

Appeal Decision

Hearing held on 27 September 2016

Site visit made on 27 September 2016

by R C Kirby BA(Hons) DipTP MRTPI

an Inspector appointed by the Secretary of State for Communities and Local Government

Decision date: 09 November 2016

Appeal Ref: APP/Y1138/W/16/3151342

Land at NGR 303818 111567, Muxbeare Lane, Willand, Devon

- 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 London and Devonshire Trust against the decision of Mid Devon District Council.
 - The application Ref 16/00406/OUT, dated 15 March 2016, was refused by notice dated 17 May 2016.
 - The development proposed is residential development of up to five dwellings with approval of access sought and all other matters reserved for future consideration.
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Decision

1. The appeal is dismissed.

Procedural Matters

2. The application was submitted in outline and the application form makes it clear that approval is being sought for access at this stage. It was confirmed at the Hearing that the layout plan and elevations submitted with the application were for illustrative purposes only. It is on this basis that I have considered the appeal.
3. The site address, above, was agreed by the main parties at the Hearing as best describing the location of the site.
4. With agreement, the appellant submitted revised Unilateral Undertakings (UUs) following the Hearing. The 2 UUs contain planning obligations to ensure that the development is for self-build purposes only and to provide contributions in respect of a number of matters, including education and public open space. One of the UUs would also make provision for a contribution to be made towards air quality. The Council was given the opportunity to comment on the UUs. The UUs and the obligations contained therein are referred to later in my decision.

Main Issues

5. The main issues in this case are:
 - whether or not the loss of allocated employment land is justified in this case; and
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- the effect of the proposal on the character and appearance of the area, having particular regard to the proposed highway works necessary to serve the development, and the site's location relative to neighbouring land uses.

Reasons

6. The appeal site is located within the settlement limit for Willand. The Council's Core Strategy 2026 (CS) identifies certain rural settlements as villages, including Willand, within Policy COR 17. The policy states that development will be limited to minor proposals within defined settlement limits of villages and to allocations for affordable housing to meet a local need; small scale employment and tourism; services and facilities serving the locality; and other very limited development which enhances community vitality or meets a local social or economic need. It is common ground that the proposal accords with CS Policy COR 17, being a minor proposal within the settlement limit for Willand.

Effect on allocated employment land

7. However, the appeal site forms part of a larger site (WI1 Willand Industrial Estate) allocated for employment uses (B1, B2 and B8), within the Local Plan Part 3 Development Management Policies (LP3). LP3 Policy DM21 seeks to protect employment land, including sites that are established, allocated or have planning permission. This policy broadly accords with the National Planning Policy Framework's (the Framework) objective of securing economic growth in order to create jobs and prosperity and placing significant weight on the need to support economic growth through the planning system.
8. The policy however recognises that non-employment uses of employment land may be permitted in certain circumstances. Again, this reflects the Framework at paragraph 22 which advises that planning policies should avoid the long term protection of sites allocated for employment use where there is no reasonable prospect of a site being used for that purpose. Where there is no reasonable prospect of a site being used for the allocated employment use, applications for alternative uses of land or buildings should be treated on their merits having regard to market signals and the relative need of different land uses to support sustainable local communities.
9. For non-employment uses or development of employment land or buildings to be permitted LP3 Policy DM21 requires it to be demonstrated that there is no reasonable prospect of the site being used for employment purposes. The policy goes on to highlight three criteria, all of which must be satisfied before non-employment uses will be permitted. I will deal with each of these in turn.
10. Firstly, Policy DM21 of LP3 requires that there must be a sufficient range of suitable and available employment sites in the area. The supporting text to this policy establishes that in terms of availability of alternative sites, the Council will have regard to the specific and wider conclusions of the Employment Land Review (ELR).
11. The Council commissioned GL Hearn to carry out a review of employment land in Mid Devon and the resulting document was published in January 2013. Paragraph 8.3 of this document identified that there was an excess of employment land within the District of between 15 – 25 hectares over the period to 2031 when assessed against an identified need for 30 – 40 hectares.

