



Appeal Decision

Hearing held on 25 October 2022

Site visit made on 25 October 2022

by Mr W Johnson BA(Hons) DipTP DipUDR MRTPI

an Inspector appointed by the Secretary of State

Decision date: 21 December 2022

Appeal Ref: APP/Y1110/W/21/3287921

Land at Home Farm, Pinhoe, Exeter, Devon, EX4 9JG

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant outline planning permission.
- The appeal is made by Waddeton Park Ltd against the decision of Exeter City Council.
- The application Ref 21/0223/OUT, dated 8 February 2021, was refused by notice dated 13 July 2021.
- The development proposed is described as: 'outline planning application for the construction of up to 61 dwellings and associated infrastructure'.

Decision

1. The appeal is dismissed.

Preliminary Matter

2. Originally, the application was made in outline form with all matters reserved except for access. However, prior to the event, the appellant indicated that they no longer wished for access to be considered, thus changing the outline application to outline with all matters reserved. A number of drawings indicate the point of access, and no objections on this matter were received from the Council. Comments were invited at the event, including interested parties. I took into account the responses received, including those presented orally at the event. After a short adjournment, I concluded that no party would be prejudiced through the removal of access as a consideration on this application. I have dealt with the appeal on this basis.

Main Issues

3. Whilst the agenda set out the main issues, I sought views from all parties present at the event to adding 'with particular regard to landscape setting' to the listed main issue. No objections were raised to the addition of this amendment. Consequently, the main issues of this appeal are:
 - the effect of the proposed development on character and appearance, with particular regard to landscape setting; and,
 - whether the proposed development would make adequate provision for: affordable housing, open space, healthcare and highways.

Reasons

Landscape setting

4. The appeal site is located within the Exeter Slopes and Hills landscape character area with a character type of Upper Farmed and Wooded Valley

Slopes, as defined by the Devon landscape character assessment (LCA). The LCA describes how this landscape feels elevated above surrounding areas, offering views across Exeter, with distinctive views, the strong topography, notable woodland and the proximity to Exeter contribute to a strong sense of place.

5. Within the first refusal reason, the Council has cited 2no. development plan policies: 'saved' Policy LS1 of the Exeter Local Plan First Review, 2005 (LP), and Policy CP16 of the Exeter City Council Core Strategy, 2012 (CS). CS Policy LS1 seeks to restrict development within Exeter's Landscape Setting, listing a number of exceptions. It is accepted that the appeal site is situated within an area to which is covered by LP Policy LS1 and the proposed development does not comply with any of the exceptions listed, and therefore conflicts with LP Policy LS1. However, the main parties agree that this policy should be given limited weight, given that it is inconsistent with the Framework, amongst other things.
6. CS Policy 16 seeks to protect the character and distinctiveness of a number of defined areas, including the hills to the north and north-west of the City. Whilst, the aims of this policy are similar to LP Policy LS1, it is not as restrictive and does not rule out development within it, albeit it seeks to direct development outside the landscape setting of the city. Additionally, reference is made towards the protection of the Exe Estuary European Site, which I shall address later in my Decision.
7. I have had regard to the Exeter Fringes Study, 2007 and the Cornwall Environmental Consultants Ltd Visual Land Parcel Evaluation 2013, particularly the section referring to Land Parcel 100-1. However, whilst the Council have submitted the Exeter Landscape Sensitivity Assessment, undertaken by White Consultants, dated August 2022, it was confirmed orally at the event by both parties that this document has not yet been adopted by the Council. Thus, for this reason, it attracts very limited weight in the determination of this appeal.
8. Both Main Parties have submitted Landscape and Visual Assessments¹ (LVAs) to support their respective positions. Additionally, I also viewed the site from the majority of locations identified in the respective LVAs and additional locations put forward by interested parties. Consequently, I am satisfied that I saw everything I need to assess the impact of the development. Additionally, whilst the proposal is for outline permission only, the effect of erecting up to 61no. dwellings on this site, and the associated domestic paraphernalia, that would be associated with a residential development can still be determined.
9. The appellant's LVA is confirmed as comprising a Verified View (VV) or Accurate Visual Representation (AVR). Current good practice has been applied in preparing the VVs/AVRs of the proposed development, where the views selected are considered to be the most representative viewpoints in the area surrounding the site. I note the conclusions of the appellant's LVA, but I consider that the development of the appeal site would have a detrimental effect on the landscape setting of Exeter through its urbanisation and the resultant effect this would have on views, particularly towards the appeal site, which despite recent development, have not been affected to a great extent.

