**an Inspector appointed by the Secretary of State**

**Decision date: 11<sup>th</sup> August 2021**

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**Appeal Ref: APP/U1105/W/21/3270077**

**Honiton Cattle Market and Auction Rooms, Silver Street, Honiton  
EX14 1QN**

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a failure to give notice within the prescribed period of a decision on an application for planning permission.
  - The appeal is made by Churchill Retirement Living Ltd against East Devon District Council.
  - The application Ref 20/2410/MFUL, is dated 13 October 2020.
  - The development proposed is demolition of existing structures and redevelopment to form 57 retirement living apartments for older persons including communal facilities, parking and landscaping.
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### Decision

1. The appeal is dismissed and planning permission for demolition of existing structures and redevelopment to form 57 retirement living apartments for older persons including communal facilities, parking and landscaping is refused.

### Preliminary Matter

2. On 20 July 2021 the Government published its revised National Planning Policy Framework (the Framework). The main parties were able to comment on the implications of this on their cases both orally and through the exchange of written representations during the event.

### Main Issues

3. The Council's statement of case sets out four reasons for refusing the planning application had it been in a position to do so. Reason for refusal 2, relating to disabled parking facilities, cycle parking and provision for electric vehicle charging points, is no longer being pursued by the Council following the submission of a revised site plan (10106HT-PA01 Rev A). The third reason for refusal requires a financial contribution towards affordable housing to be secured by the submission of a legal agreement. I now have such an agreement before me which I deal with in my 'other matters' below. The requirement for an affordable housing contribution is not contested.
4. The main issues in this appeal are therefore:
  - The effect of the development on business and employment opportunities in the area, and;

- The effect of the development on the settings of Honiton Conservation Area and the Grade II listed St Pauls Church.

## Reasons

### *Employment opportunities*

5. Honiton cattle market extends to around 0.39 hectares. It was historically used as a traditional livestock market, with sales of sheep, cattle and calves held on a weekly basis. However, since circa 2001 it has operated as a Livestock Collection Centre, largely in response to the Foot and Mouth outbreak.
6. The Livestock Collection Centre continues to serve a growing demand; the area surrounding Honiton has one of the highest concentrations of livestock in the country. Whilst only a relatively small number of people are directly employed on the site, many others are reliant on the centre for employment. To run the collection centre Stags<sup>1</sup> act as an agent to farmers and registered keepers of livestock. In the last 2 years they have serviced over 450 different vendor clients.<sup>2</sup>
7. The appeal site therefore generates a large number of jobs and is an employment use for the purposes of Strategy 32 of the East Devon Local Plan 2013-2031 (LP). Strategy 32 seeks to protect employment uses and resists the change of use of such land, unless, amongst other things, options for retention of the site or premises for its current or similar use have been fully explored without success for at least 12 months (and up to 2 years depending on market conditions), and there is a clear demonstration of surplus supply of land or provision in the locality (Strategy 32,3). Both elements of Strategy 32,3 must be met to allow an exception to this policy on these grounds.
8. There is no dispute between the main parties that to comply with the first part of Strategy 32,3, at least 12 months marketing of the site is required, and the Council set this out in its pre-application advice to the appellant. However, no marketing of the site has been undertaken.
9. I accept that at the time pre-application advice was received the UK was in the first throes of the Covid 19 outbreak and market conditions were far from normal with the country being in a national lockdown. Nevertheless, there is an obvious potential buyer for the site. Stags, who run the existing Livestock Collection Centre, and currently lease the appeal site, are running a successful business from here. They would be displaced by its residential re-development; in fact, they have already been served notice to leave the premises by the end of the year.<sup>3</sup> Consequently, they have had to find an appropriate site to relocate to and are currently in the process of applying for planning permission for the change of use of an existing agricultural building outside of Honiton to facilitate this move<sup>4</sup>. A decision on this planning application is currently pending.
10. In the absence of a robust marketing exercise, I cannot be sure if the Livestock Collection Centre would need to be relocated at all. Stags could be potential purchasers rather than seeking planning permission to relocate elsewhere and