12. The appellant submits that the emerging Mid Devon Local Plan 2013 – 2033 (MDLP) has changed the status of the appeal site and land to the west (phase 2 of the business park), from a protected employment site to open countryside, as a result of the findings of the ELR. It is suggested that I attach substantial weight to this matter in my overall Decision. Whilst the Council does not dispute that there is a surplus of employment land within the District, it points out that there are several unresolved objections to the proposed status of the appeal site and land to the west within the emerging MDLP and therefore only limited weight should be attached to this matter in my consideration of the appeal proposal.
13. Given the stage that the MDLP has reached and the outstanding objections relating to the status of the appeal site and surrounding land, there is no certainty that the site will remain as open countryside within a future adopted version of this plan. As such, I am only able to attach very limited weight to this matter in my consideration of the appeal proposal.
14. The Council submit that although the ELR concluded that there was a surplus of employment land within the District, it recommended that encouragement and support should be given to employment development of the remaining consented development at Willand. The planning history of the appeal site and surrounding land on the business park indicates that the original outline planning permission for both phase 1 and 2 was granted under Ref 05/02177/OUT, towards the end of 2005. Whilst there have been a number of subsequent planning permissions upon phase 1 of the site between this date and the date of the ELR, there have been no further planning permissions granted on the appeal site. Given this matter, I find that the recommendation of the ELR above, does not relate to the appeal site and as such I attach very limited weight to this in my overall Decision.
15. I have no reason to doubt the Council's assertion that there is confidence within the business park as a whole. This is demonstrated by the recent number of planning permissions on both phase 1 and phase 2 of the business park. However, it remains the case that there is a surplus of employment land within the District as identified by the ELR.
16. In light of the foregoing, I find that the proposal would ensure that there was a sufficient range of suitable and available employment sites in the local area for the foreseeable future. The first part of Policy DM21 of LP3 is therefore met.
17. The second part of Policy DM21 of LP3 requires it to be demonstrated that there is no commercial interest in the re-use of the site for employment. This requires a suitable marketing exercise to be undertaken for at least 18 months, at a price reflecting similar employment sites or based upon the valuation of independent assessors.
18. Whilst marketing information may have been submitted with an earlier application upon the site, this information is not before me. At the Hearing I was told of other employment sites in the area which had lower rents than the Mid Devon Business Park, and that it had taken a considerable time to let the units on the site. Whilst noting these matters, LP3 Policy DM21 requires a marketing exercise to be undertaken, even where it has been demonstrated that there is a sufficient range of suitable and available sites in the local area. This has not been done and the proposal would therefore be in conflict with this policy.

19. Furthermore, the appellant has not undertaken a sequential viability test as required by the third part of Policy DM21, which brings the proposal further into conflict with this policy.
20. In light of the foregoing, I conclude that in respect of the first main issue, I am not satisfied that it has been demonstrated that there is no reasonable prospect of the appeal site being used for employment purposes. The proposal conflicts with development plan policy in this regard. The appellant's assertion that the only access to the site would be from Muxbeare Lane, regardless of its future use, does not convince me to depart from development plan policy in this regard. This is because I have not been provided with substantive evidence to demonstrate that the site could not be accessed through phase 2 of the business park in the future, or indeed that Muxbeare Lane would be unsuitable to serve a future employment use of the site.
21. However, the appellant's case is based on the premise that the Council's policies for the supply of housing, including Policy DM21 of LP3 are out of date. The Council acknowledge that it cannot demonstrate a five-year supply of deliverable housing sites and it accepts that LP3 Policy DM21 could be considered as a policy for the supply of housing. In light of the evidence before me, I have no reason to reach a different conclusion in this respect.
22. Where a five-year supply of deliverable housing sites cannot be demonstrated, the Framework at paragraph 49 makes it clear that relevant policies for the supply of housing (in this case Policy DM21) should not be considered up-to-date. Paragraph 14 of the Framework states that unless material considerations indicate otherwise, 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, or where specific policies in the Framework indicate development should be restricted.
23. The Framework makes it clear at paragraph 47 the Government's objective to boost significantly the supply of housing. It further states at paragraph 49 that housing applications should be considered in the context of the presumption in favour of sustainable development. Sustainable development has three dimensions as set out in paragraph 7: economic, social and environmental.
24. There is no dispute that the site's location is close to the services and facilities on offer in Willand. These facilities could be easily walked or cycled to from the appeal site. Tiverton Parkway station is relatively close to Willand and can be accessed from Muxbeare Lane. These matters amount to social and environmental benefits in the scheme's favour.
25. The economic benefits associated with the proposal include the creation of jobs, some of which would be likely to be local given that the appellant is suggesting that each of the plots would be reserved as self-build plots. The intended future occupiers of the new dwellings would be likely to support local services and facilities. Whilst noting the Council's concerns that the proposal would result in the loss of jobs as a result of the change in use from employment land to residential, I have not been provided with substantive evidence as to the impact this would have on the local economy. I therefore attach limited weight to this concern in my overall Decision.