¹ Landscape and Visual Impact Assessment by Anne Priscott Associates Ltd and LVA by Define (the appellant's LVA)

10. The appellant has referenced various appeal decisions² and judgments³ in their submission, including the decision⁴ for the adjacent site at Home Farm, now referred to as 'Phase 1'. I note comments in respect of this judgment from various parties, including the appellant. I consider that this decision, which was challenged in the courts is a material consideration in the determination of this appeal. Whilst the built environment has undoubtedly changed through the passage of time, through the implementation of approved schemes, the importance of the upper slopes to the setting of the city, which contain the appeal site, has not diminished. Nonetheless, whilst the undeveloped nature of the site was a factor in the determination of the appeal for the adjacent site, this scheme has been assessed on its own merits.
11. I am unable to share all of the main findings of the appellant's detailed LVA. Whilst I acknowledge the Distinctive Characteristics of the LCA for Exeter Slopes and Hills, listed by the appellant. I also note some of the special qualities and features associated with this area, such as a strong rural character, with woodlands, fields, hedgerows and vernacular settlements, giving rise to high scenic quality and providing an attractive setting to the city of Exeter. It is also the overall strategy of the LCA to protect the landscape's strong rural character and role as setting to Exeter.
12. The visualisations within the appellant's LVA only serve to demonstrate that the proposed development would have a significant visual impact. This is particularly apparent in the case of viewpoints 4, 6 and 7, where I cannot be certain that the proposed development would not punctuate the ridge line. I accept that tree planting would likely soften the resultant appearance of the proposed development, but given that no such scheme is before me as landscaping is a reserved matter, there is no certainty that the outcomes predicted in the appellant's LVA would be achieved.
13. In any event, whilst appreciating the extent of built development in the locality of the site, I still consider that there would be adverse landscape and visual effects caused by the proposed development, but do not agree that a planting scheme, which would take some 15 years to mature, would provide suitable or sufficient mitigation to counteract the harm created by the residential development on this site. Additionally, I am not convinced that securing any future reserved matters submission in accordance with the submitted parameter plan and limiting the height of the dwellings would ensure the acceptability of the proposed development.
14. For the reasons given above, I conclude that the proposed development would create very significant harm to the character and appearance of the appeal site and the surrounding area, with particular regard to the landscape setting of Exeter. Therefore, the scheme conflicts with character and appearance aims of CS Policy CS16 and LP Policy LS1. The scheme also fails to accord with the requirements of the National Planning Policy Framework (the Framework), particularly paragraphs 130 and 174.

² APP/Y1110/W/22/3296946 (the Clyst Road decision); APP/Y1110/W/18/3202635; APP/Y1110/W/21/3278148; APP/Y1110/A/10/2137880; APP/Y1110/W/15/3005030; APP/Y1110/W/22/3292721 and APP/V0510/W/21/3282449

³ Suffolk Coastal District Council v Hopkins Homes Ltd and Richborough Estates v Cheshire East Borough Council (Supreme Court, 10/05/2017, UKSC 37); Tesco Stores Limited v Dundee City Council (Supreme Court, [2012] UKSC 12) and Exeter City Council and Secretary of State for Communities and Local Government, Waddeton Park Limited and The R B Nelder Trust (High Court, [2015] EWHC 1663 (Admin)).

