



Appeal Decision

Site visit made on 6 December 2022

by B J Sims BSc (Hons) CEng MICE MRTPI

an Inspector appointed by the Secretary of State

Decision date: 12 January 2023

Appeal Ref: APP/W1145/W/22/3301339

Holly Lane Farm, Halwill Junction, EX21 5UF.

- 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 Mrs K Potter against the decision of Torridge District Council.
 - The application Ref 1/0290/2021/OUTM, dated 9 March 2021, was refused by notice dated 20 December 2021.
 - The proposal is for residential development (use class C3) with associated access, infrastructure and landscaping works.
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Decision

1. The appeal is dismissed.

Procedural Matters

2. The application and appeal are in outline but the means of access is for consideration in detail at this stage.
3. The Appellant has completed an agreement under Section 106 of the Act establishing certain planning obligations, should the permission sought in the appeal be granted. These comprise a 30% affordable housing contribution, and the provision of open space, biodiversity net gain and a secondary education transport contribution. The Council has provided a statement that these obligations are compliant with the Community Infrastructure Regulations. The planning obligations are considered further below.

The Site and the Proposed Development

4. The appeal site comprises some 1.7ha of low-quality pasture land, bounded by trees and hedges, together with a strip of land providing the means of access to the A3079 and Holly Lane. The main part of the site lies outside and to the north of the defined settlement boundary of Halwill Junction. A submitted indicative layout illustrates 41 houses arranged around a central loop road together with an attenuation pond and an area of open green space.
5. Between the northern settlement boundary and the appeal site there is a development of five dwellings under construction. These lie to the north of a recently completed development of another five dwellings within the settlement boundary. All these ten houses will ultimately be served by an existing access road from the A3079, which incorporates a turning head not far from the main road junction. It is proposed that the turning head would be extended to create

the access road to the appeal development, running immediately to the east of the dwellings just described.

6. The development now proposed would be contiguous with the five-dwelling development still under construction.
7. The application plans show that land to the north west of the appeal site is in the ownership or control of the Appellants and it is proposed that some 1.7ha would be provided for biodiversity gain via the Section 106 agreement, together with another small area in the southernmost corner of the appeal site. Holly Lane, which forms a separate connection between the estate and the A3079 is also owned or controlled by the Appellant and is available as a pedestrian link.

Planning Law and Policy

8. It is established law that all development should comply with the development plan unless material considerations indicate otherwise. The National Planning Policy Framework (NPPF) is such a material consideration.
9. The NPPF at paragraph 11 and Footnote 8 applies a presumption in favour of sustainable development, including the so-called tilted balance that, where a local planning authority cannot demonstrate a five-year supply of deliverable housing sites, permission is to be granted, unless any adverse impacts of doing so would significantly and demonstrably outweigh the benefits, when assessed against the policies of the NPPF as a whole.
10. The development plan includes the adopted North Devon and Torridge Local Plan 2011-2031 (LP) which defines the settlement boundary of Halwill Junction and contains the following policies of direct relevance to this appeal.
11. Policy ST07 provides the spatial strategy for rural North Devon and defines Halwill Junction as a Local Centre and primary focus for development in a rural area. Beyond this, in the countryside, development is limited to that which is enabled to meet local economic and social needs and development necessarily restricted to a countryside location.
12. Policy HAL states the Spatial Strategy for Halwill Junction with a vision that includes a strong village community, new development of a scale that addresses local needs, preferably to the north and east of the A3079, and retains the existing character of the area. The Strategy seeks the provision of a minimum of 30 dwellings, including a site allocation for 25 homes at Chilla Road, to the east.
13. Policies ST04 and DM04(a)(b) and (d) together seek high quality design for development that is appropriate to its setting, reinforces the key characteristics and special qualities of the area and contributes positively to local distinctiveness. Policy DM08A requires development to respect the character of the landscape, whether or not it is subject to protective designation.
14. Policy ST21 on Managing the Delivery of Housing supports proposals for residential development outside defined settlement limits when housing completions fall below 90% of the planned requirement and are unlikely to recover within two years. Such proposals should be of location and scale commensurate with the deficit, be able to contribute to it in a timely manner,

be consistent with the overall spatial strategy and should accord with other policies.

15. There is nothing to suggest that these policies are inconsistent with the NPPF.

Matters not in Dispute

16. The Council cannot demonstrate a five-year housing land supply (5YHLS), following a previous appeal finding that the supply equates to 4.23 years. Accordingly, it is necessary in this case to apply the tilted balance of the NPPF.
17. There is no dispute that the proposed development would comply with the development plan with respect to its effects on heritage and archaeology, flood risk and drainage, and housing mix.

