



Appeal Decision

Site visit made on 17 April 2025

by **C Butcher BSc MA MRTPI**

an Inspector appointed by the Secretary of State

Decision date: 27 June 2025

Appeal Ref: APP/W1145/W/24/3351681

Endford Works, Shebbear, Devon EX21 5RY

- The appeal is made under section 78 of the Town and Country Planning Act 1990 (as amended) against a refusal to grant outline planning permission.
 - The appeal is made by Mr & Mrs Rumsam against the decision of Torridge District Council.
 - The application Ref is 1/0125/2015/OUTM.
 - The development proposed is 33 residential units with associated landscaping and play space (amended plans).
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Decision

1. The appeal is dismissed.

Applications for costs

2. Applications for an award of costs have been made by both of the main parties. These applications will be the subject of separate decisions.

Preliminary Matters

3. The appeal relates to an application for outline planning permission with all matters reserved. As such, where the proposed site plans show any information relating to those reserved matters, I have treated this as illustrative for the purposes of making my decision.

Main Issue

4. The main issue is whether the proposed development would make sufficient provision for affordable housing, and whether appropriate financial contributions towards community infrastructure would be provided.

Reasons

5. Policy ST18 of the North Devon and Torridge Local Plan, 2011 – 2031 (the LP) sets out that proposals for 11 or more dwellings should, as a starting point, be expected to provide 30% of the units as affordable housing. Part 5 of the policy goes on to state that negotiation to vary the scale and nature of affordable housing provision, along with the balance of other infrastructure and planning requirements, will be considered on the basis of a robust viability appraisal.
6. In this instance, as part of the Council's consideration of the planning application, advice from the District Valuer (the DV) was sought in relation to the appellant's viability assessment. The DV set out that, in their view, two scenarios could be viable. The first would be to provide 5 affordable housing units and a financial

contribution of £50,000 towards community infrastructure, while the second scenario would provide 2 affordable units and a contribution of £303,938.

7. From the evidence before me, it appears that the Council were keen to pursue the first scenario in order to maximise on site affordable provision. However, it is noted that the appellant was in favour of the second scenario due to difficulties in finding a Registered Provider. A large number of emails have been provided as part of this appeal which demonstrate that no agreement could be reached.
8. As part of their appeal statement, the appellant has provided further viability information produced by Belstone Fox Project Management Ltd, August 2024 (the VA). The VA assessed two scenarios. The first (scenario one) was identified as being a policy compliant scheme which would provide 10 affordable units and contributions totalling £303,938. The VA concluded that this would result in a development deficit of over £4 million. A second scenario (scenario two) was to provide no affordable housing, but with financial contributions totalling £171,676. The VA concluded that this would also result in an overall financial loss.
9. Further input from the DV sets out that they consider that the scheme could viably provide 5 affordable units, as discounted market sales, and a contribution of £303,938. A key aspect of the difference between the DV position and the VA's scenario one is related to market values. In this instance, the DV has provided a very significant amount of detail to justify their identified values based on recent sales within similar villages in the wider area.
10. In contrast, the appellant's figures are based on advice received from a local estate agent. I do not wish to question the experience or knowledge of the estate agents, however, simply based on the evidence before me, I do find the DV's assessment more compelling and convincing in relation to market values. Therefore, irrespective of any conclusions drawn in relation to build costs, abnormal costs and other inputs, this does suggest that the VA does not necessarily represent a robust basis for identifying an appropriate balance between affordable housing provision and community infrastructure contributions.
11. Since I undertook my site visit, the appellant has submitted a draft unilateral undertaking (UU), significantly beyond the usual timescales for appeals. The UU provides a commitment to deliver two affordable homes on site, along with a total of £171,676 towards community infrastructure. However, even if I were to agree that the appellant's viability evidence was robust, and that the provision for affordable housing and contributions set out within the UU were appropriate, the appellant has noted that it would not be possible to finalise the planning obligation in the near future due to an ongoing probate process.
12. The appellant has set out two options for addressing this matter. I find that the first option, which is to leave the appeal open for an indefinite period of time until the probate process has ended, is not appropriate given that this process can often take several months to conclude.
13. The second option presented by the appellant is to use a negatively worded condition to allow the planning obligation to be finalised later on. Planning Practice Guidance¹ sets out that negatively worded conditions, such as the one proposed here, are unlikely to be appropriate in the majority of cases except in exceptional

¹ Paragraph: 010 Reference ID: 21a-010-20190723

circumstances, for instance where the delivery of particularly complex development schemes may otherwise be at risk. I do sympathise with the appellant's current position. However, it is abundantly clear that the provision of affordable homes and payments towards infrastructure are absolutely critical to the sustainability of this scheme. Therefore, even if I were to agree to accept a late UU into this process, I am simply not satisfied that a negatively worded condition would provide me with sufficient certainty that the identified affordable homes and payments had been secured.