⁴ APP/Y1110/A/14/2215771

Planning obligation

15. Since the Council made its decision, it has been confirmed that after reviewing its initial request, the Council no longer wishes to pursue a contribution towards education.
16. The executed Unilateral Undertaking (UU) that has been submitted would provide 35% of the dwellings to be affordable. Concerns were raised by the Council in respect of the dwelling mixture, but there is nothing substantive to demonstrate why the mixture as proposed in the UU is not acceptable. The UU also contains obligations in relation to Open Space, Highways/Transport, including the Pinhoe Area Access Strategy, Travel Plan and an amendment to a Traffic Regulation Order. The UU also makes provision for a health care contribution, albeit this is disputed by the appellant.
17. There is scope within the UU for me to strike out the healthcare provision if I do not deem it to be Community Infrastructure Levy (CIL) compliant. The UU identifies the financial contribution regarding healthcare as 'GP Surgery Contribution' (GPSC), which would result in £559.36 to be paid per dwelling. Given the level of development approved in the area already and the existing demand on Pinhoe Surgery, ISCA Medical Practice and Barnfield Hill Surgery, the proposed development would further increase demand on such services.
18. I acknowledge that the appellant considers that monies have already been received in respect of population growth and that the GP surgeries are in private ownership. However, based on the discussions at the event and the written submissions I consider that the proposed development would give rise to additional local demand on the GP services, which should be mitigated to make the development acceptable in planning terms. The GPSC in the UU is very specific in this regard.
19. In view of the above, I consider the obligations set out in the UU are necessary to make the development acceptable in planning terms; directly related to the development; and fairly and reasonably related in scale and kind. Therefore, they meet the tests within CIL Regulation 122 and those set out in paragraph 57 of the Framework. As such, I have taken them into account in reaching my decision.
20. Consequently, I conclude that there is no longer any conflict with CS Objectives 1, 3, 5, 6 and 10; CS Policies CP7, CP9, CP10, and CP18, LP Policies AP1, T1. DG5 and Exeter City Council Affordable Housing Supplementary Planning Document 2014.

Other Matters

Housing supply

21. Whilst the parties reach different figures, the Council's current supply of deliverable sites for housing is within a range of approximately 4.0 to 4.10 years. The figure of 4.0 years advanced by the appellant originates from the Clyst Road decision. As such, the Council are unable to demonstrate a five-year supply of deliverable housing sites as required by paragraph 68 of the Framework, which represents a housing shortfall. In these circumstances, Paragraph 11 of the Framework indicates that housing policies should be regarded as out of date and that there is a 'tilted balance' in favour of granting permission.

22. Paragraph 11d)(ii) of the Framework indicates 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. I discuss this further in my planning balance.

Habitats Sites

23. The appeal site is located within 10 kilometres and therefore, falling within the 'zone of influence' of the Exe Estuary Special Protection Area (SPA) and the East Devon Pebbled Heaths SPA and Special Area of Conservation (SAC). These are statutorily protected habitats sites under the Conservation of Habitats and Species Regulations 2017 (as amended).
24. It is anticipated that new housing development in this area is 'likely to have a significant effect', when considered either alone or in combination, upon the interest features of the SAC/SPA due to the risk of increased recreational pressure caused by that development.
25. The Council has undertaken a Appropriate Assessment (AA) for the site which concludes that, whilst the development has the potential to have a significant effect on the European Sites, and an adverse impact on the achievement of the conservation objectives for the sites, the impacts of the development can be mitigated through receipts from the CIL to contribute towards the implementation of measure in the South East Devon European Sites Mitigation Strategy (SEDEMS), which are designed to avoid and mitigate the adverse impacts of increased visitor pressure brought about through the population growth.
26. SEDEMS sets tariffs for residential development to contribute to mitigation measures and how they would be collected through the CIL and Planning Obligations/Unilateral Undertakings. In this instance it is proposed that payment would be made through CIL, this would be a per dwelling contribution and would be top-sliced from CIL receipts.
27. Notwithstanding the Council's findings in respect of this, as the competent authority, I am required to carry out an AA of the effect of the proposed development. However, as I am dismissing the appeal in any event, I have not needed to consider this matter further.