Main Issues

18. The main issues to be addressed in the determination of this appeal are: the principle of the development located outside the defined settlement boundary of Halwill Junction; its effects on the appearance and character of the countryside landscape by extending the built settlement; and the degree to which, in the application of the tilted balance of the NPPF, any adverse impacts would outweigh the benefits, when assessed against the Framework as a whole.
19. Before assessing planning benefits, it is also appropriate to review other material considerations of particular concern to local residents, regarding highway safety, residential amenity, infrastructure capacity and the effect on wildlife and biodiversity.

Reasons

Principle of Development

20. Although contiguous with built development under construction, the appeal site is located some way outside the northern defined settlement boundary of Halwill Junction, in the countryside, where LP Policy ST07 generally resists built development unless it is to meet local economic and social needs.
21. Policy HAL defines local housing needs for Halwill Junction as a minimum of 30 new dwellings. Potentially, this is largely met by an allocation for 25 dwellings at Chilla Road now the subject of planning permission. Whilst there is no ceiling to the amount of new housing for Halwill Junction, there is no substantive evidence that the development of up to 41 dwellings proposed in this appeal, outside the settlement boundary, is required to meet local economic and social needs in terms of Policy HAL.
22. Accordingly, even though Policy HAL prefers that any new development be north of the A3079, like the new building in progress adjacent to the appeal site, the present proposal is contrary to Policy ST07 and in principle unacceptable.

Countryside Landscape and Extension to the Built Settlement

23. The appeal site is undesignated in landscape terms and screened by its boundary hedges and trees, with potential for enhancement by new planting as part of any detailed reserved matters scheme. Therefore, taking account also

of a submitted landscape impact assessment, the visual impact of the proposed housing on the surrounding countryside landscape would be mitigated to some extent. At the same time, the new built development would inevitably make the site urban in character and would therefore be intrinsically harmful to the character of the wider rural area.

24. The development would thus be in conflict with the protective provisions of LP Policies ST04, DM04 and DM08A, in that it would not be appropriate to, nor respectful of, the character of its rural landscape setting.
25. Clearly, the development would extend the existing built settlement significantly northward. The prevailing form of the village is strongly linear, having derived historically from the pattern of the main roads and railway, with limited modern departures from the original layout.
26. I note the contention of the Appellant that the northward extension now proposed would perpetuate the linear form of the settlement. To an extent, that is true of the ten dwellings now existing or under construction between the A3079 and the southern appeal site boundary. That is because they are served by a single, central spine road. However, the access to the appeal development, proposed in detail at this stage, would, in effect, duplicate that access road by running parallel to the existing spine road and east of the houses. The area of up to 41 new houses would itself broaden out beyond the current linear extension of ten dwellings. As illustrated, any layout for the proposed development would likely comprise four rows of houses arranged around a central loop road.
27. For these reasons, I consider overall that the proposed development would amount to an incongruous departure from the present linear form of Halwill Junction. This would be further contrary to LP Policy DM04, in failing to reinforce this key characteristic of the area, or to contribute to local distinctiveness.

Other Material Considerations

Highway Safety

28. Several local people raise strong concerns that the main A3079 at the junction providing access to the appeal development is dangerous due to the speed of passing traffic and poor emerging visibility. However, the County Highway Authority points out that the access is in process of construction under a previous planning permission, including vision splays appropriate to the prevailing 30mph speed limit. The Highway Authority has no objection to the present appeal proposal, subject to conditions to require further detailed approval of the estate road, including pedestrian access to Holly Lane, footways and cycle paths, vision splays, lighting and to control parking, drainage, and construction traffic.
29. On that basis I agree with the Highway Authority and the Council that the proposed development could provide safe and suitable access and parking, in accordance with the relevant provisions of LP Policies ST10, DM05 and DM06.

Amenity

30. Residents near the appeal site are concerned that future housing might give rise to such impacts as overlooking, noise or disturbance. Certainly, there is

always potential for these and other effects on amenity and this must always be considered. However, this is an outline proposal (apart from means of access) and the submitted layout is only indicative, such that these considerations are essentially for the reserved matters stage. I am satisfied in this case that adverse impact on amenity could be avoided in a detailed design by suitable choice of building orientation, layout and landscaping, to ensure compliance with the provisions of LP Policy DM01 in this connection.