14. As such, given my concerns with regards to the appellant's viability evidence and the lack of a completed planning obligation, I conclude that the proposal would not provide appropriate financial contributions towards community infrastructure or an appropriate level of affordable housing provision. It would therefore conflict with LP Policies ST18, ST23 and DM10, the relevant aspects of which seek to ensure that developments provide, or contribute towards, the provision of a suitable level of infrastructure and affordable homes.

Other Matters

15. There are two Grade II listed buildings close to the entrance to the site known as 1 and 2 Goamans Cottages. Their significance is derived from their historic appearance and notable design detailing, including plastered cob walls and gable ended thatched roofs. Given that the proposed development would enhance the appearance of the site entrance, and the site itself, I am satisfied that it would not harm the setting or significance of these designated heritage assets.

Conclusion

16. It is not in dispute that the Council cannot currently demonstrate a 5-year supply of deliverable sites for housing. Indeed, the Council has noted that the current position is 4.86 years. As a result of the shortfall, policies related to the location and supply of housing are deemed to be out of date. In such circumstances, Paragraph 11d and footnote 8 of the National Planning Policy Framework (the Framework) require 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 as a whole.
17. The provision of 33 dwellings would make efficient use of a previously developed site and would contribute to local housing supply. The scheme would also provide some economic benefits for the local area and would deliver play space for children and have biodiversity benefits. While the shortfall in land supply is very modest, I still apply significant weight to these benefits.
18. I have concluded that the proposal would not secure suitable provision for affordable homes or community infrastructure payments. Given the importance of these matters to the overall sustainability of the scheme, and the emphasis that the Framework places on these issues, I am obliged to afford the highest possible weight to this harm.
19. As a result, when assessed against the policies in the Framework taken as a whole, the adverse impacts would significantly and demonstrably outweigh the benefits.

20. Consequently, for the reasons given, the proposed development conflicts with the development plan as a whole, and there are no other considerations, including the provisions of the Framework, that outweigh the identified harm. The appeal is therefore dismissed.

C Butcher

INSPECTOR

Richborough



Costs Decision

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Costs application in relation to Appeal Ref: APP/W1145/W/24/3351681 Endford Works, Shebbear, Devon EX21 5RY

- 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 Mr and Mrs Rumsam for a full award of costs against Torridge District Council.
 - The appeal was against the refusal of planning permission for 33 residential units with associated landscaping and play space (amended plans).
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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. In this instance, the applicant has alleged that the Council has not engaged proactively and positively in the application process. This is particularly related to the Council's position that they wanted to secure five affordable units and £50,000 as part of the scheme, rather than an alternative proposal as outlined by the District Valuer. However, securing the maximum number of affordable units is clearly a corporate priority for the Council. As such, I cannot conclude that they have acted unreasonably in pursuing such a scenario, even taking into account the applicant's difficulties in finding willing Registered Providers.
4. The applicant has also raised concerns about the content of the District Valuer's assessment. However, as part of my appeal decision, I have noted that I am inclined to agree with the market values provided by the District Valuer. In any event, the Council is entitled to rely on the evidence provided to it by an independent party.
5. With this in mind, I consider that unreasonable behaviour resulting in unnecessary or wasted expense has not occurred and an award of costs is not warranted.

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INSPECTOR



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3. In this instance, the Council has set out that the appellant acted unreasonably in submitting further detailed viability evidence as part of their appeal statement. It is the case that late evidence should not routinely be accepted. However, given the length of the appeal process, and the changeable nature of viability information, it is not unreasonable for the appellant to provide an up to date assessment as part of their appeal documents.
4. With this in mind, while I acknowledge the Council's frustration that they have been obliged to pay for additional support from the District Valuer, I consider that unreasonable behaviour resulting in unnecessary or wasted expense has not occurred and an award of costs is not warranted.

C Butcher

INSPECTOR