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<sup>1</sup> An Auctioneer and Valuer

<sup>2</sup> Planning and Design and Access Statement (D&A Statement), Change of Use and associated works of agricultural building for use as a Livestock Collection Centre at Land East of Tower Road, Offwell, Honiton, para 3.3

<sup>3</sup> D&A Statement Para 2.6

<sup>4</sup> 21/1798/FUL

the costs associated with that. There is no substantive evidence before me that the existing site is no longer suitable for their needs. The buildings currently on site are still capable of providing a reasonable environment for the holding of livestock<sup>5</sup> and the main reason it is ceasing operation at the appeal site towards the end of the year is due to the tenant being served notice by the landlord<sup>6</sup>.

11. Planning permission for the proposed relocation is not guaranteed and therefore the Livestock Collection Centre currently has nowhere definite to relocate to. All of this means the potential loss of a significant employment generating use in the area as a result of a failure to market the site.
12. Rather than marketing the site the appellant has sought to hypothetically explore alternative employment uses other than its current use and these were discussed in detail at the inquiry. Whilst it was broadly agreed in the inquiry that alternative uses for the site are very niche, given its location and access arrangements, the first consideration in this case, as set out above, is to explore retention of the site in its current use, and, as advocated by Strategy 32,3, to do so through marketing. This has not been done. Without this, the exception in Strategy 32,3 cannot, therefore, be met.
13. Similarly, even if there is a surplus supply of employment land or provision in the locality, which again was considered in detail at the inquiry, this is purely academic as the exception under Strategy 32,3 cannot be met if the first part of this policy has not been complied with. In any event, there is plainly no surplus of land or provision for the Livestock Collection Centre to relocate to, without the need for planning permission, which again indicates, on the ground, that Strategy 32,3 has not been complied with.
14. Whilst, ultimately, what the site owner does with the land is a matter for them, planning law, nevertheless, exerts control over the use of land. In this case I find that the proposal would harm business and employment opportunities in the area contrary to Strategy 32 of the LP. Given the wide-reaching effects of this in the locality I give this harm significant weight. More broadly I also find conflict with the relevant provisions of Strategies 3, 4 and 23 which encourage securing jobs and employment provision in order to help sustain Honiton as a vibrant and economically active town. Read together, these policies are consistent with the Framework as they promote both economic development and new homes and are sufficiently flexible to account for market changes.

#### *Settings of Honiton Conservation Area and St Paul's Church*

15. Honiton Conservation Area is centred around the historic High Street where there are a high number of listed buildings. It is an historic market town and a successful one having had a flourishing woollen industry during the 17<sup>th</sup> and 18<sup>th</sup> centuries. Glimpses of distant landscape are visible beyond the conservation area between buildings which adds to its significance as a country town with historic farming links.
16. Chert stone, a local, natural building material is widely used throughout the conservation area, especially in boundary walls to the rear of the high street<sup>7</sup> where the appeal site is located, and on the Grade II listed St Pauls Church.

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<sup>5</sup> Proof of Evidence, Christopher Parkes FRICS, Employment Land Report para 2.8

<sup>6</sup> D&A Statement para 2.6

<sup>7</sup> Honiton Interim Conservation Area Review para 5.4

This has value as a local material historically used during the period from which these structures date, and aesthetic value as it gives the conservation area a distinctive vernacular. Buildings and structures constructed from this material therefore contribute to the historic significance of the conservation area.