Infrastructure Capacity

31. The planning obligations, discussed below would ensure the provision of several elements of infrastructure to offset the effects of the proposed development in accordance with LP Policies ST18, ST23 and DM10. Otherwise, I have seen no substantive evidence that community services or facilities would prove to have insufficient capacity to serve the potential occupiers of the appeal development.

Wildlife and Biodiversity

32. There is naturally concern that any building work on hitherto undeveloped, rural land will disrupt its ecology. A submitted ecological impact assessment identifies several types of bat, including some rare species, commuting and foraging among the boundary vegetation; and reptile surveys found grass snakes and a slow worm, whilst there is potential for dormice, nesting birds, badgers and otters to be present, although unrecorded. The site is not subject to any specific wildlife designations and suitable mitigation measures would be included within a Landscape and Ecological Management Plan, secured by planning condition. Moreover, significant biodiversity net gain would be assured in accordance with LP Policies ST14 and DM08 by several aspects of green infrastructure, in particular the dedication of 1.77ha of land immediately north west of the appeal site.

Planning Obligations

33. The 30% affordable housing contribution and the 75%-25% tenure split between social rent and intermediate accord with LP Policy ST18 and the NPPF in this respect.
34. The provision of 17.7ha of land adjacent to the north west boundary of the appeal site and 153sqm within its southern corner for biodiversity net gain accords with LP Policies ST14 and DM08 requiring enhancement of environmental assets
35. On-site green infrastructure provision and financial contributions per dwelling for off-site play, sports and recreation space and allotments all accord respectively with LP Infrastructure Policies ST23 and DM10 and the North Devon Green Infrastructure Strategy, being calculated according to the indicative 41-dwelling scheme.
36. A financial contribution for secondary education transport at a rate per dwelling would appropriately support school transport for families occupying the development, connecting to the closest secondary school at Holsworthy, in accordance with LP Infrastructure Policy ST23.

37. A further financial contribution per dwelling for NHS acute care services would also comply with LP Infrastructure Policy ST23, calculated on population increase.
38. I am satisfied that all the planning obligations would be properly secured by the completed Section 106 agreement and would be necessary in planning terms and directly, fairly and reasonably related to the development in terms of the relevant Regulation 122 of the Community Infrastructure Regulations 2010 and national Planning Practice Guidance.

Tilted Balance, Benefits and Conclusions

39. In connection with assessing the tilted balance it is germane that LP Policy ST21 on managing housing delivery itself contemplates development outside settlement boundaries in the face of a housing supply deficit, as here represented by the lack of a 5YHLS. Importantly, that is subject to timely delivery, broad consistency with planned strategy and settlement vision and compliance with other policies.
40. Clearly, as found in respect of the main issues, the proposed development would not be consistent with the strategy and vision for Halwill Junction, albeit the site is apparently available for timely delivery following approval of reserved matters and, aside from the substantive objections on location and countryside landscape impact grounds, compliant with other LP policies.
41. Overall, despite that degree of compliance with other policies and the broad settlement strategy of the LP, I consider that the proposed development would conflict with LP Policy ST21.
42. Moreover, due to its failure also to comply with LP Policies ST04, ST07, HAL, DM04, DM08 and DM08A with respect to the main issues of principle and landscape and settlement character, I also consider that the proposal is to be regarded as failing to comply with the development plan as a whole. This factor carries very substantial weight against this appeal.
43. For reasons explained above, the determination of this appeal turns on the tilted balance of the NPPF.
44. The proposed development would make a valuable contribution to the overall market and affordable housing supply deficit of the wider Torridge District as whole, providing social and economic benefit. There would also be a net gain in local biodiversity. These benefits attract substantial weight in favour of the appeal.
45. There would be actual and financial contributions of green space, as well as education transport and NHS acute care financial contributions. However, these essentially respond to the needs of prospective occupiers of the proposed dwellings and carry limited weight in favour of the appeal.
46. I have identified the planning harms and benefits that would result from the appeal proposal with reference to development plan policies that are consistent with the NPPF, in particular its provisions for housing delivery, well-designed places and conservation and enhancement of the natural environment. The planning harm and benefits accordingly carry the equivalent levels of weight when assessed against the NPPF as a whole.

47. On an overall balance of judgment, I conclude that the adverse impacts of granting the planning permission sought in this appeal would significantly and demonstrably outweigh the benefits of doing so and that, taking into account every matter raised in the written representations, the appeal should be dismissed.

B J Sims

Inspector

Richborough Estates