



Appeal Decision

Site visit made on 6 February 2024

by K Reeves BA (Hons) MA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 10 May 2024

Appeal Ref: APP/Y1138/W/23/3327516

Sandhurst, Road from Eastington Cross to Orchard Cross, Lapford EX17 6QE

- 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 Mr Kenneth Harrison against the decision of Mid Devon District Council.
 - The application Ref 22/01910/MOUT, dated 4 October 2022, was refused by notice dated 31 March 2023.
 - The development proposed is the erection of 14 dwellings to include a footpath link.
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Decision

1. The appeal is dismissed.

Application for costs

2. An application for costs was made by Mid Devon District Council against Mr Kenneth Harrison. This application is the subject of a separate Decision.

Preliminary Matters

3. The wording of the description of development on the application form is unclear and contains a significant amount of unnecessary information. I have, therefore, used the description of development listed on the Council's decision notice and on the appeal form, with redundant words omitted, in the banner heading above, for reasons of clarity.
4. The application has been submitted in outline with all matters reserved for future consideration. I have dealt with the proposal on that basis, treating details such as the submitted plans for illustrative purposes only and as an indication of the dwellings that would likely be erected on the site.
5. A revised National Planning Policy Framework (the Framework) was published on 19 December and updated on 20 December 2023. An opportunity was provided to the main parties to make further written comment over these changes. This decision is based on the current Framework and has taken account of the further representations made on this.

Main Issue

6. The main issue is whether the proposed development would be acceptable in this countryside location, having regard to the development plan and national planning policies relating to rural exception sites.

Reasons

Location

7. The appeal site is an undeveloped field adjoining the edge of Lapford. It abuts existing residential development on two of its boundaries with the remaining boundaries opening into the countryside. The field is located in the countryside outside the defined settlement limit of Lapford.
8. The proposal is for the erection of 14 dwellings, consisting of 8 no. affordable dwellings, 4 no. open market dwellings and 2 no. self-build dwellings. The number of dwellings is confirmed on the application form and are not reserved matters.
9. The proposal has been put forward on a rural exception site on land adjoining the settlement boundary of Lapford. The principle of affordable housing to meet local needs on such sites is supported by the development plan (Policies S14 and DM6 of the Mid Devon Local Plan 2013 – 2031 (LP)) and the Framework (Paragraph 82). However, it is not obvious in this case what geographical area should be considered as local in terms of affordable housing. The Council's 'Meeting Housing Needs' Supplementary Planning Document November 2023 (SPD) advises that the assessment of local need should be limited to the housing need of the parish. From the evidence, including my observations on site, I consider the local area would include the settlement of Lapford and the wider area of the parish of Lapford.
10. The Council have confirmed that data from Devon Home Choice, obtained in January 2023, indicated a local housing need in the parish of Lapford of 7 dwellings. More recent data from Devon Home Choice, obtained in November 2023, indicates that the local housing need for Lapford parish remains at 7 dwellings.
11. In terms of the proposed affordable housing mix, Devon Home Choice data from January 2023 indicated that the housing needed for Lapford parish comprised 2 no. one bedroom dwellings, 3 no. three bedroom dwellings and 2 no. four bedroom dwellings. The more recent data from November 2023 indicates a housing need of 4 no. 1 bedroom dwellings, 1 no. 3 bedroom dwelling and 2 no. four bedroom dwellings.
12. Whilst I have not been provided with the types and tenures of affordable housing needed locally in Lapford parish, the appellant has confirmed their intention to provide the types and tenures of housing in accordance with the mix specified in the SPD. This would be 60% affordable rent (including social rented housing) and 40% affordable Home Ownership (including a proportion of First Homes). However, even if this mix were achieved, the proposal would provide a greater number of dwellings than identified as the local housing need.
13. I acknowledge that the proposal is at the outline stage and that certain matters have been reserved. However, the development descriptions on the application form, decision notice and appeal form are prescriptive on the total number of dwellings proposed and the application form is clear on the total number of affordable dwellings to be provided. Planning Practice Guidance confirms that the amount of development proposed is necessary to allow consideration of an application for outline planning permission. As such, the amount of affordable

housing is a matter for consideration at this stage of the process and the prescriptive nature of the development description would leave no opportunity for alterations to the amount of development at the reserved matters stage, including a lowering of the number of affordable dwellings.

14. In terms of viability, the appellant initially submitted a viability assessment carried out by ET Planning and dated 10 January 2023. That assessment considered a scheme for 1 bedroom affordable dwellings being sold at a discounted price. It indicated that it would be viable for more affordable housing on the site to be provided with less market housing as cross-subsidy. The appellant has subsequently provided at appeal an updated viability assessment produced by Herridge Property Consulting and dated 2 August 2023. The updated assessment takes account of the Council's expected affordable housing tenure mix, and I am content to use this assessment for this reason. However, the updated assessment confirms that 6 open market dwellings would be required to make a delivery of 8 affordable dwellings viable. This indicates that a scheme to deliver affordable housing in line with the level of local need (7 affordable dwellings) would result in less open market dwellings being required to make the scheme viable. In its current form, the proposed development would lead to more open market housing being built than is required to make a policy compliant scheme viable.
15. Whilst I am mindful that a detailed scheme as part of a reserved matters application could alter the proposed development in terms of its scale and layout, as the proposal is for 14 dwellings I can reasonably judge the impact that so many dwellings would have on the character and appearance of the area. The site contributes positively to the character and appearance of the landscape surrounding the settlement and the existing character of this section of the lane is defined by residential properties that are laid out in a linear pattern on its southern side. The proposed development would result in the spread of development into the rural fringe around the settlement and the quantum of development would cause harm to the character and appearance of the area, particularly as it would lead to the proliferation of unjustified housing development into the undeveloped countryside.
16. For these reasons, the proposed development would not be acceptable in this countryside location, having regard to the development plan and national planning policies relating to rural exception sites. Furthermore, the resulting proliferation of unjustified housing development into the undeveloped countryside would lead to unacceptable harm to the character and appearance of the landscape. Consequently, the proposal would conflict with Policies S14 and DM6 of the LP for the reasons given above. Furthermore, there would be a conflict with the Framework, insofar as it supports rural exception site development that addresses the identified needs of the local community and seeks to contribute to and enhance the natural and local environment by recognising the intrinsic character and beauty of the countryside.