17. St Paul's Church is an historically significant building for many reasons, including its architectural interest having been designed by Charles Fowler and being built on the site of the earlier All Saints Chapel first documented in 1327<sup>8</sup>. For the purpose of this appeal, however, an important part of its historic significance is that it is a dominant landmark, both in the High Street and wider surrounding area. Its size and dominance is representative of the success of the town of Honiton and in that sense provides an insight into the history of the town and building itself.
18. The southern boundary of the appeal site which abuts Silver Street marks the boundary of Honiton Conservation Area. Immediately to the south-east of this boundary is St Paul's Church which sits more or less on the opposite side of the road. Given the close proximity of both of these heritage assets, the appeal site clearly sits within their settings.
19. The appeal site is enclosed by a chert stone wall, the southern part of which forms the boundary of the conservation area and, as confirmed at the inquiry, falls just within the conservation area. This makes a positive contribution to the significance of the conservation area and its setting due to it being an historic building material commonly used in this area. The appeal site is also a place from which St Paul's church can be seen from or across given that the site is relatively open with only low-level buildings on it. As part of the significance of the church is that it is a landmark, the appeal site therefore contributes to this significance as it enables views of the church to be appreciated in the wider area.
20. The proposed development would retain and restore the existing chert stone boundary wall thereby retaining an important element of the conservation area and its setting. Notwithstanding this, the materials indicated on the submitted plans would not be sympathetic to their location. They would be man-made, for example, slate effect and concrete tiles, and uPVC windows. The overall colour palette of renders, brick and painted brick, and different roofing materials would also be incohesive and not reflect the more muted and traditional building materials more prevalently found in the immediately adjacent conservation area, where the prevailing roofing material is slate<sup>9</sup>. Being located so close to the conservation area and the buildings within in, which include the church, more sympathetic materials would be suitable. My concerns in respect of materials, could, however, be controlled by way of detailed material conditions.
21. In terms of views of the development, whilst three storeys in height; which would not be out of the ordinary given surrounding development, and relatively large, it would, nevertheless, be located on lower ground to the church and set sufficiently back to allow the church to retain its prominence as demonstrated in the Visually Verified Montages, dated May 2021, Views 1, 2 and 4. In View 3 the proposed building and the church do visually appear close. However, I am conscious that the church would still not be obscured and that in real life views

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<sup>8</sup> Proof of Evidence karen Pritchard para 5.4

<sup>9</sup> Honiton Interim Conservation Area Review para 5.1

are kinetic and View 3 is therefore a very small snapshot of the 'real' experience on the ground.

22. The development would obscure some views of distant countryside in Views 2 and 3. However, these are not views from within the conservation area, and, perhaps unsurprisingly, are not specifically identified in the Conservation Area Character Appraisal as being important. The Council also raised concerns that the development would be visible from High Street behind the church where further glimpses of countryside can be seen. However, Visually Verified Montages provided by the appellant show only a very small glimpse would be possible (View 5) such that this would not amount to harm.
23. Overall, subject to detailed conditions relating to materials, I find no harm to the settings of either Honiton Conservation Area or St Paul's Church. I also find that the proposal would preserve the character and appearance of Honiton Conservation Area. In coming to the above findings, I have also considered the effect of the proposal on the settings of other nearby listed buildings. For the same reasons as set out above, I find no harm in this respect. It follows therefore that I find no conflict with Policies EN9 and EN10 of the LP which seek to protect heritage assets.

#### *Other matters*

24. Strategy 34 of the LP sets a target of 25% affordable housing on residential developments. In this case, given the specific type of housing proposed, an off-site contribution towards affordable housing is justified. Various negotiations have taken place between the appellant and the Council following the submission of a viability appraisal resulting in an agreed reduction in affordable housing provision in this case, providing any such legal agreement includes an overage clause to capture a proportion of any unexpected 'super' profits. This is a reasonable approach to take. A unilateral undertaken has been submitted which makes provision for this. The affordable housing contribution meets the relevant tests and I have therefore taken this into consideration in my determination of the appeal.
25. Reference was made to various appeal decisions, including one in Fleet<sup>10</sup>, and specifically the weight afforded to various benefits by the Inspector in that case, which, it was argued should be transposed in this case. However, attributing weight depends on the full facts of the case before the decision maker, and these are unlikely to be exactly the same in any two cases. This appeal, in particular, turns on the individual circumstances of the case.