Other

28. I have had regard to the number of objections received from local residents and others, including local councillors as part of this appeal. I also note the views expressed by those interested parties who attended the Hearing, some of whom spoke as representatives of local interest groups, expressing a wide range of concerns including, but not limited to the following; accessibility, environmental sustainability, infrastructure, pedestrian and highway safety, site access during construction, drainage, ecology, climate change, amongst other things. However, I note that these matters were considered where relevant by the Council when it determined the planning application. Whilst I can understand the concerns of the interested parties, there is no compelling evidence before me that would lead me to come to a different conclusion to the Council on these matters.

Planning Balance

29. The appeal site is located outside the settlement boundary and is therefore within the countryside. There would be visual harm to the character and appearance of the appeal site and surrounding area. This harm would be very significant, particularly with regard to the landscape setting of Exeter and would attract very substantial weight and importance in the planning balance.
30. The delivery of market homes attracts significant weight in light of the Framework's objective of significantly boosting housing supply, and the shortfall of the Council's housing supply. In addition, securing affordable housing as part of the scheme attracts significant weight. There would also be significant economic benefits through the construction phase and the future occupation of the properties.
31. The provision of public open space, highways/transport and healthcare contributions are all necessary to make the development acceptable in planning terms and attract neutral weight. Additionally, whilst SEDEMS would likely provide suitable mitigation to ensure the integrity of habitat sites, this does not attract any weight for or against the proposed development.
32. As the site is currently undeveloped, the harm from this proposed development to landscape character, visual amenity and the landscape setting of Exeter would be permanent. I am therefore clear that the adverse impacts of granting planning permission in this instance would significantly and demonstrably outweigh the benefits when assessed against the policies in the Framework taken as a whole. Therefore, the proposal would not constitute sustainable development with regard to paragraph 11 d ii) of the Framework.

Conclusion

33. The proposed development would be contrary to the development plan and there are no material considerations that outweigh this conflict. Consequently, with reference to Section 38(6) of the Planning and Compulsory Purchase Act 2004, I conclude that the appeal should be dismissed.

W Johnson

INSPECTOR

APPEARANCES

FOR THE APPELLANT:

Charles Banner of Counsel

Instructed by Mr Seaton

He called:

David Seaton MRTPI

Agent

Andrew Williams BA (Hons) DipLA DipUD CMLI

Define

FOR THE LOCAL PLANNING AUTHORITY:

Matthew Diamond BA (Hons) MA MRTPI

Exeter City Council

Simon Curran

Exeter City Council

Dale Cooper

Exeter City Council

Anne Priscott

Anne Priscott Associates Ltd

INTERESTED PARTIES:

Cllr Duncan Wood

Exeter City Council

Cllr Tracy Adams

Devon County Council

Jaqueline Pitcher

Local Resident

Michael Bennett

Local Resident / Exeter

Kate Jago

Greenspace Group

Local Resident / Exeter

Greenspace Group

Richard Wood

Local Resident

Gill Baker

Local Resident / Exeter

Greenspace Group

DOCUMENTS SUBMITTED AT THE HEARING

The following documents were submitted and accepted at the Hearing:

ON BEHALF OF THE APPELLANT:

- Statement of Common Ground (Addendum) – email 24 October 2022
- Suggested Conditions/Comments – email 24 October 2022
- Completed Unilateral Undertaking – email 24 October 2022
- Draft Statement of Common Ground (Addendum) – email 20 October 2022
- Draft Suggested Conditions/Comments – email 20 October 2022
- Note Regarding Unilateral Undertaking - email 20 October 2022
- Email correspondence dated 19 October 2022 - email 20 October 2022
- Unilateral Undertaking – email dated 12 October 2022
- Appeal Decision APP/Y1110/W/22/3296946 – email dated 12 October 2022
- CIL Compliance Statement – email dated 12 October 2022
- CIL Charging Schedule – email dated 12 October 2022
- CIL Proof A to H – email dated 12 October 2022
- Letter RE: 'means of access' – email dated 2 October 2022

ON BEHALF OF THE LOCAL PLANNING AUTHORITY:

- Representation from Integrated Care Board – email 21 October 2022
- Landscape Sensitivity Assessment & Land Parcel Assessment by White Consultants – email 14 October 2022

ON BEHALF OF AN INTERESTED PARTY:

- Photographs and viewpoints – Michael Bennett

****End****