Other considerations and planning balance

17. The appellant has submitted a signed and dated Unilateral Undertaking (UU) that would secure financial contributions towards off-site open space and secondary education transport. It would also secure a minimum of 51% affordable housing provision on the site, but the number of affordable dwellings

would be established through the submission and agreement of an Affordable Housing Scheme, which would be informed by a financial viability assessment.

18. I consider that the UU would be directly related to the development, be reasonably related in scale and kind, and necessary to make the development acceptable in planning terms. As such, I consider that it would satisfy the relevant tests set out in Regulation 122(2) of the Community Infrastructure Regulations 2010.
19. However, the proposal is specifically for 14 dwellings and 51% of that amount of dwellings (rounded up to the nearest whole dwelling) would secure 8 affordable dwellings. A higher percentage of affordable housing would result in more affordable dwellings. Given that it has been established that a provision of 8 or more affordable dwellings on the site would conflict with Policies S14 and DM6 of the LP, the UU would not address the policy conflict. As the site is not a readily accessible location to the population of the wider district and the surplus affordable housing would make a minimal contribution to the district wide local housing need, I afford limited weight to the benefits arising from the UU.
20. Additionally, the proposal would contribute 14 dwellings, including 8 affordable dwellings, to the existing housing stock, but the limited contribution means that the housing provision would attract moderate weight. Furthermore, there would be associated social and economic benefits, including during the construction phase, through financial contributions, and future residents paying into the local economy. However, given the small scale of the proposed development, these associated benefits would be limited.
21. Contrary to the above benefits, the proposed development would harm the overall spatial strategy for the district and would result in unacceptable harm to the character and appearance of the landscape. The policies that I have identified conflict with are considered to be consistent with the Framework. Accordingly, I apportion significant weight to the policy conflicts and associated harm that would be caused by the proposed development, and I find that the adverse impacts of the scheme would outweigh the scheme's benefits.

Conclusion

22. For the reasons given above, the proposal would conflict with the development plan and the material considerations do not indicate that the appeal should be decided other than in accordance with it. Accordingly, the appeal should be dismissed.

K Reeves

INSPECTOR



Costs Decision

Site visit made on 6 February 2024

by K Reeves BA (Hons) MA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 10 May 2024

Costs application in relation to Appeal Ref: APP/Y1138/W/23/3327516
Sandhurst, Road from Eastington Cross to Orchard Cross, Lapford EX17 6QE

- The application is made under the Town and Country Planning Act 1990, Sections 78, 322 and Schedule 6, and the Local Government Act 1972, Section 250(5).
- The application is made by Mid Devon District Council for a full award of costs against Mr Kenneth Harrison.
- The appeal was against the refusal of planning permission for the erection of 14 dwellings to include a footpath link.

Decision

1. The application for an award of costs is refused.

Reasons

2. Parties in planning appeals normally meet their own expenses. However, the Planning Practice Guidance (PPG) advises that costs may be awarded against a party who has behaved unreasonably and thereby caused the party applying for costs to incur unnecessary or wasted expense in the appeal process.
3. The Council's case is that the appellant has acted unreasonably by submitting a speculative application that is clearly contrary to the development plan and submitting additional information in the form of a new viability assessment at the appeal stage. Additionally, the Council have raised that the appellant did not agree to pay for them to carry out their own independent viability assessment to verify the appellant's updated viability assessment.
4. Whilst I have found the proposal to be contrary to the development plan, I do not agree that the appellant submitted a speculative application. The appellant did not have professional representation during the application process, but has provided sufficient evidence at the appeal stage, based on planning arguments, to support their case for the development of the site. I am also satisfied that the subsequent application submitted for non-residential development on this site¹ does not demonstrate that the application was speculative.
5. The appellant provided an updated viability assessment as part of their appeal submission. However, they have confirmed that the original viability assessment was based on the affordable housing being discounted sales, whereas the updated assessment is based on the Council's currently expected affordable housing tenure mix of 60% affordable rent and 40% intermediate rent, as outlined in the Council's 'Meeting Housing Needs' Supplementary Planning Document (SPD) of November 2023. Whilst it is unfortunate that the updated assessment was provided at the appeal stage, the Council's position

¹ Mid Devon District Council application reference 23/01768/FULL

has changed during the appeal process, and I note the SPD was not published until well after planning permission had been refused. I do not consider this to be unreasonable behaviour in this case.

6. Despite it being the Council's procedure to request that the commissioning of their own independent viability assessment be covered by the appellant, it would not be unreasonable for the appellant to refuse to cover these costs. Particularly as the viability assessment originally submitted by the appellant was actually favourable to the Council's case that the proposed development is not policy compliant. Moreover, it is my understanding that the Council did not commission their own independent viability assessment and therefore there was no unnecessary or wasted expense incurred.
7. Having regard to all of the above, unreasonable behaviour resulting in unnecessary or wasted expense has not occurred and an award of costs is not warranted.

K Reeves

INSPECTOR

Richborough