#### *Planning Balance*

26. I have found that the proposal does not accord with the development plan by virtue of harm to business and employment opportunities in the area. Given the scale of harm to jobs across Honiton I give this significant weight.
27. Various benefits would be provided by the development. It would provide housing, and in particular, housing for older persons, which of itself is beneficial for social reasons but also, as set out in the National Planning Policy Guidance, there is a critical need for it. In East Devon there is also a particular need for such housing as it is an area characterised by an elderly population profile. This type of housing also has the potential to release under-occupied housing stock.

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<sup>10</sup> APP/N1730/W/20/3261194

28. The development would also make a contribution towards affordable housing, albeit the full contribution, as required by Strategy 34, is not guaranteed at this stage. There are also benefits to the location of the development, it being on previously developed land and in an accessible location in Honiton.
29. Benefits relating to the generation of jobs would, for the most part, be either short-term in terms of the construction and operational phases of the development, or indirect in terms of local spending. When set against the clearer job losses which would potentially arise as an indirect result of the development, I give this benefit minimal weight. Environmental benefits put forward are that the scheme would be designed to energy and water efficiency standards. However, this would likely be true of any new development and given there is a current need for the use of the site as is, without its redevelopment and the environmental impacts of this, I again afford this benefit minimal weight.
30. The threat of the site falling into disrepair if an alternative employment use is not found has been put to me. However, the evidence indicates there was no need for an alternative employment use to be found. The Livestock Collection Centre remains a viable, employment use of the site. Until such time as the retention of the current use at the appeal site has been fully explored I afford this matter minimal weight.

### **Conclusion**

31. Whilst cumulatively the benefits put forward are significant, the harm to employment opportunities in the area is also significant and, overall, I find conflict with the development plan as a whole in this regard. Consequently, I find that, although finely balance, the benefits do not outweigh this harm. Therefore, having regard to the development plan as a whole and all material considerations advanced, the appeal is dismissed and planning permission refused.

*Hayley Butcher*

INSPECTOR



## APPEARANCES

### FOR THE LOCAL PLANNING AUTHORITY:

|                                                |                                                                                                  |
|------------------------------------------------|--------------------------------------------------------------------------------------------------|
| Mark Westmoreland-Smith QC                     | Instructed by the Strategic Lead –<br>Governance and Licencing of East Devon<br>District Council |
| He called:<br>Karen Pritchard BA(hons)<br>IHBC | Conservation Officer, East Devon District<br>Council                                             |
| Chris Parkes FRICS                             | Lambert Smith Hampton                                                                            |
| Jeremy Ebdon BSc(Hons)<br>DIPTP, MRTPI         | Principal Planning Officer, East Devon District<br>Council                                       |

### FOR THE APPELLANT:

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|--------------------------------------------------------|-----------------------------------------------------|
| Sasha White QC assisted by<br>Ben Fullbrook            | Instructed by Stuart Goodwill of Planning<br>Issues |
| He called:<br>Paul White BA(Hons) MPhil<br>MCIfA PIEMA | Ecus Ltd                                            |
| Rob Jackson BArch MArch<br>RIBA ARB                    | Planning Issues                                     |
| James Chaffer MRTPI MRICS                              | Alder King Property Consultants                     |
| Matthew Shellum BA(Hons),<br>DIPTP, MRTPI              | Planning Issues                                     |

### INTERESTED PERSONS:

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| Cllr David Munge | Honiton Town Council |
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**DOCUMENTS submitted at the Inquiry**

- 1 REBUTTAL heritage Proof
- 2 Appeal Decision APP/H1705/W/20/3248204
- 3 Revised site plan 10106HT-PA01 Rev A
- 4 Honiton Supplementary A3 Brochure
- 5 Heritage Statement submitted with planning application Ecus
- 6 Alder King Employment Land Report
- 7 LPA & Appellant comments on NPPF published 20 July 2021
- 8 Final draft legal agreement
- 9 LPA & Appellant Additional Conditions
- 10 Transcribed comments from Cllr Munge
- 11 Table of Employment Land Availability
- 12 Signed copy of legal agreement
- 13 Confirmation of acceptance of pre-commencement conditions
- 14 Council's comments on the Unilateral Undertaking