26. Further social benefits of the scheme would include the provision of self-build housing which could be delivered quickly, and the contribution that would be made towards the provision of education facilities and public open space. The contribution towards air quality would include electric vehicle charging infrastructure in Cullompton. This would be a social and environmental benefit which weighs in favour of the proposal. These matters could be secured through the submitted UUs dated 6 October 2016.
27. A further environmental role of sustainability is the protection and enhancement of the natural, built and historic environment and a further social role is the creation of a high quality built environment. These matters are considered below.

Character and appearance

28. The appeal site is accessed off Muxbeare Lane. The lane is narrow and serves a number of sporadic dwellings of individual design, set in individual plots. It is largely lined by mature landscaping, giving it an attractive sylvan, rural character.
29. Policy DM2 of LP3 requires new development to be of high quality design, which amongst other matters is based upon the principles of having a clear understanding of the characteristics of the site, its wider context and the surrounding area; creates visually attractive places that are well integrated with surrounding buildings, streets and landscapes and make a positive contribution to local character. This accords with the Framework's core planning principles of high quality design and the account that should be taken of the different character of different areas.
30. The Council is concerned that the proposed widening of the lane would be harmful to the rural character of it. The widening proposed is localised and from my observations it would be at points where there would be limited removal of vegetation. This in itself would not be harmful to the character and appearance of the area.
31. However, the proposed access into the site and associated visibility splays would involve the removal and cutting back of a large section of mature landscaping along its frontage with Muxbeare Lane. This landscaping makes an important contribution to the established character of the area. Although the submitted drawings indicate that new landscaping would be included along the front boundary of the site, I am not convinced that this would suitably mitigate the harm that would be caused as a result of the proposed access works.
32. Furthermore, the appeal site is physically separate from the main built up area of the village. A residential scheme in this location would not be well integrated with either the adjoining employment development, or the sporadic residential development along the lane. The creation of a single access onto Muxbeare Lane to serve 5 new dwellings would introduce a suburban form of development into this rural area. This would be an alien form of development in this established rural area.
33. In light of my findings, I conclude that the proposal would result in a form of development which would not reinforce local distinctiveness or provide a positive impact on the local environment. It would not protect or enhance the natural or built environment. This would be harmful to the character and

appearance of the area and would result in conflict with the objectives of CS Policy COR 2, LP3 Policies DM2 and DM14, and the environmental role of sustainability.

34. The Framework makes it clear at paragraph 8 that to achieve sustainable development, economic, social and environmental gains should be sought jointly and simultaneously through the planning system. Although there would be economic, social and environmental benefits associated with the proposal, as set out above, significant harm would be caused to the character and appearance of the area. This would be in conflict with the environmental role of sustainability. This harm would significantly and demonstrably outweigh the benefits of the scheme. Accordingly, the proposal would not comprise sustainable development for which the Framework indicates there is a presumption in favour.

Other Matters

35. The submitted UUs would make provision for a number of matters as set out above. However, given my conclusions above, I am not required to take a view as to whether these obligations accord with the requirements of Regulation 122 of the Community Infrastructure Levy Regulations 2010.
36. The appellant asserts that an application for residential development is likely to be made on the adjoining land to the appeal site (phase 2), and that it is unlikely that it will be brought forward for employment use. Be that as it may, I do not have details of planning permission being granted on this site for anything other than employment use. In any event, I have determined the appeal proposal on its individual merits.

Conclusion

37. I therefore conclude that in light of the foregoing, the proposal does not comply with the development plan taken as a whole and does not represent sustainable development in the terms of the Framework.
38. For the above reasons, and having regard to all other matters raised, the appeal is dismissed.

R C Kirby

INSPECTOR

APPEARANCES

FOR THE APPELLANT

Mr D Stephenson	London and Devonshire Trust
Mr N Jillings	Jillings Heynes Planning

FOR THE COUNCIL

Ms T Maryan	Area Planning Officer
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INTERESTED PARTIES

Mr B Warren	Chairman, Willand Parish Council
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DOCUMENTS SUBMITTED AT THE HEARING

1. Copy of Policy WI1 of LP3
2. Copy of Policy S2 of Local Plan Review 2013 – 2033 (proposed submission)
3. Copy of Policy S6 of Local Plan Review 2013 – 2033 (proposed submission)
4. Copy of Policy DM19 of Local Plan Review 2013 – 2033 (proposed submission)
5. Plan annotated with planning history for the appeal site and surrounding area

DOCUMENTS SUBMITTED AFTER THE HEARING

1. Unilateral Undertakings x 2, dated 6 October 2016